

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1104

Introduced by Adams, 24.

Read first time January 19, 2012

Committee: Education

A BILL

1 FOR AN ACT relating to the Postsecondary Institution Act; to amend
2 sections 85-2403, 85-2405, 85-2406, 85-2408, 85-2412,
3 85-2413, 85-2414, 85-2415, 85-2416, and 85-2417, Revised
4 Statutes Supplement, 2011; to provide for recurrent
5 authorization to operate; to harmonize provisions; to
6 eliminate expired provisions; to repeal the original
7 sections; and to outright repeal sections 85-2410 and
8 85-2411, Revised Statutes Supplement, 2011.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 85-2403, Revised Statutes Supplement,
2 2011, is amended to read:

3 85-2403 For purposes of the Postsecondary Institution
4 Act:

5 ~~(1) Authorization to operate means approval by the~~
6 ~~commission to operate a postsecondary institution in this state;~~

7 ~~(2)~~(1) Authorization to operate on a continuing basis
8 means approval by the commission to operate a postsecondary
9 institution in this state without a renewal requirement;

10 ~~(3)~~(2) Commission means the Coordinating Commission for
11 Postsecondary Education;

12 ~~(4)(a)~~(3)(a) Establishing a physical presence means:

13 (i) Offering a course for college credit or a degree
14 program in this state that leads to an associate, baccalaureate,
15 graduate, or professional degree, including:

16 (A) Establishing a physical location in this state where
17 a student may receive synchronous or asynchronous instruction; or

18 (B) Offering a course or program that requires students
19 to physically meet in one location for instructional purposes more
20 than once during the course term; or

21 (ii) Establishing an administrative office in this state,
22 including:

23 (A) Maintaining an administrative office in this state
24 for purposes of enrolling students, providing information to students
25 about the institution, or providing student support services;

1 (B) Providing office space to staff, whether
2 instructional or noninstructional staff; or

3 (C) Establishing a mailing address in this state.

4 (b) Physical presence does not include:

5 (i) Course offerings in the nature of a short course or
6 seminar if instruction for the short course or seminar takes no more
7 than twenty classroom hours and the institution offers no more than
8 two courses as defined by the commission in a calendar year;

9 (ii) Course offerings on a military installation solely
10 for military personnel or civilians employed on such installation;

11 (iii) An educational experience arranged for an
12 individual student, such as a clinical, practicum, residency, or
13 internship; or

14 (iv) Courses offered online or through the United States
15 mail or similar delivery service which do not require the physical
16 meeting of a student with instructional staff;

17 ~~(5)~~ (4) Executive director means the executive director
18 of the commission or his or her designee;

19 ~~(6)~~ (5) Nebraska public postsecondary institution means
20 any public institution established, operated, and governed by this
21 state or any of its political subdivisions that provides
22 postsecondary education;

23 ~~(7)~~ (6) Out-of-state public postsecondary institution
24 means any public institution with a physical presence in Nebraska
25 that is established, operated, and governed by another state or any

1 of its political subdivisions and that provides postsecondary
2 education;

3 ~~(8)~~—(7) Postsecondary institution means any private
4 postsecondary institution, out-of-state public postsecondary
5 institution, or Nebraska public postsecondary institution exempt from
6 the Private Postsecondary Career School Act; ~~and~~

7 ~~(9)~~—(8) Private postsecondary institution means any
8 Nebraska or out-of-state nonpublic postsecondary institution with a
9 physical presence in Nebraska, including any for-profit or nonprofit
10 institution, that provides postsecondary education; and -

11 (9) Recurrent authorization to operate means approval by
12 the commission to operate a postsecondary institution in this state
13 until a renewal of such authorization is required.

14 Sec. 2. Section 85-2405, Revised Statutes Supplement,
15 2011, is amended to read:

16 85-2405 The commission has the following powers and
17 duties:

18 (1) To establish levels of authorization to operate based
19 on institutional offerings;

20 (2) To receive, investigate as it may deem necessary, and
21 act upon applications for a recurrent authorization to operate and
22 applications to renew ~~an~~ a recurrent authorization to operate;

23 (3) To establish reporting requirements by campus
24 location either through the federal Integrated Postsecondary
25 Education Data System, 20 U.S.C. 1094(a)(17), as such section existed

1 on January 1, 2011, and 34 C.F.R. 668.14(b)(19), as such regulation
2 existed on January 1, 2011, or directly to the commission for any
3 postsecondary institution authorized to operate;

4 (4) To maintain a list of postsecondary institutions
5 authorized to operate, which shall be made available to the public;

6 (5) To establish a notification process when an
7 authorized postsecondary institution changes its address or adds
8 instructional sites within this state;

9 (6) To conduct site visits of postsecondary institutions
10 to carry out the Postsecondary Institution Act;

11 (7) To establish fees for applications for a recurrent
12 authorization to operate and applications to renew a recurrent
13 authorization to operate, which shall be not more than the cost of
14 reviewing and evaluating the applications;

15 (8) To investigate any violations of the act by a
16 postsecondary institution; and

17 (9) To adopt and promulgate rules, regulations, and
18 procedures to administer the act.

19 Sec. 3. Section 85-2406, Revised Statutes Supplement,
20 2011, is amended to read:

21 85-2406 The commission shall adopt and promulgate rules
22 and regulations to establish minimum standards according to which a
23 postsecondary institution shall ~~be authorized~~ have a recurrent
24 authorization to operate within the state, and upon failure to
25 operate according to such standards, the postsecondary institution

1 shall be subject to the suspension or revocation of the authorization
2 to operate. An institution shall demonstrate that it can be
3 maintained and operated in accordance with such standards. The
4 standards shall include, but not be limited to:

5 (1) The financial soundness of the institution and its
6 capability to fulfill its proposed commitments and sustain its
7 operations;

8 (2) The quality and adequacy of teaching faculty, library
9 services, and support services;

10 (3) The quality of the programs offered, including
11 courses, programs of instruction, degrees, any necessary clinical
12 placements, and the institution's ability to generate and sustain
13 enrollment;

14 (4) The specific locations where programs will be offered
15 or planned locations and a demonstration that facilities are adequate
16 at the locations for the programs to be offered;

17 (5) Assurances regarding transfer of credits earned in
18 the program to the main campus of such institution and clear and
19 accurate representations about the transferability of credits to
20 other institutions located in Nebraska and elsewhere;

21 (6) Whether such institution and, when appropriate, the
22 program, are fully accredited, or seeking accreditation, by an
23 accrediting body recognized by the United States Department of
24 Education;

25 (7) The institution's policies and procedures related to

1 students, including, but not limited to, recruiting and admissions
2 practices;

3 (8) The tuition refund policy for an institution that
4 does not participate in federal financial aid programs described in
5 Title IV of the federal Higher Education Act of 1965, 20 U.S.C. 1001
6 et seq., as such act existed on January 1, 2011; and

7 (9) Any other standards deemed necessary by the
8 commission.

9 Sec. 4. Section 85-2408, Revised Statutes Supplement,
10 2011, is amended to read:

11 85-2408 ~~No~~ Except as provided in section 85-2407, no
12 postsecondary institution shall operate in the State of Nebraska by
13 establishing a physical presence in this state until it has received
14 authorization to operate by the commission.

15 Sec. 5. Section 85-2412, Revised Statutes Supplement,
16 2011, is amended to read:

17 85-2412 (1) Except as otherwise provided in this section,
18 after review of an initial application for a recurrent authorization
19 to operate, including any further information submitted by the
20 applicant as required by the commission and any investigation of the
21 applicant as the commission may deem necessary or appropriate, the
22 commission shall grant or deny the application for an initial
23 recurrent authorization to operate. A grant of an initial recurrent
24 authorization to operate may be on such terms and conditions as the
25 commission may specify. Such authorization shall be for a five-year

1 period unless the commission determines that a shorter period of time
2 is appropriate based on the standards established pursuant to section
3 85-2406.

4 (2) After review of an application to renew ~~an~~a
5 recurrent authorization to operate, ~~including~~ which shall include any
6 further information submitted by the applicant as required by the
7 commission and any investigation of the applicant as the commission
8 may deem necessary or appropriate, the commission shall grant or deny
9 the application. ~~for renewal of an authorization to operate.~~ Renewal
10 of ~~an~~a recurrent authorization to operate may be on such terms and
11 conditions as the commission may specify. Such authorization shall be
12 for a five-year period unless the commission determines that a
13 shorter renewal period is appropriate based on the standards
14 established pursuant to section 85-2406.

15 (3) ~~If the applicant~~ an institution has, for at least
16 twenty academic years under the same ownership, continuously offered
17 one or more graduate or four-year undergraduate programs with a
18 physical presence in Nebraska in compliance with state and federal
19 law, the institution may request authorization to operate on a
20 continuing basis. After review of the request which shall include any
21 further information submitted by the applicant as required by the
22 commission and any investigation of the institution as the commission
23 may deem necessary or appropriate, the commission shall grant
24 authorization to operate on a continuing basis unless the commission
25 determines that an additional ~~review period~~ recurrent authorization

1 to operate is appropriate based on the standards established pursuant
2 to section 85-2406.

3 ~~(3)~~ (4) Except as otherwise provided in this section,
4 modifications, as defined by the commission in rules and regulations,
5 to an existing recurrent authorization to operate, but not to an
6 authorization to operate on a continuing basis, shall require an
7 application to the commission. After review of the application,
8 including any further information submitted by the applicant as
9 required by the commission and any investigation of the applicant as
10 the commission may deem necessary or appropriate, the commission
11 shall grant or deny the application. Approval of the application may
12 be on such terms and conditions as the commission may specify. Such
13 authorization shall replace the existing authorization ~~to operate~~ and
14 shall be for a five-year period unless the commission determines that
15 a shorter period of time is appropriate based on the standards
16 established pursuant to section 85-2406.

17 ~~(4)~~ (5) If an application for an initial recurrent
18 authorization to operate or a modification to an existing recurrent
19 authorization to operate includes a request to establish a new campus
20 in this state, as defined by the commission in rules and regulations,
21 the commission shall hold a public hearing. The hearing shall be
22 scheduled following a completed review of the application for a
23 recurrent authorization to operate or the modification of ~~an~~ a
24 recurrent authorization to operate, including any further information
25 submitted by the applicant as required by the commission and any

1 investigation of the applicant as the commission may deem necessary
2 or appropriate, and shall be conducted according to the
3 Administrative Procedure Act. After the public hearing, the
4 commission shall grant or deny the application. A grant of a
5 recurrent authorization to operate or the modification of ~~an~~a
6 recurrent authorization to operate may be on such terms and
7 conditions as the commission may specify. Such authorization or
8 modification shall be for a five-year period unless the commission
9 determines that a shorter period of time is appropriate based on the
10 standards established pursuant to section 85-2406.

11 Sec. 6. Section 85-2413, Revised Statutes Supplement,
12 2011, is amended to read:

13 85-2413 ~~An~~A recurrent authorization to operate shall be
14 in a form approved by the commission and shall state in a clear and
15 conspicuous manner at least the following information:

16 (1) The date of issuance, effective date, and term of the
17 authorization to operate;

18 (2) The full and correct name and address of the
19 institution authorized to operate;

20 (3) The authority for authorization to operate and the
21 conditions thereof; and

22 (4) Any limitation of authorization to operate as deemed
23 necessary by the commission.

24 Sec. 7. Section 85-2414, Revised Statutes Supplement,
25 2011, is amended to read:

1 85-2414 Any postsecondary institution ~~authorized with a~~
2 recurrent authorization to operate which ceases to meet any of the
3 requirements of the Postsecondary Institution Act, any rules or
4 regulations adopted and promulgated under the act, or any terms or
5 conditions specified by the commission for authorization to operate
6 under the act shall be notified in writing of any such specific
7 deficiency by certified mail. A hearing shall be scheduled requiring
8 the institution to show cause why the authorization to operate should
9 not be suspended or revoked. The hearing shall be held according to
10 the Administrative Procedure Act. After the hearing, if the
11 commission determines that any requirements, rules or regulations, or
12 terms and conditions have been violated, the commission may suspend
13 or revoke the recurrent authorization to operate or may require
14 action as a condition of continued authorization. ~~to operate.~~

15 Sec. 8. Section 85-2415, Revised Statutes Supplement,
16 2011, is amended to read:

17 85-2415 The recurrent authorization to operate or
18 authorization to operate on a continuing basis shall be issued to the
19 owner or governing body of the postsecondary institution and shall be
20 nontransferable. If there is a change in ownership, as defined by the
21 commission in rules and regulations, the new owner or governing body
22 shall, within thirty days after the change of ownership, apply for a
23 new recurrent authorization to operate under the Postsecondary
24 Institution Act, and if the institution fails to apply within such
25 time period, the original authorization to operate shall terminate.

1 An application for a new recurrent authorization to operate may be
2 deemed an application for renewal of the institution's original
3 authorization, except that such renewal shall be given in the form of
4 a recurrent authorization to operate even if the original
5 authorization was an authorization to operate on a continuing basis.
6 ~~to operate.~~ Verification that all student records are transferred
7 intact and in good condition to the new owner shall accompany the
8 application.

9 Sec. 9. Section 85-2416, Revised Statutes Supplement,
10 2011, is amended to read:

11 85-2416 At least ninety days prior to the expiration of
12 its recurrent authorization to operate, a postsecondary institution
13 shall complete and file with the commission an application form for
14 renewal of its recurrent authorization to operate or a request for an
15 authorization to operate on a continuing basis. Financial stability
16 information shall accompany the application.

17 Sec. 10. Section 85-2417, Revised Statutes Supplement,
18 2011, is amended to read:

19 85-2417 (1) Any institution denied ~~an~~ a recurrent
20 authorization to operate, a renewal of ~~an~~ a recurrent authorization
21 to operate, or an authorization to operate on a continuing basis by
22 the commission shall have the right to a hearing and a review of such
23 decision by the commission. If upon written notification of a denial
24 the aggrieved party desires a hearing and review, such party shall
25 notify the commission in writing within ten business days after

1 receipt of notice by the commission. If the aggrieved party does not
2 notify the commission pursuant to this section, the action shall be
3 deemed final. Upon receipt of such notice from the aggrieved party,
4 the commission shall fix the time and place for a hearing and shall
5 notify the aggrieved party of such by certified mail. The hearing
6 shall be conducted according to the Administrative Procedure Act.

7 (2) A decision of the commission following such hearing
8 shall be deemed final subject to the right of judicial review
9 provided in the Administrative Procedure Act. All matters presented
10 at any such hearing shall be acted upon promptly by the commission,
11 and the commission shall notify all parties in writing of its
12 decision, which shall include a statement of findings and conclusions
13 upon all material issues of fact, law, or discretion presented at the
14 hearing and the appropriate rule, regulation, order, sanction,
15 relief, or denial thereof.

16 Sec. 11. Original sections 85-2403, 85-2405, 85-2406,
17 85-2408, 85-2412, 85-2413, 85-2414, 85-2415, 85-2416, and 85-2417,
18 Revised Statutes Supplement, 2011, are repealed.

19 Sec. 12. The following sections are outright repealed:
20 Sections 85-2410 and 85-2411, Revised Statutes Supplement, 2011.