

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 178

*An Act to amend the Code of Virginia by adding in Title 23 a chapter numbered 21.1, consisting of sections numbered 23-276.1 through 23-276.12, and to repeal Chapter 21 (§§ 23-265 through 23-276) of Title 23 of the Code of Virginia, relating to regulation of certain private and out-of-state institutions of higher education; penalty.*

[S 627]

Approved March 22, 2002

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 23 a chapter numbered 21.1, consisting of sections numbered 23-276.1 through 23-276.12, as follows:**

### *CHAPTER 21.1.*

#### *REGULATION OF CERTAIN PRIVATE AND OUT-OF-STATE INSTITUTIONS OF HIGHER EDUCATION.*

##### *§ 23-276.1. Definitions.*

*As used in this chapter:*

*"Certificate" or "diploma" means an award that is given for successful completion of a curriculum comprised of courses that may also be taken for degree credit and shall apply only to those awards given for coursework offered by institutions of higher education.*

*"College" means any institution of higher education that offers associate or baccalaureate level degree programs.*

*"Council" means the State Council of Higher Education for Virginia.*

*"Degree" means any earned award at the associate, baccalaureate, graduate, first professional or specialist levels that represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level.*

*"Institution of higher education" means any person or entity, other than a Virginia state-supported institution of higher education named in § 23-9.5, that has received approval from the Council to (i) use the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business; (ii) enroll students; or (iii) offer approved courses for degree credit or programs of study leading to a degree or to offer degrees either at a site in Virginia or via telecommunications equipment located within Virginia.*

*"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by the Council.*

*"Postsecondary school" or "school" means an institution offering a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.*

*"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.*

*"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.*

*"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.*

##### *§ 23-276.2. Exemptions.*

*A. The provisions of this chapter shall not apply to the public state-supported institutions named in § 23-9.5.*

*B. In addition, the following activities or programs offered by institutions that are otherwise subject to this chapter shall be exempt from its provisions:*

*1. The awarding of an honorary degree conferred and regarded as (i) commemorative in recognition of an individual's contributions to society and (ii) not representative of the satisfactory completion of all or any part of the requirements of a program or course of study; such degree shall clearly state on its face that it is honorary in nature;*

*2. A nursing education program regulated by the Board of Nursing;*

*3. A professional or occupational training program subject to the approval of a regulatory board pursuant to Title 54.1;*

*4. Any postsecondary school that is subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 and offers only nondegree certificate or diploma programs that are subject to approval by the Virginia Department of Education or other governmental agency;*

*5. Those courses or programs of instruction given by or approved by any institution of higher education, professional body, fraternal organization, civic club or benevolent order that are principally*

*for continuing or professional education or similar purpose and for which no degree credit is awarded;*

*6. Those courses or programs of instruction offered by institutions of higher education at United States military posts or reservations that are open only to military personnel, their dependents or civilian employees of such military posts or reservations;*

*7. Those courses or programs offered through approved multistate compacts, including, but not limited to, the Southern Regional Education Board's Electronic Campus; and*

*8. Those courses for degree credit offered and delivered by an institution of higher education solely on a contractual basis for which no individual is charged tuition.*

*C. The Council shall exempt from the provisions of this chapter any institution whose primary purpose is to provide religious or theological education. Institutions of higher education shall apply for exemptions for courses and programs related to religion and theology. Exemptions may be granted for a maximum of five years, unless the institution has been granted a standing exemption prior to July 1, 2002.*

*Each institution seeking an exemption or continuation of an exemption shall file such information as may be required by the Council. If the Council does not grant an institution of higher education an exemption, the institution shall be notified in writing with the reasons for the exemption denial. The affected institution shall have the right to appeal the Council's decision pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2. The Council shall, in each instance, determine the applicability of the exemption as provided in this section.*

*D. Notwithstanding the exemptions provided in this section, an institution of higher education may seek Council approval for an otherwise exempt activity or program.*

*§ 23-276.3. Authority of the State Council of Higher Education; delegation of authority to director.*

*A. The State Council of Higher Education for Virginia shall adopt, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) such regulations as may be necessary to implement the provisions of this chapter. The Council's regulations shall include, but need not be limited to, (i) procedures by which an institution may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all institutions of higher education that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing higher education opportunities in institutions subject to the provisions of this chapter; and (iv) information to assist persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals.*

*B. The minimal standards established by the Council shall include, but need not be limited to, faculty preparation and experience, educational programs, physical plants, additional locations, finances, guaranty instruments, advertising and publications, maintenance of student records, personnel qualifications, student services, the method for collecting and refunding tuition and fees, library resources and services, research equipment and aids, organization and administration, changes of ownership or control, procedures for student admission and graduation, consistency of an institution's stated purpose with the proposed offerings, reporting requirements, and any other relevant standards or requirements promulgated by action of the Council or an accrediting agency recognized by the United States Department of Education.*

*C. The Council shall prescribe the manner, conditions, and language to be used by an institution, person, or agent thereof in disclosing or advertising that the institution has received approval from the Council to offer degree programs in Virginia.*

*D. In addition to the other requirements of this chapter, the Council may establish separate approval criteria for various institutional classifications.*

*E. Pursuant to the provisions of this chapter and its implementing regulations, the Council may grant to its director the authority to take, on its behalf, specific actions.*

*§ 23-276.4. Council approval required for the conferring of certain degrees and other awards or the offering of certain programs; division of regulatory responsibility between the Council and the Board of Education under certain circumstances.*

*A. Without obtaining the approval of the Council or a determination that the activity or program is exempt from such approval requirements, no institution of higher education subject to the provisions of this chapter shall:*

*1. Use the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business;*

*2. Enroll students;*

*3. Offer degrees, courses for degree credit, or programs of study leading to a degree, either at a site in Virginia or via telecommunications equipment located within Virginia; or*

*4. Initiate other programs for degree credit or award degrees, certificates, or diplomas at a new or additional level.*

*B. To obtain full approval, all institutions of higher education subject to the provisions of this chapter shall be fully accredited by an accrediting agency recognized by the United States Department of Education.*

*C. Institutions of higher education that were formed, chartered or established in this Commonwealth prior to July 1, 1980, and that have been approved or authorized prior to that date to confer or grant*

academic or professional degrees at a specific level by the Council, by the Board of Education, or by an act of the General Assembly shall not be required to obtain another approval from the Council to operate in Virginia unless or until such approval or authorization is revoked or the institution wishes to confer degrees at a level other than that already approved or authorized or to otherwise exceed the previously granted approval or authorization.

D. Any institution of higher education approved to grant degrees by the Council pursuant to this chapter that does not offer nondegree credit programs but does offer certificate and diploma programs that are components of degree programs shall only be subject to the authority of the Council.

E. Notwithstanding the Council's authority to regulate institutions of higher education, the Board of Education shall review, pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1, all nondegree credit, certificate, and diploma programs offered by postsecondary schools that have been approved by the Council to confer degrees.

F. In addition to such other requirements as are established in this chapter or the regulations of the Council, any institution of higher education formed, chartered, or established outside of this Commonwealth shall provide verification that:

1. The institution is fully accredited by an accrediting agency recognized by the United States Department of Education;

2. All courses, degrees, certificates, or diploma programs offered at any Virginia site are also offered at the institution's main out-of-state campus;

3. All credits earned at any Virginia site are transferable to the institution's main out-of-state campus; and

4. The institution has complied with the requirements of either Article 17 (§ 13.1-757 et seq.) of Chapter 9 of Title 13.1 or Article 14 (§ 13.1-919 et seq.) of Chapter 10 of Title 13.1.

G. Any institution of higher education that seeks to conduct telecommunications activities from a Virginia site shall apply for Council approval to conduct such activity and shall comply with this chapter and the Council's regulations in the same manner as any other institution subject to this chapter.

#### *§ 23-276.5. Approval procedures.*

A. Prior to Council approval for an institution to use the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business, to offer courses or programs for degree credit, enroll students in any courses or programs, or confer or award degrees, each institution of higher education or postsecondary school shall be evaluated by the Council in accordance with the regulations adopted pursuant to this chapter.

B. Upon finding that the applicant has fully complied with regulations, the Council shall approve the application.

C. A fully accredited institution of higher education or postsecondary school that has been approved to operate within the Commonwealth may request full approval from the Council to confer certificates, diplomas, or degrees at (i) a specified degree level or (ii) in one or more specific programs or program areas at a specified degree level.

D. The Council may grant provisional approval or modify the previous approval granted to an institution of higher education, as set forth in its regulations. Such provisional approval may be valid for a specific period, during which period the institution shall comply with the relevant standards, stipulations, or conditions, or the provisional approval may direct the institution to comply with certain standards, stipulations, or conditions by a date certain.

In the event that an institution granted provisional approval fails to comply with the relevant standards, stipulations, or conditions, the institution shall not continue to engage in the activity subject to the provisional approval.

E. Any institution whose approval by the Council includes a stipulation or condition may be restricted from engaging in further activity during the period of time the stipulation or condition is in effect.

F. The Council may establish a modified application process for an institution requesting approval for additional programs at a new degree level.

G. The Council may defer a decision on an application upon determining that additional information is needed.

H. The Council shall not take into account duplication of effort by public and private institutions in the Commonwealth or other questions of need when considering an application.

#### *§ 23-276.6. Refusal, suspension, and revocation of approval.*

A. The Council may refuse to grant an approval or may revoke, or suspend its approval, including any approval or authorization issued prior to July 1, 1980, on such grounds as may be provided in its regulations or any of the following grounds:

1. The institution submits or has submitted any false or misleading information to the Council in connection with its approval;

2. The institution or any of its locations fails to meet or to maintain compliance with the Council's

regulations;

3. The institution publicly makes or causes to be made any false or misleading representation that it has complied with any requirement of this chapter or the Council's regulations;

4. The institution violates any provision of this chapter or the Council's regulations;

5. The institution fails or refuses to furnish the Council with any requested information or records required by this chapter or the Council's regulations; or

6. In any case where the Board of Education has recommended discontinuation of certificate and diploma programs in any postsecondary school approved by the Council to offer degrees.

B. The Council shall notify the institution by certified mail, return receipt requested, of its intention to deny an application or suspend, revoke, or modify its approval and shall state in writing the reasons for the denial, suspension, revocation, or modification. The institution may, within ten days of receipt of the certified mail notice, submit a written request for a proceeding before the Council pursuant to Article 3 (§ 2.2-4018) of Chapter 40 of Title 2.2.

C. The Council may issue orders to comply with its regulations or the provisions of this chapter; unless an emergency exists, such orders shall only be issued after a proceeding pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2.

D. In accordance with Article 3 (§ 2.2-4018) of Chapter 40 of Title 2.2, any institution aggrieved by a decision of the Council to deny an application or suspend or revoke its approval or by any order to comply with the Council's regulations or this chapter may appeal such decision. The Council shall make a final administrative decision on such appeal in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

E. In order to regain approval, an institution that has had its approval revoked or suspended by the Council shall file a new application for approval and shall provide clear and convincing evidence that the conditions resulting in the suspension or revocation have been remedied and that the institution is in compliance with this chapter and the Council's regulations.

#### *§ 23-276.7. Emergency actions.*

A. The Council may, by regulation, authorize its director to take immediate action on its behalf in any instance in which an institution holding Council approval to operate in Virginia is the subject of an adverse action by the United States Department of Education or by the institution's accrediting agency. When such adverse action threatens a disruption of the operation of the institution and exposes students to a loss of course or degree credit or financial loss, the director may take any or all of the following actions:

1. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels that have been approved by the Council;

2. Require the institution to provide a guaranty instrument in the amount necessary to cover the refund of unearned tuition to all students enrolled at the time of the action; or

3. Take such other actions as may be necessary to protect the rights of currently enrolled or future students.

B. At its next regularly scheduled meeting, the Council shall either ratify the director's action or take such other actions as it may deem necessary.

#### *§ 23-276.8. Preservation of students' records required.*

A. Every institution of higher education approved by the Council to operate in Virginia after July 1, 1980, shall ensure the preservation of students' records by binding agreement with another institution or records-maintenance organization with which the institution is not corporately connected or in such other manner as the Council may authorize by regulation.

B. In the event of institutional closure or revocation of its approval, the Council may facilitate, as it deems appropriate, the transfer of the student records to the repository required by subsection A. In the event the repository fails to secure and preserve the students' records, the Council, through its director, shall be authorized to take such actions as may be necessary to secure and preserve the students' records until such time as one or more repositories accept the records.

C. This section shall not be deemed to interfere with students' rights to have access to and obtain copies of their own records or to authorize disclosure of student records except in compliance with applicable state and federal law, including the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as amended.

#### *§ 23-276.9. Fees.*

The Council may, as it deems necessary to comply with the provisions of this chapter and its regulations, establish fees for services and methods for collecting such fees. All fees shall be nonrefundable.

#### *§ 23-276.10. Prohibited acts.*

A. Without prior Council approval, no person or other entity subject to the provisions of this chapter shall use in any manner, within the Commonwealth of Virginia, the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business or in any literature, catalog, pamphlet, or descriptive material.

This subsection shall not apply to any person or other entity that (i) used the term "college" or

*"university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in Virginia by the Council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in Virginia after July 1, 2002; (iii) was exempted from the provisions of Chapter 21 (§ 23-265 et seq.) of this title, as such law was in effect prior to July 1, 2002; or (iv) was authorized by the Council to use a name while its request for approval to enroll students is pending before the Council.*

*B. No person or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree credit, degree, diploma, or certificate.*

*C. No person or other entity shall use, or attempt to use, in connection with any business, trade, profession, or occupation, any degree or certification of degree or degree credit, including, but not limited to, a transcript of coursework that he knows or has reason to know has been fraudulently issued, obtained, forged, materially altered, or purchased.*

*D. Unless exempted from the provisions of this chapter or granted approval by the Council in accordance with this chapter and relevant regulations, no person or other entity shall represent that credits earned at or granted by any institution of higher education may be applied for credit toward a degree.*

*§ 23-276.11. Virginia law to apply to contracts.*

*The laws of Virginia shall govern any agreement, contract, or instrument of indebtedness executed between an institution of higher education and any person enrolling in any course or program offered or to be offered by such institution in Virginia and any person employed or offered employment by such institution in Virginia.*

*§ 23-276.12. Violations; criminal penalty; injunction proceeding.*

*A. Violations of this chapter or the Council's implementing regulations shall be punishable as a Class 1 misdemeanor. Each degree, diploma, certificate, program, or course of study offered, conferred, or used in violation of this chapter or the Council's regulations shall constitute a separate offense.*

*B. The Council may institute a proceeding in equity to enjoin any violation of this chapter or its implementing regulations.*

*C. Upon substantially prevailing on the merits of the case and unless special circumstances would render such an award unjust, the Council shall be entitled to an award of reasonable attorney's fees and costs in any action to enjoin violations of this chapter or its implementing regulations.*

**2. That Chapter 21 (§§ 23-265 through 23-276) of Title 23 is repealed.**

**3. That, until the date on which the State Council of Higher Education adopts regulations to implement this act, the regulations adopted by the State Council of Higher Education for Virginia pursuant to Chapter 21 (§ 23-265 through 23-276) of Title 23, as such law was in effect prior to July 1, 2002, shall continue in effect as promulgated by the State Council of Higher Education and shall apply to any institutional application filed prior to the effective date of the regulations to implement this act.**

**4. That, upon the date on which the State Council of Higher Education adopts emergency regulations or final regulations to implement the provisions of this act, such implementing regulations shall apply to all pending and future requests from institutions of higher education subject to this act to operate, grant degrees, and use the term "college" or "university" in Virginia or to implement changes in degree programs subject to this act.**

**5. That, pursuant to the authority granted by § 2.2-4011 for the adoption of emergency regulations, the State Council of Higher Education shall adopt regulations to implement the provisions of this act within 280 days of the date of its enactment.**