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SENATE BILL NO. 598

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on February 4, 2010)

(Patron Prior to Substitute—Senator Herring)

A BILL to amend and reenact §§ 23-276.1 and 23-276.2 of the Code of Virginia, relating to the definition of "avocational programs" and yoga teacher training.

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-276.1 and 23-276.2 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 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 the Commonwealth other than the office or principal location of such institution or school.

"Avocational programs" means instructional programs that are not intended to prepare students for employment or to upgrade career skills, but rather are intended solely for recreation, enjoyment, personal interest, or as a hobby and shall include those courses or programs of instruction that prepare individuals to teach avocational pursuits.

"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.

"Continuing or professional education" means those classes, courses, and programs, designed specifically for individuals who have completed a degree in a professional field, that (i) are intended to fulfill the continuing education requirements for licensure or certification in said profession; (ii) have been approved by a legislatively or judicially established board or agency responsible for regulating the practice of the profession; and (iii) are offered exclusively to an individual practicing in the profession.

"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.

"Fraudulent academic credential" means a diploma, certification, academic transcript, or other document issued by a person or an entity that is not an institution of higher education that provides evidence of or demonstrates completion of course work or academic credit that results in the issuance of an associate or more advanced 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

60 postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement
61 and approved by the Council.

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

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

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

71 "Postsecondary school" or "school" means any entity offering formal instructional programs with a
72 curriculum designed primarily for students who have completed the requirements for a high school
73 diploma or its equivalent. Such schools include programs of academic, vocational, and continuing
74 professional education, and exclude avocational and adult basic education programs. For the purposes of
75 this chapter, a "postsecondary school" shall be classified as either an institution of higher education as
76 defined in this section or a noncollege degree school, as defined in this section.

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

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

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

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

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

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

90 § 23-276.2. Exemptions.

91 A. The provisions of this chapter shall not apply to the public state-supported institutions named in
92 § 23-9.5 or any public institution of higher education established in statute as an authority and declared
93 a governmental instrumentality pursuant to § 23-14.

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

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

100 2. A nursing education program or curriculum regulated by the Board of Nursing;

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

103 4. Those courses or programs of instruction given by or approved by any professional body, fraternal
104 organization, civic club or benevolent order that are principally for continuing or professional education
105 or similar purpose and for which no degree credit is awarded;

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

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

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

115 8. *Those schools offering only avocational programs as defined in 23.276.1;*

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

120 910. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in
121 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 school whose primary purpose is to provide religious or theological education. Postsecondary schools shall apply for exemptions to confer diplomas, certificates, or degrees related to religion and theology. Exemptions may be granted for a maximum of five years, unless the school has been granted a standing exemption prior to July 1, 2002.

Each 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 school shall be notified in writing with the reasons for the exemption denial. The affected 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 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.