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HOUSE BILL NO. 2088**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Education
on January 28, 2013)

(Patron Prior to Substitute—Delegate Tata)

A BILL to amend and reenact §§ 23-276.1 and 23-276.8 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 21.1 of Title 23 a section numbered 23-276.16, relating to postsecondary schools; student records and closure procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-276.1 and 23-276.8 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 a section numbered 23-276.16 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.

"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 postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement

60 and approved by the Council.

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

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

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

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

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

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

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

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

86 "Teachout plan" means a written agreement between or among postsecondary schools that provides
87 for the equitable treatment of students if one party to the agreement stops offering an educational
88 program before all students enrolled in that program complete the program.

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

91 "Vocational" refers to a noncollege degree school that offers only nondegree credit courses, and shall
92 not include instructional programs that are intended solely for recreation, enjoyment, personal interest, or
93 as a hobby, or courses or programs of instruction that prepare individuals to teach such pursuits.

94 **§ 23-276.8. Preservation of students' records required.**

95 A. Every school approved by the Council to operate in Virginia after July 1, 1980, shall ensure the
96 preservation of students' records by binding agreement with another school or records-maintenance
97 organization with which the school is not corporately connected or in such other manner as the Council
98 may authorize by regulation.

99 B. In the event of school closure or revocation of its approval or certification, as the case may be,
100 the Council may facilitate, as it deems appropriate, the transfer of the student records to the repository
101 required by subsection A. In the event the repository fails to secure and preserve the students' records,
102 the Council, through its director, shall be authorized to take such actions as may be necessary to secure
103 and preserve the students' records until such time as one or more repositories accept the records the
104 school shall (i) make arrangements for the transfer of the academic and financial records of all students
105 to the Council within 30 days of the closure or (ii) with the approval of the Council, ensure
106 preservation of the academic and financial records of all students by entering an agreement with
107 another school. An out-of-state school that is public or corporately held may retain records at the
108 school's location outside of the Commonwealth but shall provide the Council with the contact
109 information needed for each student to obtain copies of his academic and financial records.

110 C. B. This section shall not be deemed to interfere with students' rights to have access to and obtain
111 copies of their own records or to authorize disclosure of student records except in compliance with
112 applicable state and federal law, including the federal Family Educational Rights and Privacy Act of
113 1974, 20 U.S.C. § 1232g, as amended.

114 **§ 23-276.16. School closure procedures.**

115 A. A school shall notify the Council of its intention to close at least 30 days prior to the closure. The
116 notice shall be accompanied by a comprehensive plan for closure and a teachout plan that makes
117 provision for presently enrolled students to complete the program of instruction for which they have
118 enrolled, either at the school or at another school certified by the Council or authorized to operate in
119 the Commonwealth. The school shall obtain the Council's approval of the teachout plan prior to
120 implementation.

121 B. The school shall notify the Council, in writing, if there is no comparable program for the

122 *purposes of developing a teachout plan within 50 miles of the closing school or if the closing school is*
123 *unable to enter a teachout agreement with another school. This information shall be provided at the*
124 *time the school notifies the Council of its intention to close.*
125 *C. Owners or senior administrators of a postsecondary school that closes without providing (i) an*
126 *adequate teachout plan or refunds of unearned tuition and (ii) appropriate preservation of records shall*
127 *be denied certification to operate another postsecondary school in the Commonwealth.*