

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 691

An Act to amend and reenact §§ 22.1-319, 22.1-320, 22.1-326, 22.1-329, 23-265, 23-266, 23-267, 23-268, 23-269, 23-271, and 23-275 of the Code of Virginia, relating to degree-granting authority and approval of certain postsecondary institutions.

[H 1146]

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-319, 22.1-320, 22.1-326, 22.1-329, 23-265, 23-266, 23-267, 23-268, 23-269, 23-271, and 23-275 of the Code of Virginia are amended and reenacted as follows:

§ 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" 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.

"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 has offered or which may offer one or more courses 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. 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;

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. 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 (§ 23-265 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 § 23-265, 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.

§ 22.1-326. Certificate or license restricted to specific courses; supplementary application.

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

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

13. 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 (§ 23-265 et seq.) of Title 23.

B. The provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall be applicable to proceedings under this section.

§ 23-265. Definitions.

As used in this chapter:

1. "Council" means the State Council of Higher Education for Virginia.

"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 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.

"Diploma" or "certificate" means an award which represents a level of educational attainment at or 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 institutions of higher education which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, degrees at the associate, baccalaureate, graduate, or professional level.

2. "Institution of higher education" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:

a. 1. Offers courses or programs of study or instruction which lead to, or which may reasonably be understood to be applicable toward, a degree; or

b. 2. Operates a facility as a college or university or other entity of whatever kind which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or

c. 3. Uses 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.

"Postsecondary school" or "school" shall have the meaning ascribed to it in § 22.1-319.

3. "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 degrees when such awards represent a level of educational attainment above that of the associate degree level.

4. "Diploma" or "certificate" means an award which represents a level of educational attainment at or 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 institutions of higher education which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, degrees at the associate, baccalaureate, graduate, or professional level.

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

6. "Program area" means a general group of disciplines in which one or more degree programs may be offered.

§ 23-266. Exemptions.

A. The provisions of this chapter shall not be applicable to any institution named in § 23-9.5 or any institution of higher education (i) whose primary purpose is to provide religious training or theological education, (ii) which awards degrees, diplomas or certificates whose titles indicate such primary purpose plainly upon their face and which state that the institution is excluded from the requirement of state approval, and (iii) whose catalogs and other publications plainly state that the institution's primary purpose is to provide religious training or theological education, that the institution's degrees, diplomas or certificates are so titled and worded and that the institution is excluded from the requirement of state approval.

B. Upon a determination by the Council as provided in subsection D of this section, the following institutions, schools, programs, degrees, diplomas, and certificates shall be exempted from the provisions of this chapter:

1. Any institution not exempt under the provisions of subsection A of this section whose primary purpose is to provide religious training or theological education and whose degree, diploma, or certificate is limited to evidence of completion of that education; provided, however, that any such institution which also offers degrees, diplomas, or certificates that are not awarded for the completion of religious training or theological education shall, to the extent of such nonreligious, nontheological

degrees, diplomas, or certificates, be subject to the provisions of this chapter.

2. An institution's conferring or awarding of an honorary degree, as long as the degree (i) does not represent the satisfactory completion of all or any part of the requirements of a program or course of study and (ii) is normally regarded as one which is intended to be commemorative in nature in recognition of an individual's contributions to society.

3. An institution's offering of (i) a nursing education program to the extent the program is regulated by the Board of Nursing or (ii) a professional program for professional or occupational training to the extent the program is subject to the approval by a regulatory board pursuant to Title 54.1.

4. Any ~~school~~ *postsecondary school* subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 *that offers only certificate or diploma programs; however, the addition of a degree program by any such school shall require the approval of the Council pursuant to the provisions of this chapter.*

5. An institution's awarding of a certificate or diploma on the basis of continuing education unit credit, or the equivalent, provided that the certificate or diploma so awarded indicates that the award is not based on the successful completion of degree credit work.

6. Courses or programs of instruction given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for professional education or advancement or similar purpose and for which no degree or degree credit is awarded; and

7. Postsecondary educational courses or programs of instruction offered by institutions of higher education at United States military posts or reservations when all of the courses or programs so offered are open only to military personnel or civilians employed by such military posts or reservations.

C. The Council may approve institutions of higher education to offer courses or programs exempted from this chapter pursuant to subdivision 7 of subsection B of this section if requested to do so by the appropriate military officials.

D. Each institution of higher education *or school* which claims to be exempt under the provisions of subsection B hereof shall file with the Council such information as may be required by the Council to determine whether the institution *or school* is exempt or to ensure that the institution *or school* continues to be exempt. The information so required by the Council shall be strictly limited to that which is necessary and relevant for such purposes. If the Council determines that an institution *or school* is not exempt from the provisions of this chapter, it shall notify the institution *or school* in writing with the reasons for the determination, and the affected institution *or school* shall have the opportunity for proceedings before the Council pursuant to § 9-6.14:11. The Council shall, in each instance, determine the validity of the exemption as provided in this section and such regulations as may be prescribed by the Council; provided, however, that any institution which claims an exemption under subsection A of this section on the basis that its primary purpose is to provide religious training or theological education shall be entitled to a rebuttable presumption of the truth of that claim.

§ 23-267. When Council approval required for conferring of degrees, etc., or offering certain programs.

A. 1. No institution of higher education formed, chartered, or established in the Commonwealth prior to July 1, 1980, which has been approved or authorized prior to that date to confer or grant academic, professional or honorary degrees by the Council, by the Board of Education or by an act of the General Assembly shall be required to obtain approval of the Council as provided in this chapter to confer those degrees unless or until such approval or authorization is revoked as provided in § 23-271. No such institution shall confer degrees at a level other than that for which it holds such approval or in specific programs or program areas at a degree level other than that for which it holds such approval unless such institution receives approval from the Council in accordance with the provisions of this chapter.

2. No institution of higher education formed, chartered, or established in the Commonwealth to which the provisions of subdivision A 1 of this section are inapplicable may confer or award degrees at any level within the Commonwealth unless such institution receives approval from the Council in accordance with the provisions of this chapter.

3. No institution of higher education formed, chartered or established within the Commonwealth which has approval from the Council to confer or award degrees within the Commonwealth at a specified level or in specified programs or program areas at a particular degree level shall award or issue certificates or diplomas at or below the associate degree level unless the institution receives approval from the Council for each type or category of certificate or diploma so offered, as defined by regulation of the Council. *The Board of Education shall continue to review, pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1, all certificate and diploma programs offered by a postsecondary school which is approved by the Council to confer degrees pursuant to this chapter. 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 approved by the Council before July 1, 1996, to confer degrees shall not be subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 for the purposes of adding any diploma or certificate programs.*

4. No institution of higher education formed, chartered, or established within the Commonwealth

which is approved by the Council to confer a degree at a specified level or to confer degrees in specified programs or program areas at a particular degree level shall enroll students into degree programs at a new or additional degree level or in specified programs or program areas at a new or additional degree level or into new or additional certificate or diploma programs unless the institution receives the approval of the Council in accordance with this chapter to confer degrees at the level or in the program or in program areas at the level or to award the certificates or diplomas or unless the Council authorizes the institution to do so upon such conditions as the Council may establish pending approval of the applicant's request to confer such degrees or to award such diplomas or certificates.

B. 1. No institution of higher education formed, chartered, or established outside the Commonwealth shall confer any degree or offer any program of study or course for degree credit or any diploma or certificate program within the Commonwealth unless the institution receives the approval of the Council in accordance with the provisions of this chapter or unless the Council authorizes the institution to do so upon such conditions as the Council may establish pending approval of the applicant's request to confer the degree or to offer the program or course for degree credit, or the diploma or certificate at or below the associate degree level.

2. No institution of higher education formed, chartered, or established outside the Commonwealth shall confer degrees or offer courses or programs of study within Virginia which may be either credited toward a degree at the institution's campus, branch or extension within the Commonwealth or transferred to a location within or outside the Commonwealth, including the institution's principal location, for application toward a degree without approval from the Council in accordance with the provisions of this chapter.

3. No institution of higher education formed, chartered or established outside the Commonwealth shall offer a certificate or diploma program at or below the associate degree level within the Commonwealth, regardless of whether the institution has approval from the Council to confer degrees or to offer a specified program or course within the Commonwealth, without approval from the Council to offer the certificate or diploma program.

4. No institution of higher education formed, chartered or established outside the Commonwealth and no branch or extension thereof shall, prior to receiving the appropriate approval by the Council, enroll students within the Commonwealth into a specified program or course providing degree credit or into a certificate or diploma program.

§ 23-268. Regulations.

The Council shall adopt, in accordance with the provisions of Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9, regulations to carry out the provisions of this chapter. The regulations shall state the procedures by which an institution *or school* shall make application for approval by the Council and shall contain standards designed (i) to insure that all institutions of higher education *or postsecondary schools* which are subject to the provisions of this chapter meet minimal academic standards and (ii) to be in the best interests of students who are expending time and money in obtaining postsecondary education and persons who rely on postsecondary degrees, diplomas and certificates in judging the competence of individuals. The areas to be dealt with in the standards shall include, but not be limited to, the following: adequacy of faculty training and experience, adequacy of present educational programs, adequacy of physical plant and structure, adequacy of finances, adequacy of maintenance of records, adequacy of personnel, adequacy of student services, adequacy of library, adequacy of research equipment and aids, adequacy of organization and administration, adequacy of procedures for student admission and graduation, consistency of an institution's stated purpose with proposed offerings, and any other relevant standards promulgated by the Southern Association of Colleges and Schools or other appropriate accrediting agencies recognized by the United States Department of Education as reliable authorities of the quality of education and training offered at institutions. The Council may by regulation prescribe the manner, condition and language to be used by an institution, person or agent thereof in making known that the institution has received approval from the Council pursuant to the provisions of this chapter.

§ 23-269. Approval procedures.

A. Each institution of higher education *or postsecondary school* which applies for approval to confer degrees under this chapter shall be evaluated by the Council according to the standards for approval adopted by the Council pursuant to § 23-268 before such institution is approved to confer or award degrees.

B. An institution of higher education formed, chartered or established within the Commonwealth may request approval (i) to confer degrees at a specified academic level; or (ii) limited approval to confer degrees limited to one or more programs or program areas at a specified degree level; or (iii) approval to award a certificate or diploma. In considering an institution's application, the Council shall not take into account duplication of effort by public and private institutions in the Commonwealth or other questions of need within the Commonwealth for degrees or programs of the kind for which approval is sought. In granting approval to an institution to confer degrees at a specified level or in specified programs or program areas at a particular degree level, the Council may establish the term or period of time for which such approval is granted or may specify certain conditions under which it is granted.

Following a satisfactory evaluation of an institution, the Council shall grant provisional approval to an institution to confer degrees at a specified level or in specified programs or program areas at a particular degree level and, when the institution has obtained accreditation from an appropriate regional or professional accrediting organization, the Council may then grant conditional or full approval to the institution, depending upon whether the institution has fully satisfied the standards for approval, as determined by the Council. In evaluating an institution's request to award or issue a certificate or diploma, the Council shall use, as appropriate, its standards for approving institutions to confer degrees.

C. In evaluating an institution of higher education formed, chartered or established outside the Commonwealth in accordance with the standards prescribed by the Council pursuant to § 23-268, the Council shall determine in each instance whether the academic and support services provided or otherwise required for citizens who will be enrolled in a particular course or program are available and adequate at the institution's campus, branch, or extension located in Virginia or whether the institution has made bona fide contractual provision, acceptable to the Council, for the materials and resources to be available within the proximity of the institution's campus, branch, or extension located in Virginia. In evaluating the request of such an institution to offer degree programs in Virginia or to offer credit courses or programs for transfer to a location within or outside Virginia, including the applicant's principal location, the Council shall insure and require that the applicant institution also offer the degree and the particular degree program or course at its principal location and that the specified program or course is included within the institution's programs accredited by an accrediting body recognized by the United States Department of Education. In granting approval to such an institution to confer degrees or to offer a specified degree program or course for degree credit or to award or issue a certificate or diploma, the Council may establish the term or period of time for which such approval is granted. The Council may also establish, by regulation, the procedure whereby an institution already approved to confer degrees or to offer a specified program, course, certificate, or diploma shall apply for a renewal of its approval.

§ 23-271. Refusal, suspension and revocation of approval.

A. The Council may, on its own motion, refuse to grant or may suspend ~~an institution's~~ *its* approval to confer a degree or to offer a specified program, course, certificate or diploma or to confer degrees at a specified level or in specified programs or program areas or to award certificates or diplomas, including any approval or authorization prior to July 1, 1980, referred to in subsection A of § 23-267, if the Council determines that any one of the following has occurred:

1. The institution *or postsecondary school* knowingly submits any material information to the Council in connection with its request for approval that is misleading or untrue;
2. The institution *or postsecondary school*, or its branch or extension, fails to meet or maintain the standards established by regulation of the Council pursuant to § 23-268;
3. The institution *or postsecondary school* publicly makes or causes any false or misleading representation that it has complied with any of the requirements of this chapter;
4. The institution *or postsecondary school* violates any regulation promulgated by the Council pursuant to its authority under this chapter; ~~or~~
5. The institution ~~willfully~~ *or postsecondary school willfully* refuses to furnish the Council with any requested information or records demonstrably necessary for the Council to carry out its responsibilities under this chapter; *or*

6. *In the case of a postsecondary school approved by the Council to offer degrees, and subject to the Board of Education for review of its certificate and diploma programs, the Board of Education recommends discontinuance of such programs.*

B. An institution whose request to offer a degree, program, course, certificate, or diploma is denied or whose approval to offer such is suspended by the Council shall receive written notification, as prescribed in the Council's regulations, of the reasons therefor and shall have an opportunity for proceedings before the Council in accordance with § 9-6.14:11 or, upon the written request of the institution, § 9-6.14:12. An institution which elects proceedings in accordance with § 9-6.14:12 shall bear the cost of such proceedings as shall be provided by Council regulation, the expenses of any court reporter and the normal site visitation committee and its testimony deemed necessary by the Council, and for the preparation of a transcript.

C. Following the opportunity for proceedings provided for in subsection B of this section, the Council shall make its determination as to whether an approval shall be granted or, in the case of suspension, reinstated or revoked and shall so advise the institution in writing. No approval may be revoked for failure to meet or maintain the Council's standards as provided in subdivision 2 of subsection A of this section unless there is clear and convincing evidence of such failure.

In order again to receive an approval that has been revoked by the Council, an institution shall make application for approval under the Council's regulations governing requests for approval.

§ 23-275. Applications pending.

All institutional applications for approval to confer degrees, ~~diplomas, or certificates,~~ or to offer degree programs in specific areas, or to offer specific programs or courses which are pending before the Council on July 1, ~~1980~~ 1996, shall be determined according to the provisions of this chapter.

Postsecondary schools, as defined in § 22.1-319, not approved by the Council before July 1, 1996, and seeking to offer diplomas or certificates, but not degrees, shall not be subject to the provisions of this chapter. However, all postsecondary schools with applications for approval to confer degrees pending before the Council on January 1, 1996, when approved by the Council to confer degrees, shall be deemed to have been approved prior to July 1, 1996. Institutions of higher education approved by the Council before July 1, 1996, to confer degrees shall not be subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 for the purposes of adding any diploma or certificate programs.