

## LEGISLATIVE BILL 4

Approved by the Governor February 14, 1995

Introduced by Executive Board: Hall, 7, Chairperson

AN ACT relating to the Private Postsecondary Career School Act; to amend sections 79-2801 to 79-2808, 79-2810 to 79-2838, 79-2842 to 79-2846, 79-2848 to 79-2853, and 79-2855 to 79-2863, Reissue Revised Statutes of Nebraska; to transfer sections; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 79-2801, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2801-~~ Sections 79-2801 to 79-2863 1 to 58 of this act shall be known and may be cited as the Private Postsecondary Career School Act.

Sec. 2. Section 79-2802, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2802-~~ It is the purpose of the Private Postsecondary Career School Act to provide for the protection, education, and welfare of the citizens of the State of Nebraska, its private postsecondary career schools, and its students by:

(1) Establishing minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility in order to protect against substandard, transient, unethical, deceptive, or fraudulent schools and practices;

(2) Prohibiting the granting of false educational credentials;

(3) Prohibiting misleading literature, advertising, solicitation, or representation by schools or their agents;

(4) Providing for the preservation of essential records; and

(5) Providing certain rights and remedies to the consuming public and the board necessary to effectuate the purposes of the act.

Sec. 3. Section 79-2803, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2803-~~ For purposes of the Private Postsecondary Career School Act:

(1) Agent shall mean means any person who owns any interest in, is employed by, or regularly represents for remuneration a private postsecondary career school located within or outside this state who (a) by solicitation made in this state enrolls or seeks to enroll a resident of this state for education offered by such school, (b) offers to award educational credentials for remuneration on behalf of any such school, or (c) holds himself or herself out to residents of this state as representing such a school;

(2) Agent's permit shall mean means a nontransferable, written authorization issued to a natural person by the department which allows that person to solicit or enroll any resident of this state for education in a private postsecondary career school;

(3) Authorization to operate shall mean means approval by the department to operate a private postsecondary career school in this state;

(4) Board shall mean means the State Board of Education;

(5) Branch facility shall mean means a facility (a) which is separate from a principal facility, (b) which offers a full program and full student services, (c) which is under the supervision of an onsite director or administrator, and (d)(i) the ownership, management, and control of which are the same as the principal facility, which principal facility is responsible for the delivery of all services, or (ii) at which education is offered by a franchisee of a franchisor authorized to operate as a private postsecondary career school pursuant to the act if the franchisor establishes the course curriculum and guidelines for teaching at the franchisee's facility;

(6) Commissioner shall mean means the Commissioner of Education;

(7) Course of study or instruction shall mean means a program of study, training, or instruction consisting of a series of lessons or classes which are coordinated as a curriculum or program of instruction to prepare or qualify individuals or improve or upgrade the skills needed for employment, career opportunities, or any specific occupation;

(8) Department shall mean means the State Department of Education;

(9) Education or educational services shall mean means any class, course, or program of occupational training, instruction, or study;

(10) Entity shall mean means any individual, company, firm, society, group, association, partnership, limited liability company, corporation,

trust, or other person;

(11) Grant, with respect to educational credentials, ~~shall mean~~ **means** award, sell, confer, bestow, or give;

(12) Home study school ~~shall mean~~ **means** a school which provides correspondence lesson materials prepared in a sequential and logical order for study and completion by a student on his or her own, with completed lessons returned by the student to the school for evaluation and subsequent return to the student, including those schools which offer instruction by home study in combination with in-residence training;

(13) Offer ~~shall include~~ **includes**, in addition to its usual meaning, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform a described act;

(14) Out-of-state school ~~shall mean~~ **means** any school which has its place of instruction or its principal location outside the boundaries of this state and which offers or conducts courses of instruction or subjects on the premises of the school, or provides correspondence or home study lesson materials, or offers or provides Nebraska students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of Nebraska;

(15) Principal facility or main school ~~shall mean~~ **means** a private postsecondary career school located in the State of Nebraska;

(16) Private postsecondary career school ~~shall mean~~ **means** any organization or business enterprise which is not specifically exempt under section 79-2804 4 of this act, which offers courses or subjects for which tuition is charged, and at the place of business of which a course of instruction is available through classroom instruction, home study, or both to a person for the purpose of training, preparing, or improving the person for an occupation even though the organization's or business enterprise's principal efforts may not be exclusively educational in nature;

(17) Resident school ~~shall mean~~ **means** any school offering courses of instruction to its students on the school's premises; and

(18) Separate classroom ~~shall mean~~ **means** a supplemental training space (a) which is located near the main school for the purpose of expanding the educational offerings or for training an overflow of students who cannot be accommodated at the main school, (b) which is close enough to the main school to assure immediate supervision and administration of all essential student services by the main school and ready access by students to the student services available, and (c) in which the only required onsite service is teaching.

Sec. 4. Section 79-2804, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2804-~~ The following education and schools are exempted from the provisions of the Private Postsecondary Career School Act:

(1) Schools exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization which is offered solely for that organization's membership or offered without charge;

(3) Education solely avocational or recreational in nature as determined by the department;

(4) Educational programs offered by a charitable institution, organization, or agency as long as such education or training is not advertised or promoted as leading toward occupational objectives;

(5) Public postsecondary schools established, operated, and governed by this state or its political subdivisions;

(6) Schools or organizations offering education or instruction which are licensed and regulated by agencies of this state other than the department as of September 2, 1977, except that such schools or organizations shall not be exempt from the provisions of the act with respect to agents' permits and the Tuition Recovery Cash Fund;

(7) Schools or organizations which offer education or instruction and which are licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff; and

(8) Private colleges and universities which award baccalaureate or higher degrees and which maintain and operate educational programs for which credit is given.

Sec. 5. Section 79-2805, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2805-~~ The department shall administer the Private Postsecondary Career School Act and for the purposes thereof shall employ such personnel as may be necessary. To effectuate the purposes of the act, the department may

request from any department, division, board, bureau, commission, or other agency of the state, and the same shall provide, such information as will enable the department to exercise properly its powers and perform its duties under the act.

Sec. 6. Section 79-2806, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2806-~~ The department shall have the following powers and duties in the administration of the Private Postsecondary Career School Act:

(1) To establish minimum standards in conformity with section ~~79-2808~~ 8 of this act, including quality of education, ethical and business practices, health and safety, and fiscal responsibility. Applicants for authorization to operate or for an agent's permit shall meet minimum standards before such authorization or permit may be issued or to continue such authorization or permit in effect. The standards to be developed under this subdivision shall be such as will effectuate the purposes of the act but will not unreasonably hinder legitimate educational innovation;

(2) To receive, investigate as it may deem necessary, and act upon applications for authorization to operate a private postsecondary career school and applications for an agent's permit;

(3) To maintain a list of private postsecondary career schools authorized to operate in this state and agents' permits which shall be available for the information of the public;

(4) To receive and cause to be maintained as a permanent file copies of records in conformity with section ~~79-2848~~ 44 of this act; and

(5) To adopt and promulgate rules, regulations, and procedures necessary and appropriate for the conduct of its work and the implementation of the act.

Sec. 7. Section 79-2807, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2807-~~ The board shall appoint an advisory council of six representatives of private postsecondary career schools. Members of the council shall include representatives from a business school, a trade or technical school, a better business bureau, and three other distinct areas of education. Members of the council shall serve staggered terms of three years each as established by the board at the time of initial appointment. If a vacancy occurs on the council, the board shall appoint a successor in the same category as the predecessor. The advisory council shall have the following responsibilities:

(1) To advise the department in its administration of the Private Postsecondary Career School Act; and

(2) To review the rules and regulations adopted or proposed for adoption by the department and make recommendations with respect thereto.

Sec. 8. Section 79-2808, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2808-~~ The board shall adopt and promulgate rules and regulations to establish minimum standards according to which a private postsecondary career school shall be maintained and operated in the state. A new school shall demonstrate that it can be maintained and operated in accordance with such standards. The standards shall include, but not be limited to, provisions on educational quality, facilities, equipment, qualification of administrators and instructors, publication of catalogs, credentials awarded, records, building and sanitation standards, financial stability, advertising, refund of unearned tuition and fees, and any other aspects deemed necessary by the board.

Sec. 9. Section 79-2810, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2810-~~ Accreditation by national or regional accrediting agencies recognized by the United States Department of Education such as the Association of Independent Colleges and Schools, the Accrediting Council for Continuing Education and Training, the National Accrediting Association of Cosmetology Arts and Sciences, or the National Association of Trade and Technical Schools may be accepted by the department as evidence of compliance with the minimum standards established pursuant to sections ~~79-2806 and 79-2808~~ 6 and 8 of this act. Accreditation by a recognized, specialized accrediting agency such as the Council on Medical Education of the American Medical Association, the Commission on Accreditation of the American Dental Association, or the American Veterinary Medical Association may be accepted as evidence of such compliance only as to the portion or program of a school accredited by such agency if the school as a whole is not accredited.

Sec. 10. Section 79-2811, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2811-~~ No entity of whatever kind, alone or in concert with

others, shall:

(1) Operate in this state a private postsecondary career school not exempted from the Private Postsecondary Career School Act unless the school has a currently valid authorization to operate issued pursuant to section ~~79-2813~~ 12 of this act;

(2) Offer, as or through an agent, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to section ~~79-2823~~ 23 of this act, enrollment or instruction in or the granting of educational credentials from a private postsecondary career school not exempted from the act, whether such institution is within or outside this state, nor accept contracts or enrollment applications from any person who does not have a current agent's permit, but the board may adopt and promulgate rules and regulations to permit the rendering of legitimate public information services without such permit;

(3) Instruct or educate, offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, or contract or offer to contract with any school or party to perform any such act in this state, whether such entity is located within or without this state, unless such entity observes and is in compliance with the minimum standards established pursuant to sections ~~79-2806 and 79-2808~~ 6 and 8 of this act and the rules and regulations adopted and promulgated by the department; or

(4) Grant or offer to grant educational credentials without authorization to do so from the department.

Sec. 11. Section 79-2812, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2812-~~ Each private postsecondary career school desiring authorization to operate in this state shall make application to the department upon forms to be provided by the department. The application shall be accompanied by descriptive literature published or proposed to be published by the school containing the information specified in the department's rules and regulations. The application shall include the identification of any branch facility or separate classroom. A facility which does not meet the criteria provided in subdivision (5) of section ~~79-2803~~ 3 of this act is not a branch facility and shall be considered a separate private postsecondary career school requiring separate authorization. A separate classroom shall not require separate authorization. The application shall also be accompanied by the application fee provided in section ~~79-2846~~ 43 of this act. Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section ~~79-2861~~ 56 of this act, the application shall be accompanied by a surety bond as provided in section ~~79-2842~~ 39 of this act.

Sec. 12. Section 79-2813, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2813-~~ Following review of an application for authorization to operate and any further information submitted by the applicant or required by the department and following such investigation of the applicant as the department may deem necessary or appropriate, the commissioner shall either grant or deny authorization to operate. A grant of authorization to operate may be on such terms and conditions as the commissioner may specify.

Sec. 13. Section 79-2814, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2814-~~ The authorization to operate shall be in a form approved by the department and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term of the authorization;
- (2) The full, correct name and address of the school so authorized;
- (3) The authority for authorization and conditions thereof; and
- (4) Any limitation of authorization as deemed necessary by the commissioner.

The term for which authorization is given shall not extend for more than one calendar year.

Sec. 14. Section 79-2815, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2815-~~ The authorization to operate shall be issued to the owner or governing body of the applicant school and shall be nontransferable. In the event of a change in ownership of the school, the new owner or governing body shall, within ten days after the change of ownership, apply for a new authorization to operate, and in the event of failure to do so the authorization to operate shall terminate. An application for a new authorization to operate by reason of change in the ownership of the school shall be deemed an application for renewal of the school's authorization to operate.

Sec. 15. Section 79-2816, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2816-~~ At least thirty days prior to the expiration of an authorization to operate and upon notification by the department, the school shall complete and file with the department an application form for renewal of its authorization to operate. The renewal application shall be reviewed and acted upon as provided for an initial application. No authorization issued to any private postsecondary career school shall be renewed unless such school has been accredited by the department within five years of the date of its initial authorization to operate.

Sec. 16. Section 79-2817, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2817-~~ A school not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization. The authorization shall be an inaugural authorization valid for one year and upon showing to the satisfaction of the commissioner that it has fully complied with sections ~~79-2812 to 79-2816~~ 11 to 15 of this act, the school will be eligible for a regular authorization. The commissioner may issue provisional authorization to operate containing such limitations as to time, procedures, functions, or other conditions as the commissioner may deem necessary.

Sec. 17. Section 79-2818, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2818-~~ Any private postsecondary career school offering instruction in the State of Nebraska shall, within five years of its initial authorization to operate, apply to the department for the accreditation of such school. No private postsecondary career school shall be accredited unless it submits to the department a written application for accreditation in accordance with the Private Postsecondary Career School Act. Such application shall be accompanied by the fee specified in section ~~79-2846~~ 43 of this act.

Sec. 18. Section 79-2819, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2819-~~ The department may accredit a private postsecondary career school when the school has met the minimum standards specified in the rules and regulations of the department.

Sec. 19. Section 79-2820, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2820-~~ The commissioner, upon determining that a private postsecondary career school has complied with all the requirements of the Private Postsecondary Career School Act and the rules and regulations of the department, shall issue a certificate of accreditation to the school. Unless disapproved for failure to meet the requirements for accreditation on a continuing basis as provided for in the act and as defined by the rules and regulations, accreditation shall be valid for a period of five years following the effective date appearing on the certificate. The application for reaccreditation shall be accompanied by the applicable fee. The department shall maintain a list of the schools accredited under this section and make such lists available to the public upon request.

Sec. 20. Section 79-2820.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2820.01-~~ A school which has been accredited pursuant to section ~~79-2820~~ 19 of this act may apply to the department for authority to award associate degrees. Upon determining that the quality of the courses of instruction at the applicant school ~~meet~~ meets the standards established in the department's rules and regulations, the commissioner may grant the applicant the authority to award an associate degree and shall issue a certificate setting forth the courses for which the associate degree may be awarded. Such authorization shall continue so long as the school remains accredited.

Sec. 21. Section 79-2821, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2821-~~ Any private postsecondary career school which has been accredited or authorized to award associate degrees and which ceases to meet any of the requirements for accreditation or the awarding of associate degrees shall be notified in writing of the specifics by certified mail and shall be afforded the opportunity for a hearing to show cause why the accreditation or the authorization should not be withdrawn. The board shall adopt and promulgate rules and regulations for the hearing and may utilize a hearing officer to conduct the hearing and to present recommendations, including findings of facts and conclusions of law, to the board for final decision. Following the hearing, if it is determined that the requirements have not been met, the board may withdraw the accreditation or authorization or may require

action as a condition of continued accreditation or authorization.

Sec. 22. Section 79-2822, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2822-~~ An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only private postsecondary career schools which meet the minimum standards established pursuant to sections 79-2806 and 79-2808 6 and 8 of this act. Each person desiring to perform the services of an agent in this state shall make application to the department upon forms to be provided by the department. The application shall state the school which the applicant intends to represent. An agent shall obtain a separate agent's permit for each school represented. A single agent's permit and surety bond for one school with one or more branch facilities shall extend to cover all branch facilities. The application for an agent's permit shall also be accompanied by evidence of a surety bond as provided in section 79-2843 40 of this act and payment of the application fee provided in section 79-2846 43 of this act.

If any school which the applicant intends to represent is not domiciled in this state, the application shall be accompanied by the information required of schools making application for authorization to operate and evidence to show that its place of business outside this state has been licensed or approved for operation by the appropriate state agency in the state in which it is domiciled. If the state of domicile of the school has no authorization law for private postsecondary career schools, the school shall (1) submit all information required of schools applying for authorization to operate in this state and show evidence that it has been accredited either by an accrediting agency recognized by the United States Department of Education as specified in section 79-2810 9 of this act or by the State Department of Education following an onsite evaluation of the school with all costs of the evaluation borne by the school and (2) file with the department a school bond in at least the amount required by section 79-2842 39 of this act.

Sec. 23. Section 79-2823, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2823-~~ Following review of an application for an agent's permit and any further information submitted by the applicant or required by the department and following such investigation of the applicant as the department may deem necessary or appropriate, the commissioner shall either grant or deny an agent's permit to the applicant.

Sec. 24. Section 79-2824, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2824-~~ The agent's permit shall be in a form approved by the department and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term;
- (2) The correct name and address of the agent; and
- (3) The school which such agent is authorized to represent.

The term for which an agent's permit is issued shall not extend for more than one calendar year.

Sec. 25. Section 79-2825, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2825-~~ At least thirty days prior to the expiration of an agent's permit, the agent shall complete and file with the department an application form for renewal thereof. The application shall be reviewed and acted upon as provided for an initial application.

Sec. 26. Section 79-2826, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2826-~~ Upon review and consideration of an application for authorization to operate or for an agent's permit, if the department determines that the applicant fails to meet the standards established in the Private Postsecondary Career School Act, the department shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

Sec. 27. Section 79-2827, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2827-~~ The commissioner may grant to an applicant for an authorization to operate or an agent's permit an extension of time of reasonable duration in which the applicant may eliminate the reasons for denial contained in the statement of denial if the applicant has demonstrated to the satisfaction of the commissioner the desire to meet the standards established pursuant to sections 79-2806 and 79-2808 6 and 8 of this act and if, in the judgment of the commissioner, it would be reasonably possible for the applicant to meet such requirements and standards within such time.

Sec. 28. Section 79-2828, Reissue Revised Statutes of Nebraska, is

amended to read:

~~79-2828-~~ If the commissioner denies an application for an agent's permit, he or she shall notify the school which the agent represented or proposed to represent, according to the records of the department, including the reasons for denial.

Sec. 29. Section 79-2829, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2829-~~ Any person aggrieved by a decision of the commissioner respecting denial of an authorization to operate or of an agent's permit or the placing of conditions on either shall have the right to a hearing and review of such decision by the board as provided in sections ~~79-2830 to 79-2832~~ 30 to 32 of this act.

Sec. 30. Section 79-2830, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2830-~~ If, upon written notification of any such action taken by the commissioner, the aggrieved party desires a hearing and review, such party shall so notify the board in writing within ten business days after the giving of notice of such action. If such notice is not given, the action shall be deemed final. Upon receipt of such notice from the aggrieved party, the board shall fix the time and place for a hearing and shall notify the aggrieved party by certified mail.

Sec. 31. Section 79-2831, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2831-~~ At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and may present evidence in opposition to the commissioner's action or in extenuation or mitigation. The hearing shall be conducted in accordance with the Administrative Procedure Act. Any member of the board may preside except when a clear conflict of interest may be demonstrated. The board shall adopt and promulgate rules and regulations for such hearings and may utilize hearing officers to conduct the hearings and to present recommendations, including findings of fact and conclusions of law, to the board for final decision.

Sec. 32. Section 79-2832, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2832-~~ A decision of the board following a hearing shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. All matters presented at any such hearing shall be acted upon promptly by the board, and the board shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing, and the appropriate rule, order, sanction, relief, or denial thereof.

Sec. 33. Section 79-2833, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2833-~~ An authorization to operate or an agent's permit may be revoked or made conditional after its issuance if the board has reasonable cause to believe that the holder thereof has violated or is violating the Private Postsecondary Career School Act or any rules and regulations adopted and promulgated under the act. Prior to such revocation or imposition of condition, the board shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder that if a hearing is requested in writing within ten business days of receipt of the notice, the board shall set a time and place for a hearing at which the holder may be heard in response to the allegation of noncompliance.

Sec. 34. Section 79-2834, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2834-~~ If a hearing is requested pursuant to section ~~79-2833~~ 33 of this act, it shall be conducted as provided in sections ~~79-2830 and 79-2831~~ 30 and 31 of this act. The decision of the board shall be made as provided in section ~~79-2832~~ 32 of this act and shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. If an agent's permit is revoked or conditions imposed thereon, the board shall notify the school which the agent was permitted to represent, as shown in the records of the department, in addition to the notice required to be given to the agent and any other parties to the hearing.

Sec. 35. Section 79-2835, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2835-~~ Any person claiming damage or loss as a result of any act or practice by a private postsecondary career school or its agent, or both, which is a violation of the Private Postsecondary Career School Act or of the rules and regulations adopted and promulgated under the act may file with the

board a verified complaint against such school or against its agent or both. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the board. A complaint may also be filed with the board by the commissioner or the Attorney General.

Sec. 36. Section 79-2836, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2836-~~ The board may consider a complaint after ten days' written notice by certified mail, return receipt requested, to such school or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon. Such hearing shall be conducted in accordance with the Administrative Procedure Act.

Sec. 37. Section 79-2837, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2837-~~ If, upon all the evidence at the hearing, the board finds that a private postsecondary career school or its agent, or both, has engaged in or is engaging in any act or practice which violates the Private Postsecondary Career School Act or the rules and regulations adopted and promulgated under the act, the board shall issue and cause to be served upon such school or agent, or both, an order requiring such school or agent, or both, to cease and desist from such act or practice. The board may also, as appropriate, based on its own investigation or the evidence adduced at such hearing, or both, commence an action to revoke a school's authorization to operate or an agent's permit.

Sec. 38. Section 79-2838, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2838-~~ Any person aggrieved or adversely affected by any final board action or by any penalty imposed by the board may appeal such action or penalty, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 39. Section 79-2842, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2842-~~ Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section ~~79-2861~~ 56 of this act, when an application is made for authorization to operate, the department may require the private postsecondary career school making such application to file with the department a good and sufficient surety bond in the penal sum of twenty thousand dollars or other security agreement deemed satisfactory by the department. Such bond or other security shall cover branch facilities. The bond or agreement shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond or agreement shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage as a result of any act or practice which is a violation of the Private Postsecondary Career School Act by the school and that the surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond or agreement is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond or agreement. The bond or agreement may be continuous.

Sec. 40. Section 79-2843, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2843-~~ The application for an agent's permit shall be accompanied by a good and sufficient surety bond in a penal sum of five thousand dollars. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a private postsecondary career school, but it shall cover each agent for the school in a penal sum of five thousand dollars. The bond shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage as a result of any act or practice which is a violation of the Private Postsecondary Career School Act by the agent and that the surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond may be continuous.

Sec. 41. Section 79-2844, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2844-~~ Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section ~~79-2861~~ 56 of this act, the surety bond or agreement shall cover the period of the authorization to operate or



the agent's permit, as appropriate, except when a surety is released as provided in this section. A surety on any bond or agreement filed under section 79-2842 or 79-2843 39 or 40 of this act may be released therefrom after such surety serves written notice thereof on the department thirty days prior to the release. Such release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or his or her parent or guardian for loss or damage resulting from any act or practice which is a violation of the Private Postsecondary Career School Act alleged to have occurred while the bond or agreement was in effect or for a school's ceasing operations during the term for which tuition has been paid while the bond or agreement was in force.

Sec. 42. Section 79-2845, Reissue Revised Statutes of Nebraska, is amended to read:

79-2845. Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 79-2861 56 of this act, authorization to operate and an agent's permit shall be suspended by operation of law when the school or agent is no longer covered by a surety bond or agreement as required by sections 79-2842 and 79-2843 39 and 40 of this act. The commissioner shall cause the school or agent, or both, to receive at least thirty days' written notice prior to the release of the surety to the effect that the authorization or permit shall be suspended by operation of law until another surety bond or agreement is filed in the same manner and like amount as the bond or agreement being terminated. After the Tuition Recovery Cash Fund initially reaches such minimum fund level, the surety bond or agreement shall no longer be required to be kept in force by any private postsecondary career school contributing to the fund except as specified for any private postsecondary career school applying for authorization to operate from the commissioner or any other agency after September 9, 1993.

Sec. 43. Section 79-2846, Reissue Revised Statutes of Nebraska, is amended to read:

79-2846. All fees collected pursuant to this section shall be remitted by the department to the State Treasurer who shall credit them to the General Fund. No fees shall be subject to refund. The fees shall accompany an application for authorization to operate or an agent's permit or for accreditation of courses in accordance with the following schedule:

- (1) The application fee for a private postsecondary career school shall be fifty dollars;
- (2) The fee for an agent's permit shall be twenty dollars; and
- (3) The fee for accreditation shall be fifty dollars. The cost of onsite survey shall be borne by the school.

Sec. 44. Section 79-2848, Reissue Revised Statutes of Nebraska, is amended to read:

79-2848. If any private postsecondary career school now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer of such school shall cause to be filed with the department the original or legible true copies of all academic and financial aid transcripts and such other records of the school as may be specified by the department. If there is a change of ownership, the records shall be transferred intact and in good condition to the new owner and the transfer shall be verified by the department. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

Sec. 45. Section 79-2849, Reissue Revised Statutes of Nebraska, is amended to read:

79-2849. If the person to whom educational services are to be rendered or furnished by a private postsecondary career school is a resident of this state at the time any contract relating to payment for such services, any note, instrument, or other evidence of indebtedness relating to payment for such services, or any note, instrument, or other evidence of indebtedness relating thereto is entered into, sections 79-2849 to 79-2853 45 to 49 of this act shall govern the rights of the parties to such contract or evidence of indebtedness. In such event the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness shall be invalid:

- (1) That the law of another state shall apply;
- (2) That the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;
- (3) That another person is authorized to confess judgment on such contract or evidence of indebtedness; and
- (4) That fixes venue.

Sec. 46. Section 79-2850, Reissue Revised Statutes of Nebraska, is amended to read:

79-2850. No note, instrument, or other evidence of indebtedness or

contract relating to payment for education or educational services shall be enforceable in the courts of this state by (1) any private postsecondary career school operating in this state unless the school has received authorization to operate or (2) any private postsecondary career school having an agent or agents in this state unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered or to whom educational credentials were to be granted had an agent's permit at the time of their contract with such person.

Sec. 47. Section 79-2851, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2851-~~ Any lending agency extending credit or lending money to any person for tuition, fees, or charges whatever of a private postsecondary career school for educational or other services or facilities to be rendered or furnished by the school shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked, on the face thereof, Student Loan. If such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

Sec. 48. Section 79-2852, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2852-~~ Notwithstanding the presence or absence of the notation required by section 79-2851 ~~47 of this act~~ and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the private postsecondary career school which was to render or furnish such services or facilities by any party to the evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished up to the amount remaining to be paid thereon.

Sec. 49. Section 79-2853, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2853-~~ For purposes of sections 79-2851 ~~and 79-2852 47 and 48 of this act~~, lending agency shall mean (1) any private postsecondary career school or (2) any entity (a) controlling, controlled by, or held in common ownership with such a school or (b) regularly lending money to such a school or to students of such a school.

Sec. 50. Section 79-2855, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2855-~~ Any entity or any owner, officer, agent, or employee thereof who willfully violates section 79-2811 ~~10 of this act~~ or willfully fails or refuses to deposit with the department the records required by section 79-2848 ~~44 of this act~~ shall be guilty of a Class II misdemeanor. Each day's failure to comply with such sections shall be a separate violation.

Sec. 51. Section 79-2856, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2856-~~ Any private postsecondary career school not exempt under section 79-2804 ~~4 of this act~~, whether or not a resident of or having a place of business in this state, which instructs or educates or offers to contract to provide instructional or educational services in this state to a resident of this state, whether such instruction or services are provided in person or by correspondence, or which offers to award or awards any educational credentials to a resident of this state, thereby submits such school and, if a natural person, his or her personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of the Private Postsecondary Career School Act by injunction pursuant to sections 79-2857 ~~and 79-2858 52 and 53 of this act~~.

Sec. 52. Section 79-2857, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2857-~~ The Attorney General or the county attorney of any county in which a private postsecondary career school or an agent thereof is found, at the request of the board or on his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the Private Postsecondary Career School Act.

Sec. 53. Section 79-2858, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2858-~~ Whenever it appears to the commissioner that any entity is or has been violating any of the provisions of the Private Postsecondary Career School Act or any of the lawful rules, regulations, or orders of the board or department, the commissioner may file a petition for injunction in the name of the department in any court of competent jurisdiction in this state against such entity for the purpose of enjoining such violation or for

an order directing compliance with the provisions of the act and the rules, regulations, and orders. It shall not be necessary that the commissioner allege or prove that there is no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the department may have and shall be in addition to any right of criminal prosecution provided by law. The commissioner shall not obtain a temporary restraining order without notice to the entity affected. The pendency of board action with respect to alleged violations shall not operate as a bar to an action for injunctive relief pursuant to this section.

Sec. 54. Section 79-2859, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2859.~~ The Tuition Recovery Cash Fund is hereby established. The fund shall be a cash fund used to receive assessments imposed under section ~~79-2861~~ 56 of this act and to pay claims authorized under section ~~79-2862~~ 57 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any interest earned by the fund shall accrue to the fund.

Sec. 55. Section 79-2860, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2860.~~ The Tuition Recovery Cash Fund shall be administered by the State Board of Education board and an advisory committee composed of the commissioner or his or her representative, the State Treasurer or his or her representative, and three administrators of private postsecondary career schools appointed by the State Board of Education board with the advice of the Nebraska Council of Private Postsecondary Career Schools. The State Board of Education board shall adopt and promulgate rules and regulations for the administration of the fund and for the evaluation and approval of claims pursuant to section ~~79-2862~~ 57 of this act.

Sec. 56. Section 79-2861, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2861.~~ (1) The State Board of Education board shall annually assess each private postsecondary career school one-tenth of one percent of the prior school year's gross tuition revenue until the Tuition Recovery Cash Fund reaches the minimum fund level. The fund shall be maintained at a minimum of one hundred fifty thousand dollars and a maximum of three hundred thousand dollars. At any time when the fund drops below the minimum level, the State Board of Education board may resume the assessment. Funds in excess of the maximum level shall be used as directed by the State Board of Education board to provide grants or scholarships for students attending private postsecondary career schools.

(2) The State Board of Education board shall require documentation from each private postsecondary career school to verify the tuition revenue collected by the school and to determine the amount of the assessment under this section.

(3) Any private postsecondary career school applying for authorization to operate from the commissioner or any other agency after September 9, 1993, shall not be assessed under this section for the first year of operation but shall be assessed each year thereafter for four years or until the fund reaches the minimum level required by this section, whichever occurs last, and shall maintain ~~a~~ the surety bond or other security required by pursuant to section 79-2842 39 of this act until such time.

(4) The authorization to operate of any private postsecondary career school which fails to comply with this section shall be subject to revocation.

Sec. 57. Section 79-2862, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2862.~~ Any student injured by the termination of operations by a private postsecondary career school on or after September 9, 1993, may submit a claim against the Tuition Recovery Cash Fund for tuition and fees paid to the school for which classes were not offered and no refunds made. The State Board of Education board shall adopt rules and regulations for the evaluation and approval of claims made against the fund and shall provide for payments made from the fund. No claim shall be allowed unless it is submitted within one year after the school terminates operations and there are sufficient funds available in the fund to pay the claim.

Sec. 58. Section 79-2863, Reissue Revised Statutes of Nebraska, is amended to read:

~~79-2863.~~ A private postsecondary career school may include references to the Tuition Recovery Cash Fund in advertising or information provided to students or prospective students. Any such reference shall clearly describe the protection and limitations prescribed in section ~~79-2862~~ 57 of this act and the rules and regulations.

Sec. 59. Original sections 79-2801 to 79-2808, 79-2810 to 79-2838, 79-2842 to 79-2846, 79-2848 to 79-2853, and 79-2855 to 79-2863, Reissue Revised Statutes of Nebraska, are repealed.