

# VIRGINIA ACTS OF ASSEMBLY -- 2004 RECONVENED SESSION

## CHAPTER 991

*An Act to amend and reenact §§ 22.1-319 through 22.1-323, 22.1-324, 22.1-325, 22.1-326, 22.1-328 through 22.1-332, 23-276.1 through 23-276.6, 23-276.10, 23-276.11, and 54.1-3029 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 21.1 of Title 23 sections numbered 23-276.13, 23-276.14, and 23-276.15, and to repeal §§ 22.1-326.1, 22.1-333, 22.1-334, and 22.1-335 of the Code of Virginia, relating to regulation of certain private, for-profit career-training schools by the State Council of Higher Education.*

[H 637]

Approved April 21, 2004

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

**1. That §§ 22.1-319 through 22.1-323, 22.1-324, 22.1-325, 22.1-326, 22.1-328 through 22.1-332, 23-276.1 through 23-276.6, 23-276.10, 23-276.11, and 54.1-3029 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 21.1 of Title 23 sections numbered 23-276.13, 23-276.14, and 23-276.15 as follows:**

### CHAPTER 16.

#### PRIVATE TRADE, TECHNICAL, BUSINESS AND CORRESPONDENCE SCHOOLS; SCHOOLS FOR STUDENTS WITH DISABILITIES.

§ 22.1-319. Definitions.

As used in this chapter unless the context requires a different meaning:

"Agent" means a person who is employed by any school, whether such school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker or independent contractor to procure students or enrollees for any such school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such school.

"Board" means the Virginia Board of Education.

"Correspondence school" means a privately owned and operated educational institution or educational organization which, for a consideration, profit, or tuition, teaches or instructs in any subject through the medium of correspondence between the pupil and the school by which the school transmits or exchanges matter to the pupil via printed material, telecommunication or other means.

"Degree" means any earned award at the associate, baccalaureate, graduate or professional level which represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level and includes certificates and specialist's degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study in a discipline or interdisciplinary specialty that leads to a degree.

"Department" means the Department of Education.

"Diploma" means an award which represents a level of educational attainment below the associate degree level and which is given for successful completion of a curriculum comprised of two or more courses and applies only to those awards given for coursework offered within Virginia by postsecondary schools, as defined in this section, which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, diplomas below the associate level.

"Person" means any individual, group of individuals, partnership, association, business trust, corporation, or other business entity.

"Postsecondary school" means a (i) correspondence school; (ii) proprietary career school; (iii) school for students with disabilities; or (iv) private, for-profit institution offering postsecondary education that includes courses or programs of study or instruction which lead to, or which may reasonably be understood to be applicable toward, a diploma or certificate. Such school may use the terms "school" or "institute," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

"Proprietary career school" means a privately owned and operated institution or organization, no matter how titled, maintaining or conducting classes for the purpose of offering instruction for a consideration, profit or tuition, designed to prepare an individual for entry level positions in occupations, including but not limited to business, industry, skilled trades, or service occupations, or to upgrade an individual in previously acquired occupational-related skills. Such schools may be further classified by the Board as necessary.

"School" or "schools" means any school defined in this section.

"School for students with disabilities" or "school" or "schools" means a privately owned and operated preschool, school, industrial institution or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or

tuition, to persons with mental retardation, visual impairment, speech/language disorders, hearing impairments, specific learning disabilities, physical disabilities, emotional disturbance, severe disabilities, or multiple disabilities determined to have autism, deaf-blindness, a developmental delay, a hearing impairment including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness.

"Superintendent" means the Superintendent of Public Instruction.

§ 22.1-320. Exemptions.

A. This chapter shall not apply to any of the following:

1. Except as provided in subsection B of this section, Any school that is licensed or approved pursuant to other statutes of the Commonwealth;

2. Any school conducted by any person, firm, corporation, or other organization solely on a contractual basis where approval as a school is not a requirement of the contract and no individual person is charged tuition or for which no tuition or charge is made;

3. Any course or instruction not exceeding sixteen hours in length offered by any person or any course or instruction not exceeding forty hours which is offered as an adjunct to another primary business or service by any person;

4. Any college, university or professional school approved or recognized as such by the State Council of Higher Education for Virginia or similar agency of another state in which its primary campus is located, which has offered or which may offer one or more courses covered in this chapter, if any tuition, fees and charges made by the institution are collected in accordance with the regulations prescribed by the board of trustees or other governmental body of such university, college, or institution of higher education;

5. Any public or private high school accredited or recognized by the Board of Education which *that* has offered or *which that* may offer one or more courses *programs for students with disabilities* covered in this chapter, if any tuition, fees and charges made by the school are collected in accordance with the regulations prescribed by the governing body of such school;

6 3. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in any public or private school or in preparation of an individual for an examination for professional practice or higher education; *or*

7. Schools of fine arts or other avocational courses which are conducted solely to further artistic appreciation, talent, or for personal development or information;

8. Schools offering exclusively religious instruction;

9 4. A program through which persons with disabilities are provided employment and training primarily in simple skills in a sheltered or protective environment; *or*

10. Any school, institute or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business or profession represented by such trade association.

B. The Board of Education shall continue to review all certificate and diploma programs offered by a postsecondary school which is approved by the State Council of Higher Education pursuant to Chapter 21.1 (§ 23-276.1 et seq.) of Title 23. Based on its review, the Board shall make recommendations to the Council regarding the continuance of such certificate or diploma programs. On and after July 1, 1996, any school seeking to confer diplomas and certificates, but not degrees, shall be subject only to the authority of the Board. Institutions of higher education, as defined in § 23-276.1, approved by the Council before July 1, 1996, to confer degrees shall not be subject to the provisions of this chapter for the purposes of adding any diploma or certificate programs.

§ 22.1-321. Regulations.

A. The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools. The regulations may include standards for programs offered by the schools.

B. In its regulations the Board may, among other things, provide that certification by other accrediting agencies may justify the issuance of a certificate to operate a school without the submission of the information otherwise required in this chapter, with the exception of the student tuition guaranty provisions of § 22.1-324.

C. The Board may authorize the Superintendent to issue certificates *licenses* to operate schools.

§ 22.1-322. Advisory committees.

A. The Board may appoint as ~~many~~ *an* advisory committees as it may deem necessary, each *committee*, to be composed of nine persons who shall serve for terms of two years each, the majority of whom shall be representative of the ~~types~~ of schools subject to regulation under this chapter and the balance of whom shall be representative of the public and shall have no connection with any school. The advisory committees shall recommend to the Board regulations to carry out the purposes of this chapter including the development of new or expanded programs of instruction to be included in the curricula of such schools. No member of any advisory committee shall serve for more than two consecutive terms.

B. The Board may also authorize the periodic appointment by the Department of a five-member

committee to arbitrate complaints between students and the school and recommend resolutions to the Department as needed. The committee shall be selected from a list of potential members maintained by the Department and shall be comprised of one member from a certified school, one current or former student of a certified school, and three members of the general public.

§ 22.1-323. Licenses generally.

A. No person shall open, operate or conduct any school *for students with disabilities* in this Commonwealth without a license or certificate to operate such school issued by the Board of Education. A license or certificate shall be issued for a school if it is in compliance with the regulations of the Board issued pursuant to this chapter, any fee for such license or certificate has been paid, and its facilities are approved by the Board after an inspection by the Department. No such license or certificate shall be transferable. The license or certificate shall be prominently displayed on the premises of the school in a place open for inspection by any interested person during the hours of operation.

B. Any license or certificate issued to a residential school for students with disabilities, except a provisional or conditional license or certificate issued pursuant to § 22.1-323.1, which is in effect on July 1, 1992, may, upon written notification to the school, expire on a date subsequent to its stated expiration date and determined at the discretion of the Board, but in no case later than three years from the effective date. Licenses and certificates issued to residential schools for students with disabilities which are effective on or after July 1, 1992, may be issued for periods of up to three successive years. Licenses may be issued to private day special education schools for periods of up to three successive years.

C. The Superintendent or his authorized agents shall *may* make at least one unannounced inspection inspections of each residential school for students with disabilities each year.

§ 22.1-324. Application or license; information required; student guaranty provisions.

A. To obtain a certificate license to operate a school, an application, certified as true and correct, shall be filed with the Board upon forms prepared and furnished by it setting forth the following information:

1. The title or name of the school together with the names of its owners, controlling officials, and managing employees;
2. The specific programs, subjects, and courses of instruction which will be offered and the specific purpose of such instruction;
3. A description of the location or locations where such instruction will be given, including governmental approval of the physical, safety and sanitary facilities thereof, and a copy of the deed, lease or other legal instrument authorizing the school to occupy such location or locations for the purpose of operating a school;
4. A specific listing of the equipment available for instruction in each program or course;
5. The maximum anticipated enrollment to be accommodated with the equipment available in each specified program or course and the ratio of students to instructors, as of the date of application;
6. The educational and teaching qualifications of instructors and supervisors in each specified program or course;
7. Financial statements of the school or owning entity which have been, at a minimum, reviewed by an independent certified public accountant; or which, at the discretion of the Board or Department, may be required to be audited financial statements; and which demonstrate resources available to equip, maintain and operate the school;
8. Copies of student record forms and the method of collecting and refunding tuition;
9. Copies of all advertising currently used by such school;
10. A surety bond or other guaranty instrument acceptable to the Department and evidence of compliance with student tuition guaranty provisions; and
11. Such additional information as the Board may deem necessary.

B. The Board shall promulgate regulations establishing a student tuition guaranty fund for proprietary career schools to be used to reimburse students who suffer losses of tuition and fees because a school has failed to perform faithfully its contractual obligations to its students. The Department may contract with a third party to administer the fund.

1. The regulations shall provide for the following:
  - a. A minimum balance and periodic assessments to be paid by the schools in amounts determined by the Department based upon the probable amount of money needed for the fund;
  - b. Supplemental assessments in the event the fund is insufficient to satisfy approved claims; and
  - c. Procedures for approving claims to be paid out of the fund.
2. The fund shall be maintained in a separate account and any income earned on the fund shall be credited to the fund. The cost of administering the fund shall be paid out of the fund.
3. A school shall pay all assessments in order to obtain and maintain a certificate to operate.
4. The guaranty instrument requirements set forth in subsection C below may be waived by the Department if it is satisfied from information supplied by the school that the school has met its obligations to the fund.

C. The surety bond, certificate of deposit, or irrevocable letter of credit shall be *deemed necessary* by

the Board.

B. Each school shall submit and maintain a guaranty instrument payable to the Commonwealth of Virginia and conditioned to protect the contractual rights of students *and other contracting parties*. The amount of such bond shall be established in the Board's regulations. ~~The guaranty instrument requirement may be reduced for schools for students with disabilities, at the discretion of the Department, on a showing by the school that the school collects no advance tuition other than equal monthly installments or payment for services rendered.~~ The minimum guaranty instrument for any school shall be \$1,000. The word "students" as used in this subsection means all enrolled students.

§ 22.1-325. Application to contain certain commitments.

Each application for a ~~certificate~~ *license* to operate a school shall contain the following commitments:

1. To conduct the school in accordance with all applicable regulations of the Board;
2. To permit the Board or Department to inspect the school or classes being conducted therein at any time and to make available to the Board or Department, when requested to do so, all information pertaining to the activities of the school required for the administration of this chapter, including its financial condition;
3. To advertise the school at all times in a form and manner that will be free from misrepresentation, deception or fraud and to conform to regulations of the Board governing such advertising;
4. To see that all representations made by an agent of the school shall be free from misrepresentation, deception or fraud and shall conform to regulations of the Board governing such misrepresentations;
5. To display the current ~~certificate~~ *license* prominently where it may be inspected by students, visitors and the Board or Department; and
6. To maintain all premises, equipment and facilities of the school in an adequate, safe and sanitary condition.

§ 22.1-326. License restricted to specific disability categories; supplementary application.

A school may offer ~~those courses~~ *education programs serving the disability categories* specifically indicated on its ~~certificate or~~ license only. A supplementary application for additional ~~fields or~~ courses *programs of instruction or disability categories* may be submitted in such form as the Board may prescribe.

§ 22.1-328. Renewal of licenses.

The license ~~or certificate~~ of each school that continues to operate as such shall be renewed ~~annually~~ on or before the anniversary date set by the Department. Every license ~~or certificate~~ *which that* has not been renewed in accordance with these provisions shall expire and a new license ~~or certificate~~ shall be obtained from the Board before such school may continue to operate, for which an original application must be submitted ~~together with any fee therefor~~. The application shall be accompanied by such information deemed necessary by the Board, ~~including a current catalog, financial statements, and evidence of compliance with student guaranty provisions described in subsection C of § 22.1-324.~~

§ 22.1-329. Denial, revocation or suspension of license; grounds.

A. The Board may refuse to issue or renew a ~~certificate or~~ license or may revoke or suspend the ~~certificate or~~ license of any school issued pursuant to this chapter for the following causes:

1. Violation of any provision of this chapter or any regulation of the Board;
2. Furnishing false, misleading or incomplete information to the Board or Department or failure to furnish any information requested by the Board or Department;
3. Violation of any commitment made in an application for a ~~certificate or~~ license;
4. Presenting, either by the school or by any agent of the school, to prospective students information relating to the school which is false, misleading or fraudulent ~~regarding employment opportunities, amount of starting salaries, or the possibility of receiving academic credit from any institution of higher learning for training offered by the school securing the enrollment;~~
5. Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by law;
6. Making any false promises through agents or by advertising or otherwise of a character likely to influence, persuade or induce enrollments;
7. Paying commission or valuable consideration to any person for any act of service performed in willful violation of this chapter;
8. Failing to maintain financial resources adequate for the satisfactory conduct of courses of instruction offered or to retain a sufficient or qualified instructional staff;
9. ~~Conducting instruction in a course or field not indicated on the certificate or license of the school;~~
- ~~10. Demonstrating unworthiness or incompetency to conduct the school in a manner calculated to safeguard the interests of the public;~~
- ~~11. Failing within a reasonable time to provide information requested by the Board or Department as a result of a formal or informal complaint to or by the Board or Department which would indicate a violation of this chapter;~~
- ~~12. Attempting to use or employ any enrolled students in any commercial activity whereby the school receives any compensation whatsoever without reasonable remuneration to the student, except to~~

the extent that employment of students in such activities is necessary or essential to their training and is permitted and authorized by the Board; *or*

~~13 12. Engaging in or authorizing any other conduct whether of the same or of a different character from that herein specified which constitutes fraudulent or dishonest dealings; or~~

~~14. Attempting to confer any degree on any student except as provided in Chapter 21.1 (§ 23-276.1 et seq.) of Title 23.~~

B. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to proceedings under this section.

§ 22.1-330. Same; investigation; time within which to correct unsatisfactory conditions.

The Board or Department may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proved, would constitute grounds for refusal, suspension or revocation of a ~~certificate~~ *license*, investigate the actions of any applicant for or any person or persons holding or claiming to hold a ~~certificate~~ *license* to operate a school.

Before refusing to renew, revoking or suspending any ~~certificate~~ *license*, the Board may grant such period of time as it deems reasonable to correct any unsatisfactory condition.

§ 22.1-331. Violations.

Any person who opens, operates or conducts any school without a ~~certificate~~ *license* required by this chapter shall be guilty of a Class 2 misdemeanor. Each day such person permits the school to be open and operate without such a ~~certificate~~ *license* shall constitute a separate offense.

§ 22.1-332. List of schools holding valid licenses.

The Department shall maintain a list of schools holding valid ~~certificates~~ *licenses* under the provisions of this chapter ~~which that~~ shall be available for the information of the public.

§ 23-276.1. Definitions.

As used in this chapter:

*"Academic-Vocational" refers to a noncollege degree school that offers degree and nondegree credit courses.*

*"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such institution or school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker or independent contractor to procure students or enrollees for any such institution or school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such institution or school.*

*"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 and academic-vocational noncollege degree schools.*

*"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.*

*"Degree credit course" means any earned credits awarded for successful completion of the requirements of a course of study or instruction beyond the secondary school level, which may be used toward completion of a certificate or diploma, or an associate, baccalaureate, graduate, first professional or specialist level degree.*

*"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.*

*"Noncollege degree school" means any postsecondary school that offers courses or programs of study that do not lead to an associate or higher level degree. Such schools may be academic-vocational or vocational.*

*"Nondegree credit course" means any earned credits awarded for successful completion of the requirements of a course of study or instruction beyond the secondary school level, which may be used toward completion of a certificate or diploma, but may not be used to earn an associate or higher level degree.*

*"Postsecondary school" or "school" means an any institution offering a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma. formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a*

*high school diploma or its equivalent. Such schools include programs of academic, vocational, and continuing professional education, and exclude avocational and adult basic education programs. For the purposes of this chapter, a "postsecondary school" shall be classified as either an institution of higher education as defined in this section or a noncollege degree school, as defined in this section.*

"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.

"Proprietary" means a privately owned and managed, profit-making institution of higher education or noncollege degree school.

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

*"Vocational" refers to a noncollege degree school that offers only nondegree credit courses.*

#### § 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 a postsecondary school solely on a contractual basis for which no individual is charged tuition and for which there is no advertising for open enrollment;~~

9. ~~Any school, institute or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business or profession represented by such association;~~

10. ~~Any public or private high school accredited or recognized by the Board of Education that has offered or may offer one or more courses cited in this chapter, if any tuition, fees and charges made by the school are collected as may be permitted by Title 22.1, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school; or~~

11. ~~Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or to prepare an individual for an examination for professional practice or higher education.~~

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~~ Postsecondary schools 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 a postsecondary school~~ 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 a postsecondary school~~ 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~~ *postsecondary schools* that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing ~~higher~~ *postsecondary* 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, *agent or solicitor requirements*, 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~~ *postsecondary* 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.

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~~ *postsecondary school* 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, *or nondegree credit courses*, 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 *and academic-vocational noncollege degree schools* 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 *shall not be required to obtain another authorization from the Council to operate in Virginia if they (i) were formed, chartered or established in this Commonwealth, or chartered by an Act of Congress; (ii) have maintained a main or branch campus continuously in the Commonwealth for at least 10 calendar years under their current ownership; (iii) were continuously approved or authorized to confer or grant academic or professional degrees by the Council, by the Board of Education or by an act of the General Assembly during those 10 years; and (iv) are fully accredited by an accrediting agency that is recognized by, and has met the criteria for Title IV eligibility of the United States Department of Education. If authorization to confer or grant academic or professional degrees is revoked, the institution must seek reauthorization and must do so annually until it meets the criteria of this subsection.*

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.

*Institutions of higher education other than those described in subsection C may request full approval from the Council to confer academic or professional degrees (i) at a new or specified degree level or (ii) in one or more specific programs or program areas at a specified degree level.*

~~F E.~~ In addition to such other requirements as are established in this chapter or the regulations of the Council, any ~~institution of higher education~~ *postsecondary school* 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 F.~~ Any ~~institution of higher education~~ *postsecondary school* 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 conditional approval or modify the previous approval granted to an institution of higher education, as set forth in its regulations. Such 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 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 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 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 C.~~ The Council may defer a decision on an application upon determining that additional information is needed.

~~H D.~~ 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, may revoke or suspend 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; *or*
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."

C. The Council shall notify the institution by certified mail, return receipt requested, of its intention to deny an application, suspend or revoke a prior approval, or add conditions to an approval, and shall state in writing the reasons for the denial, suspension, revocation, or conditions. The institution may, within 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 *et seq.*) of Chapter 40 of Title 2.2.

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.

E. In accordance with Article 3 (§ 2.2-4018 *et seq.*) of Chapter 40 of Title 2.2, any institution aggrieved by a decision of the Council to deny an application or suspend or revoke 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.*).

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.

#### § 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 or *academic-vocational noncollege degree school* 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~~ *a postsecondary school* 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.

#### § 23-276.13. Establishment of the Career College Advisory Board.

A. *The Council shall establish and seek the advice of the Career College Advisory Board, which shall assist the Council in the performance of its duties and provide advisory services in academic and administrative matters related to private proprietary institutions of higher education and academic-vocational noncollege degree schools. The Career College Advisory Board shall be composed of college and university representatives and such other members as the Council may select and shall be broadly representative of the private proprietary sector of institutions of higher education and academic-vocational noncollege degree schools.*

B. *The Career College Advisory Board shall meet at least twice each year and shall advise the Council and the private proprietary accredited institutions of higher education and academic-vocational noncollege degree schools in the Commonwealth regarding such matters as may come before it. The Council may employ such qualified personnel as may be required to assist the Career College Advisory Board in the performance of its duties.*

#### § 23-276.14. Certificates generally.

*No person shall open, operate or conduct any postsecondary school in this Commonwealth without a*

*certificate to operate such postsecondary school issued by the Council. The Council shall issue a certificate to those postsecondary schools in compliance with the Council regulations issued pursuant to this chapter.*

*Postsecondary schools shall seek such certification from Council immediately after receipt of a valid business license issued by the relevant official of the locality in which it seeks to operate.*

*§ 23-276.15. List of postsecondary schools holding valid certificates.*

*The Council shall maintain a list of postsecondary schools holding valid certificates under the provisions of this chapter, which shall be available for the information of the public.*

*Upon confirmation of any notification or discovery of any postsecondary school operating without its certification or approval, the Council shall notify in writing the relevant local Commissioner of the Revenue or other official serving such equivalent functions of the postsecondary school's violation of such certification or approval requirement, and shall recommend revocation of the school's business license.*

*§ 54.1-3029. Qualifications for a certified massage therapist.*

A. In order to be certified as a massage therapist, the applicant shall furnish evidence satisfactory to the Board that the applicant:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program, ~~having received programmatic approval from the Virginia Board of Education, Division of Proprietary Schools, or certified or approved by the Virginia Board of Education, Division of Proprietary Schools;~~ the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory ~~which that~~ approves educational programs, notwithstanding the provisions of ~~§ 22.1-320 23-276.2;~~
3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork or an exam deemed acceptable to the Board of Nursing leading to national certification; and
4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in this chapter.

B. The Board may certify any applicant who has been practicing massage therapy for up to ~~ten~~ 10 years prior to July 1, 1997, and has completed at least 200 hours of training in an education program. Such programs may be, but shall not be required to be, certified or approved by the ~~Virginia Board of Education, Division of Proprietary Schools;~~ the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory ~~which that~~ approves educational programs, or has been in practice for ~~ten~~ 10 years or more prior to July 1, 1997, and has completed 20 hours of such training; or has passed the National Certification Exam for Therapeutic Massage and Bodywork prior to 1994.

C. The Board may issue a provisional certification to an applicant prior to passing the National Certification Exam for Therapeutic Massage and Bodywork for such time and in such manner as prescribed by the Board. No more than one provisional certification shall be issued to any applicant.

D. The Board may certify without examination any applicant who is licensed or certified as a massage therapist in another state, the District of Columbia, a United States possession or territory, or another country, and, in the opinion of the Board, meets the requirements for certified massage therapists in this Commonwealth.

**2. That §§ 22.1-326.1, 22.1-333, 22.1-334, and 22.1-335 of the Code of Virginia are repealed.**

**3. That the Board of Education's regulations in effect on June 30, 2004, that were promulgated pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 concerning the private trade, technical, business and correspondence schools (commonly referred to as "proprietary schools") for which the regulatory authority is transferred by this act from the Board to the State Council of Higher Education shall remain in force and shall be deemed to be regulations of the State Council of Higher Education until such time as the Council shall promulgate regulations pursuant to this act.**

**4. That whenever any condition, requirement, provision or contents or portions of any section of Title 22.1 relating to the regulation of proprietary schools, as such sections existed on June 30, 2004, are repealed or transferred in the same or modified form to a section in Title 23 pursuant to this act, all references to such section of Title 22.1 relating to the regulation of proprietary schools as such section was in effect on June 30, 2004, shall be construed, on and after July 1, 2004, to apply to the amended or new section in Title 23 containing such conditions, requirements, provisions, contents or portions thereof.**

**5. That, on and after July 1, 2004, the State Council of Higher Education shall be the successor in interest to the Board of Education on matters relating to the regulation of proprietary schools that were previously regulated by the Board of Education pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1, with the exception of schools for students with disabilities. Further, whenever the Code of Virginia refers to the Board of Education in the context of any authority, duty, or responsibility relating to proprietary schools, except for schools for students with disabilities, such authority, duty, or responsibility shall be construed to mean the State Council of Higher Education.**

6. That, on and after July 1, 2004, all rightful title and interest in or to any tangible personal property or records that were previously vested in the Board of Education or the Department of Education relating to proprietary schools, except for schools for students with disabilities, shall be transferred to and vested in the name of the State Council of Higher Education to the extent that this act transfers the regulatory authority over such schools from the Board to the Council.
7. That the State Council of Higher Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.