

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 708

An Act to amend and reenact § 23-4.4 of the Code of Virginia, relating to authorization to transfer interest in patents and copyrights owned by institutions of higher education.

[H 2285]

Approved March 19, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 23-4.4 of the Code of Virginia is amended and reenacted as follows:

§ 23-4.4. Authorization to transfer interest; Governor's approval required under certain circumstances.

A. The Boards of Visitors, the State Board for Community Colleges, or their designees may transfer any interest they possess in patents and copyrights or in materials in which the institution claims an interest under its patent or copyright policy. However, the Governor's prior written approval shall be required for transfers of such property developed wholly or significantly through the use of state general funds and either (i) such property was developed by an employee of the institution acting within the scope of his assigned duties, or (ii) such property is to be transferred to an entity other than the Innovative Technology Authority, an entity whose purpose is to manage intellectual properties on behalf of nonprofit organizations, colleges and universities, or an entity whose purpose is to benefit the respective institutions. The Governor may attach conditions to these transfers as he deems necessary. In the event the Governor does not approve such transfer, the materials shall remain the property of the respective institutions and may be used and developed in any manner permitted by law. The State Council of Higher Education working in cooperation with the state-supported institutions of higher education and in accordance with § 23-9.10:4 shall adopt a uniform statement defining (i) the conditions under which a significant use of general funds occurs and (ii) the circumstances constituting an assigned duty.

B. Notwithstanding subsection A, the Governor's approval is not required to transfer such property to an entity described in clause (ii) of subsection A if (i) the interest was developed without the use of federal funds, (ii) such entity makes a clear and convincing case to the relevant board that its ownership of the interest is critical to its ability to commercialize that interest, and (iii) the institution receives, at a minimum, compensation equal to the anticipated revenue stream of licensing the interest.