

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 461

An Act to amend and reenact §§ 23-276.2, 23-276.5 and 23-276.6 of the Code of Virginia, relating to use of certain terms by private and out-of-state educational institutions.

[S 1025]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-276.2, 23-276.5 and 23-276.6 of the Code of Virginia are amended and reenacted as follows:

§ 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, *exempted institutions shall be subject to the provisions of subsection B of § 23-276.6 and* an institution of higher education may seek Council approval for an otherwise exempt activity or program.

§ 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~~ *conditional* approval or modify the previous approval granted to an institution of higher education, as set forth in its regulations. Such ~~provisional~~ *conditional* 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~~ *conditional* 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~~ *conditional* 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~~ *conditional* 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 a prior~~ approval, including any approval or authorization issued prior to July 1, 1980, *and may add conditions to any approval* 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 may refuse to grant an approval or may place conditions on an approval for a request to use a name that incorporates terms deemed by the Council to be misleading to consumers, students, or the general public regarding the institution's affiliation or association with any public institution or system of higher education in the Commonwealth. The Council shall not, however, add conditions to, revoke, or suspend a prior approval of a name. The Council shall, by regulation, designate the terms deemed to be misleading, which shall include, but shall not be limited to, "public university," "public college," and "community college."

~~B~~ C. The Council shall notify the institution by certified mail, return receipt requested, of its intention to deny an application ~~or~~, suspend, or revoke, ~~or modify its a prior~~ approval, *or add conditions to an approval*, and shall state in writing the reasons for the denial, suspension, revocation, or ~~modification~~ *conditions*. The institution may, within ~~ten~~ 10 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~~ D. 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~~ E. 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 a prior~~ approval, *or add conditions to an approval*, or aggrieved 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~~ F. 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.