

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 229

An Act 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.

[H 2088]

Approved March 12, 2013

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 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 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.

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

"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, and shall not include instructional programs that are intended solely for recreation, enjoyment, personal interest, or as a hobby, or courses or programs of instruction that prepare individuals to teach such pursuits.

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

A. Every 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 school or records-maintenance organization with which the school is not corporately connected or in such other manner as the Council may authorize by regulation.

B. In the event of 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 the school shall (i) make arrangements for the transfer of the academic and financial records of all students to the Council within 30 days of the closure or (ii) with the approval of the Council, ensure preservation of the academic and financial records of all students by entering an agreement with another school. An out-of-state school that is public or corporately held may retain records at the school's location outside of the Commonwealth but shall provide the Council with the contact information needed for each student to obtain copies of his academic and financial records.

C. B. 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.

§ 23-276.16. School closure procedures.

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

B. The school shall notify the Council, in writing, if there is no comparable program for the purposes of developing a teachout plan within 50 miles of the closing school or if the closing school is unable to enter a teachout agreement with another school. This information shall be provided at the time the school notifies the Council of its intention to close.

C. Owners or senior administrators of a postsecondary school that closes without providing (i) an adequate teachout plan or refunds of unearned tuition and (ii) appropriate preservation of records shall be denied certification to operate another postsecondary school in the Commonwealth.