

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 447

*An Act to amend and reenact §§ 23-276.1 through 23-276.8 and 23-276.11 of the Code of Virginia, relating to certification requirements for proprietary career schools and institutions of higher education.*

[H 1719]

Approved March 21, 2005

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

**1. That §§ 23-276.1 through 23-276.8 and 23-276.11 of the Code of Virginia are amended and reenacted as follows:**

§ 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~~ the 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~~ the 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.

*"In-state institution" means an institution of higher education that is formed, chartered, or established within Virginia. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) it has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) it produces clear and convincing evidence that its main or principal campus is located in Virginia.*

"Institution of higher education" or "institution" means any person or entity, other than a Virginia state-supported institution of higher education named in § 23-9.5 or any public institution of higher education established in statute as an authority and declared a governmental instrumentality pursuant to § 23-14, 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.

*"Out-of-state institution" means an institution of higher education that is formed, chartered, established, or incorporated outside the Commonwealth.*

"Postsecondary school" or "school" means any ~~institution~~ entity offering 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.

"Site" means a location in Virginia where a postsecondary school (i) offers one or more courses on an established schedule and (ii) enrolls two or more persons who are not members of the same household. A site may be a branch of such postsecondary school, and shall not be required to possess administrative capability.

"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 or any public institution of higher education established in statute as an authority and declared a governmental instrumentality pursuant to § 23-14.

B. In addition, the following activities or programs offered by ~~institutions~~ schools 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 or curriculum regulated by the Board of Nursing;

3. A professional or occupational training program subject to the approval of (i) a regulatory board pursuant to Title 54.1 or (ii) other state or federal governmental agency;

4. 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;

5. 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;

~~6.~~ Those courses or programs offered through approved multistate compacts, including, but not limited to, the Southern Regional Education Board's Electronic Campus;

~~7~~ 6. Those courses offered and delivered by a postsecondary school that is accredited by an entity recognized by the U.S. Department of Education for accrediting purposes, if such courses are provided, solely on a contractual basis for which no individual is charged tuition and for which there is no advertising for open enrollment;

~~8~~ 7. 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;

~~9~~ 8. 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

~~10~~ 9. 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~~ school whose primary purpose is to provide religious or theological education. Postsecondary schools shall apply for exemptions for courses and programs to confer diplomas, certificates, or degrees related to religion and theology. Exemptions may be granted for a maximum of five years, unless the ~~institution~~ school has been granted a standing exemption prior to July 1, 2002.

Each ~~institution~~ school 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 a postsecondary school an exemption, the ~~institution~~ school shall be notified in writing with the reasons for the exemption denial. The affected ~~institution~~ school 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~~ *schools* shall be subject to the provisions of subsection B of § 23-276.6 and 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~~ *a school* may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing postsecondary education opportunities in ~~institutions~~ *schools* 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~~ *a school'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~~ *a school*, person, or agent thereof in disclosing or advertising that the ~~institution~~ *school* has received ~~approval~~ *certification* from the Council to offer postsecondary programs in Virginia.

D. In addition to the other requirements of this chapter, the Council may establish separate ~~approval~~ *certification* criteria for various ~~institutional~~ *school* 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 certification required for the conferring of certain degrees and other awards or the offering of certain programs.

A. Without obtaining the ~~approval~~ *certification* of the Council or a determination that the activity or program is exempt from such ~~approval~~ *certification* requirements, no 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, 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. 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 shall not be required to obtain another ~~authorization~~ *certification* from the Council to operate in Virginia if they (i) were formed, chartered or established in ~~this the~~ 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~~ *recertification* and must do so annually until it meets the criteria of this subsection.

D. ~~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.~~

E. In addition to such other requirements as are established in this chapter or the regulations of the Council, any postsecondary school formed, chartered, or established outside of ~~this the~~ 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~~ *school's* main out-of-state campus;

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

4. The ~~institution~~ *school* 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.

F. E. Any 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~~ *school* subject to this chapter.

§ 23-276.5. Approval procedures.

A. Prior to Council approval for ~~an institution~~ *a school* 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 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. The Council may defer a decision on an application upon determining that additional information is needed.

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 or certification.

A. The Council may refuse to grant ~~an approval~~ *a certification*, may revoke or suspend a ~~—prior approval or certification, as the case may be,~~ including any approval or authorization issued prior to July 1, 1980, and may add conditions to any approval *or certification, as the case may be,* on such grounds as may be provided in its regulations or any of the following grounds:

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

2. The ~~institution~~ *school* or any of its locations fails to meet or to maintain compliance with the Council's regulations;

3. The ~~institution~~ *school* 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~~ *school* violates any provision of this chapter or the Council's regulations; or

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

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~~ *school'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~~ *school* by certified mail, return receipt requested, of its intention to deny an application, suspend or revoke a prior approval *or certification, as the case may be,* or add conditions to an approval *or certification, as the case may be,* and shall state in writing the reasons for the denial, suspension, revocation, or conditions. The ~~institution~~ *school* 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~~ *school* aggrieved by a decision of the Council to deny an application or suspend or revoke a prior approval *or certification, as the case may be,* or add conditions to an approval *or certification,* 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~~ *a school* that has had its approval *or certification, as the case may be* revoked or suspended by the Council shall file a new application for ~~approval~~ *certification* and shall provide clear and convincing evidence that the conditions resulting in the suspension or revocation have been remedied and that the ~~institution~~ *school* 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~~ *a school* holding Council ~~approval~~ *certification* to operate in Virginia is the subject of an adverse action by the United States Department of Education or by the

~~institution's~~ *school's* accrediting agency. When such adverse action threatens a disruption of the operation of the ~~institution~~ *school* 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~~ *school* 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~~ *school* 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~~ *school* or records-maintenance organization with which the ~~institution~~ *school* is not corporately connected or in such other manner as the Council may authorize by regulation.

B. In the event of ~~institutional~~ *school* closure or revocation of its approval *or certification, as the case may be*, 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.

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

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