

ARTICLE 16 PRIVATE POSTSECONDARY CAREER SCHOOLS

(2011)

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85-1601 Act, how cited. Sections 85-1601 to 85-1658 shall be known and may be cited as the Private Postsecondary Career School Act. (Laws 1977, LB 486, § 4; Laws 1980, LB 774, § 1; Laws 1982, LB 370, § 2; Laws 1990, LB 488, § 4; Laws 1993, LB 348, § 57; R.S.1943, (1994), § 79-2804; Laws 1995, LB 4, § 4; Laws 2003, LB 685, § 31. Effective date May 27, 2003.)

85-1602 Act, purpose. 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.

85-1603 Terms, defined. For purposes of the Private Postsecondary Career School Act:

- (1) Agent 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 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 means approval by the department to operate a private postsecondary career school in this state;
- (4) Board means the State Board of Education;
- (5) Branch facility 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) Commission means the Coordinating Commission for Postsecondary Education;
- (7) Commissioner means the Commissioner of Education;
- (8) Course of study or instruction 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;
- (9) Department means the State Department of Education;
- (10) Education or educational services means any class, course, or program of occupational training, instruction, or study;

(11) Entity means any individual, company, firm, society, group, association, partnership, limited liability company, corporation, trust, or other person;

(12) Grant, with respect to educational credentials, means award, sell, confer, bestow, or give;

(13) Home study school 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;

(14) Offer 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;

(15) Out-of-state school 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;

(16) Principal facility or main school means a private postsecondary career school located in the State of Nebraska;

(17) Private postsecondary career school means any organization or business enterprise which is not specifically exempt under section 85-1604, 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;

(18) Resident school means any school offering courses of instruction to its students on the school's premises;

(19) Separate classroom 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; and

(20) Short-term training means classes, courses, or programs of instruction or study that are offered for the purpose of training, preparing, or improving a person for an occupation when (a) the total hours of instruction required for completion is sixteen clock hours or less and (b) no final course grade is given to persons enrolled.

85-1604. Education and schools; exempt from act. The following education and schools are exempted from 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 provided by or funded by an employer and offered solely to its employees for the purpose of improving such persons in such employment;

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

(5) 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;

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

(7) Schools or organizations offering education or instruction that is not part of a degree program leading to an associate, a baccalaureate, a graduate, or a professional degree which are licensed and regulated by agencies of this state other than the department, except that such schools or organizations shall not be exempt from the act with respect to agents' permits and the Tuition Recovery Cash Fund;

(8) 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;

(9) Any postsecondary institution offering or proposing to offer courses or programs leading to a baccalaureate, graduate, or professional degree, but whose offerings may include associate degree programs, diplomas, and other certificates based on the award of college credit, including any such institutions that were regulated prior to May 5, 2011, as private postsecondary career schools pursuant to the Private Postsecondary Career School Act; and

(10) Entities exclusively offering short-term training.

85-1605 Department; administer act; personnel. 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.

85-1606 Board; powers and duties; rules and regulations. The board has the following powers and duties in the administration of the Private Postsecondary Career School Act:

(1) To establish minimum standards in conformity with section 85-1608, 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 85-1644;

(5) To establish fees for applications for authorization to operate, for agent's permits, and for accreditation. The fees shall be not more than the amount necessary to cover the cost of administration of the act; and

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

85-1607 Advisory council; members; appointment; term; duties. 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.

85-1608 Private postsecondary career school; minimum standards. 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.

85-1609 Accreditation; effect. 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 85-1606 and 85-1608. 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.

85-1610 Prohibited acts; enumerated. 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 85-1612;

(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 85-1623, 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 85-1606 and 85-1608 and the rules and regulations adopted and promulgated by the department;

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

(5) Have a cohort default rate which triggers state liability pursuant to section 428(n) of the federal Higher Education Act of 1965, as amended, under section 85-9,139.02.

85-1611 Private postsecondary career school; authority to operate; application; requirements. 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 85-1603 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 85-1643. Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the application shall be accompanied by a surety bond as provided in section 85-1639.

85-1612 Commissioner; grant or deny authorization to operate. 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.

85-1613 Authorization to operate; form; contents. 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 fiscal year. For purposes of this section, fiscal year means the fiscal year established by the applicant school.

85-1614 Authorization to operate; nontransferable; change in ownership; new authorization. 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.

85-1615 Authorization to operate; renewal; procedure; accreditation required; when. Annual renewal of an authorization shall be required on a schedule established by the department. 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. Financial stability information shall accompany the application. 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.

85-1616 Inaugural authorization to operate; provisional authorization to operate; when applicable. 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 85-1611 to 85-1615, 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.

85-1617 Private postsecondary career school; accreditation; application. 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 rules and regulations adopted and promulgated by the department pursuant to the Private Postsecondary Career School Act. Such application shall be accompanied by the fee provided in section 85-1643.

85-1618 Department; accredit private postsecondary career school; when. 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.

85-1619 Commissioner; certificate of accreditation; issuance; period valid; reaccreditation; application; list of schools. 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.

85-1620. School; authority to award associate degrees; commissioner; authorize. A school which has been accredited pursuant to section [85-1619](#) 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 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 programs for which the associate degree may be awarded. Such authorization shall continue so long as the school remains accredited.

85-1621 School; withdrawal of accreditation or authorization; when; hearing; notice. 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.

85-1622 Agent's permit; application; procedure. 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 85-1606 and 85-1608. 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 and shall include the applicant's social security number. 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 85-1640 and payment of the application fee provided in section 85-1643. 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 or no such law applies to a particular school or course of study or instruction concerning which the applicant intends to act as an agent, 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 by an accrediting agency recognized by the United States Department of Education as specified in section 85-1609 and (2) file with the department a school bond in at least the amount required by section 85-1639.

85-1623 Agent's permit; commissioner; grant or deny. 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.

85-1624 Agent's permit; form; contents. 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 three calendar years.

85-1625 Agent's permit; renewal; application. 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.

85-1626 Authorization to operate; agent's permit; application; denial; reasons. 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.

85-1627 Authorization to operate; agent's permit; application; denial; extension of time; when. 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 85-1606 and 85-1608 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.

85-1628 Agent's permit; denial; notice; reasons. 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.

85-1629 Commissioner decision; person aggrieved; right to hearing and review. 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 85-1630 to 85-1632.

85-1630 Commissioner decision; aggrieved party; hearing and review; notify board. 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.

85-1631 Aggrieved party; hearing; procedure. 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.

85-1632 Hearing; decision; when final; judicial review. 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.

85-1633 Authorization to operate; agent's permit; made conditional or revoked; cause; notice; hearing. 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.

85-1634 Revocation hearing; how conducted; decision; when final; judicial review; notice; to whom given. If a hearing is requested pursuant to section 85-1633, it shall be conducted as provided in sections 85-1630 and 85-1631. The decision of the board shall be made as provided in section 85-1632 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.

85-1635 Complaints of violations; filed; procedure. 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.

85-1636 Complaint; when considered; notice; hearing. 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.

85-1637 Complaint; hearing; violation; actions of board. 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.

85-1638 Appeal; procedure. 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.

85-1639 Bond or security agreement; filed; when; requirements. Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, 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.

85-1640 Agent's permit; application; surety bond; requirements. 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. Bonds in blanket form shall be executed by the school as principal. 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.

85-1641 Surety bond or agreement; release of surety; effect.

(1) Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the surety bond or other security agreement of a school provided for in section 85-1639 shall cover the period of the authorization to operate except when a surety is released as provided in this section. The surety bond of an agent provided for in section 85-1640 shall cover the period of such agent's permit except when a surety is released as provided in this section.

(2) A surety on any bond or agreement filed under section 85-1639 or 85-1640 may be released after such surety serves written notice on the department thirty days prior to the release. Such release shall not discharge or otherwise affect any claim previously or subsequently 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.

85-1642 Authorization to operate or agent's permit; bond or agreement; when required.

Except as otherwise provided in this section, 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 85-1639 and 85-1640. 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 the minimum fund level prescribed in section 85-1656, the surety bond or agreement provided for in section 85-1639 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.

85-1643. Private Postsecondary Career Schools Cash Fund; created; use; fees; schedule; no refund.

(1) The Private Postsecondary Career Schools Cash Fund is created. All fees collected pursuant to the Private Postsecondary Career School Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used only for the purpose of administering the act. No fees shall be subject to refund.

(2) Except as provided in subsection (4) of this section, fees collected pursuant to the act shall be the following:

(a) Initial application for authorization to operate, two hundred dollars plus twenty dollars per program of study offered;

(b) Renewal application for authorization to operate, one hundred dollars plus twenty dollars per program of study offered, except that the board may establish a variable fee schedule based upon the prior school year's gross tuition revenue as provided by the school pursuant to section [85-1656](#);

(c) Approval to operate a branch facility, one hundred dollars;

(d) Late submission of application, fifty dollars;

(e) Initial agent's permit, fifty dollars;

(f) Agent's permit renewal, twenty dollars;

(g) Accreditation or reaccreditation, one hundred dollars;

(h) Initial authorization to award an associate degree, one hundred dollars;

(i) Significant program change, fifty dollars;

(j) Change of name or location, twenty-five dollars; and

(k) Additional new program, one hundred dollars.

(3) Fees for out-of-state schools may include, but shall not exceed the following:

(a) Certificate of approval to recruit, five hundred dollars annually;

(b) Initial agent's permit, one hundred dollars; and

(c) Agent's permit renewal, forty dollars.

(4)(a) The board shall consult with the advisory council established pursuant to section [85-1607](#) regarding any increase in fees under the act. Beginning with fiscal year 2006-07 and each year thereafter, the board in consultation with the advisory council shall establish fees sufficient to cover the total cost of administration, except that such fees shall not exceed one hundred ten percent of the previous year's total cost. Such fees shall be set out in the rules and regulations adopted and promulgated by the board.

(b) Total cost of administration shall be determined by an annual audit of:

(i) Salaries and benefits or portions thereof for those department employees who administer the act;

(ii) Operating costs such as rent, utilities, and supplies;

(iii) Capital costs such as office equipment, computer hardware, and computer software;

(iv) Costs for travel by employees of the department, including car rental, gas, and mileage charges; and

(v) Other reasonable and necessary costs as determined by the board.

85-1644 Private postsecondary career school; discontinue operation; transcripts and records; preserved; permanent file maintained by department; fee. 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. A student requesting a copy of his or her transcripts which are on file may be charged a fee of ten dollars for each copy requested.

85-1645 Contract or evidence of indebtedness; rights of parties; invalid agreements. 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 85-1645 to 85-1649 shall govern the rights of the parties to such contract or evidence of indebtedness. 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.

85-1646 Enforceability of contracts and evidence of indebtedness. 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.

85-1647 Lending agency; evidence of indebtedness; marked, Student Loan; liability. 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.

85-1648 Lending agency; subject to defenses and claims. Notwithstanding the presence or absence of the notation required by section 85-1647 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.

85-1649 Lending agency, defined. For purposes of sections 85-1647 and 85-1648, 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.

85-1650 Violation; penalty. Any entity or any owner, officer, agent, or employee thereof who willfully violates section 85-1610 or willfully fails or refuses to deposit with the department the

records required by section 85-1644 shall be guilty of a Class II misdemeanor. Each day's failure to comply with such sections shall be a separate violation.

85-1651 Private postsecondary career school; subject to jurisdiction of courts of this state. Any private postsecondary career school not exempt under section 85-1604, 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 85-1652 and 85-1653.

85-1652 Attorney General or county attorney; enforce act. 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.

85-1653 Commissioner; file for injunctive relief; when. 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.

85-1654 Tuition Recovery Cash Fund; established; use; investment. The Tuition Recovery Cash Fund is hereby established. The fund shall be a cash fund used to receive assessments imposed under section 85-1656 and to pay claims authorized under section 85-1657. 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.

85-1655 Tuition Recovery Cash Fund; administration; advisory committee; members. The Tuition Recovery Cash Fund shall be administered by the 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 board with the advice of the Nebraska Council of Private Postsecondary Career Schools. The 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 85-1657.

85-1656 Tuition Recovery Cash Fund; assessment; board; powers and duties.

(1) The 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 board may resume the assessment. Funds in excess of the maximum level shall be used as directed by the board to provide grants or scholarships for students attending private postsecondary career schools.

(2) The 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 the surety bond or other security required by section 85-1639 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.

85-1657 Tuition Recovery Cash Fund; claim; statute of limitations.

(1) 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. The 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.

(2) For purposes of this section, a student injured by the termination of operations by a private postsecondary career school means (a) a student who has paid tuition and fees to the school for which classes were not offered and no refunds were made or (b) a student who ceased to be enrolled in classes at a school while the school was in operation and to whom a refund of unearned tuition and fees became due from the school after the school terminated operations and no refunds were made within the required time period following the student's withdrawal from the school under the rules and regulations established by the department.

85-1658 Tuition Recovery Cash Fund; references in advertising or information

authorized. 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 85-1657 and the rules and regulations.