

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 588

An Act to amend and reenact § 2.2-108 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 2 of Title 22.1 a section numbered 22.1-20.2, by adding in Title 22.1 a chapter numbered 19.1, consisting of sections numbered 22.1-349.1 through 22.1-349.11, by adding a title numbered 23.1, containing a subtitle numbered I, consisting of chapters numbered 1 through 3, containing sections numbered 23.1-100 through 23.1-310, a subtitle numbered II, consisting of chapters numbered 4 through 9, containing sections numbered 23.1-400 through 23.1-909, a subtitle numbered III, consisting of chapters numbered 10 through 12, containing sections numbered 23.1-1000 through 23.1-1238, a subtitle numbered IV, consisting of chapters numbered 13 through 29, containing sections numbered 23.1-1300 through 23.1-2913, and a subtitle numbered V, consisting of chapters numbered 30 through 32, containing sections numbered 23.1-3000 through 23.1-3228, and by adding in Title 32.1 a chapter numbered 5.3, consisting of sections numbered 32.1-162.23 through 32.1-162.31; and to repeal Article 4 (§§ 2.2-2508, 2.2-2509, and 2.2-2510) of Chapter 25, Article 1 (§§ 2.2-2700 through 2.2-2704) of Chapter 27, and Chapter 50.1 (§§ 2.2-5004 and 2.2-5005) of Title 2.2, § 3.2-503, and Title 23 (§§ 23-1 through 23-303) of the Code of Virginia, Chapter 471 of the Acts of Assembly of 1964, as amended, Chapter 170 of the Acts of Assembly of 1978, and Chapter 306 of the Acts of Assembly of 1986, as amended, relating to revising and recodifying laws pertaining to institutions of higher education and other educational and cultural institutions.

[H 209]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-108 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 22.1 a section numbered 22.1-20.2, by adding in Title 22.1 a chapter numbered 19.1, consisting of sections numbered 22.1-349.1 through 22.1-349.11, by adding a title numbered 23.1, containing a subtitle numbered I, consisting of chapters numbered 1 through 3, containing sections numbered 23.1-100 through 23.1-310, a subtitle numbered II, consisting of chapters numbered 4 through 9, containing sections numbered 23.1-400 through 23.1-909, a subtitle numbered III, consisting of chapters numbered 10 through 12, containing sections numbered 23.1-1000 through 23.1-1238, a subtitle numbered IV, consisting of chapters numbered 13 through 29, containing sections numbered 23.1-1300 through 23.1-2913, and a subtitle numbered V, consisting of chapters numbered 30 through 32, containing sections numbered 23.1-3000 through 23.1-3228, and by adding in Title 32.1 a chapter numbered 5.3, consisting of sections numbered 32.1-162.23 through 32.1-162.31, as follows:

shall assist the Council in the performance of its duties as required by subsection A. The Private College Advisory Board shall be composed of representatives of nonprofit private institutions of higher education and such other members as the Council may select and shall be broadly representative of nonprofit private institutions of higher education.

C. The Private College Advisory Board shall meet at least once each year.

§ 23.1-211. Distance learning reciprocity agreements; participation; Distance Learning Reciprocity Advisory Council.

A. The Council may enter into interstate reciprocity agreements that authorize accredited associate-degree-granting and baccalaureate (i) public institutions of higher education and (ii) private institutions of higher education to offer postsecondary distance education. The Council shall administer such agreements and shall approve or disapprove participation in such agreements by accredited associate-degree-granting and baccalaureate (a) public institutions of higher education and (b) private institutions of higher education. Participation in the agreements is voluntary.

B. The Council shall establish the Distance Learning Reciprocity Advisory Council, which shall include representatives from each institution that offers postsecondary distance education pursuant to an interstate reciprocity agreement as set forth in subsection A. The Advisory Council shall advise the Council on the development of policies governing the terms of participation by eligible institutions, including the establishment of fees to be paid by participating institutions to cover direct and indirect administrative costs incurred by the Council.

§ 23.1-212. Effect upon powers of governing boards of public institutions of higher education; endowment funds.

A. The powers of the governing boards of public institutions of higher education over the affairs of such institutions are not impaired by the provisions of this chapter except to the extent that powers and duties are specifically conferred upon the Council in this chapter.

B. The Council shall have no authority over the solicitation, investment, or expenditure of endowment funds now held or in the future received by any public institution of higher education.

Article 3.

Regulation of Certain Private and Out-of-State Institutions of Higher Education.

§ 23.1-213. Definitions.

As used in this article, unless the context requires a different meaning:

"Academic-vocational non-college degree school" means a non-college degree school that offers degree and nondegree credit courses.

"Agent" means a person who is employed by any institution of higher education or non-college 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" means an award that is given by (i) institutions of higher education and academic-vocational non-college degree schools for successful completion of a curriculum consisting of courses that may also be taken for degree credit or (ii) vocational non-college degree schools for successful completion of a curriculum. "Certificate" includes a diploma.

"College" means any associate-degree-granting institution of higher education or institution of higher education at which a bachelor's degree is the most advanced degree that is granted.

"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 such professional field, (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 such professional field.

"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" means any earned credits awarded for successful completion of the requirements of a course of study or instruction beyond the secondary school level that may be used toward completion of a certificate or degree.

"Fraudulent academic credential" means a certificate, academic transcript, or other document issued by a person or other entity that is not an institution of higher education that provides evidence of or demonstrates completion of coursework or academic credit that results in the issuance of a degree.

"Institution of higher education" or "institution" means any person or other entity, other than a public institution of higher education or any other entity authorized to issue bonds pursuant to Chapter 11 (§ 23.1-1100 et seq.), 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; and (iii) offer approved courses for degree credit or programs of study leading to a degree or offer degrees either at a site or via telecommunications equipment

located in the Commonwealth.

"Multistate compact" means any agreement involving two or more states to jointly offer postsecondary educational opportunities pursuant to policies and procedures established in such agreement and approved by the Council.

"Non-college degree school" means any person or other entity that offers courses or programs of study that do not lead to a degree. "Non-college degree school" includes academic-vocational non-college degree schools and vocational non-college degree schools.

"Nondegree credit" means any earned credits awarded for successful completion of the requirements of a course of study or instruction beyond the secondary school level that may be used toward completion of a certificate but may not be used to earn a degree.

"Out-of-state" means formed, chartered, established, or incorporated outside of the Commonwealth.

"Postsecondary school" means any institution of higher education or non-college degree school offering formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent. "Postsecondary school" includes programs of academic, vocational, and continuing professional education, except courses or programs of continuing professional education set forth in subdivision B 4 of § 23.1-226. "Postsecondary school" does not include avocational and adult basic education programs.

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

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

"Proprietary" means privately owned, privately managed, and corporately structured as a for-profit entity.

"Site" means a location in the Commonwealth where a postsecondary school (i) offers at least one course on an established schedule and (ii) enrolls at least two individuals who are not members of the same household, regardless of the presence or absence of administrative capability at such location.

"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 ceases to offer an educational program before all students enrolled in that program complete the program.

"University" means any baccalaureate institution of higher education.

"Vocational non-college degree school" means a non-college degree school that offers only courses for nondegree credit. "Vocational non-college degree school" does not include instructional programs that are intended solely for recreation, enjoyment, or personal interest or as a hobby or courses or instructional programs that prepare individuals to teach such pursuits.

§ 23.1-214. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever the Council is required to send any mail or notice by certified mail pursuant to this article and such mail or notice is sent certified mail, return receipt requested, the Council may send any subsequent, identical mail or notice by regular mail.

§ 23.1-215. Authority of the Council; regulations; standards for postsecondary schools; delegation of authority to director.

A. The Council 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 article, including (i) procedures by which a postsecondary school may apply for Council approval to confer degrees in the Commonwealth; (ii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this article meet the minimal standards established pursuant to subsection B; (iii) protections for students pursuing postsecondary education opportunities in postsecondary schools subject to the provisions of this article; and (iv) information to assist persons who rely on postsecondary degrees or certificates to judge the competence of individuals in receipt of such degrees or certificates.

B. The Council shall establish minimal standards for postsecondary schools that include standards for 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, organization and administration, changes of ownership or control, procedures for student admission and graduation, agent or solicitor requirements, consistency of a postsecondary school's stated purpose with the proposed offerings, reporting requirements, and any other relevant standards or requirements adopted by an accrediting agency recognized by the U.S. Department of Education.

C. The Council shall prescribe the manner, conditions, and language to be used by a postsecondary school or agent of such school to disclose or advertise that the postsecondary school has received certification from the Council to offer postsecondary programs in the Commonwealth.

D. The Council may establish separate certification criteria for various postsecondary school classifications.

E. The Council may grant to its director the authority to take specific actions on its behalf in furtherance of the provisions of this article.

§ 23.1-216. Career College Advisory Board established.

A. The Council shall establish and seek the advice of the Career College Advisory Board, which shall assist the Council in the performance of its duties and provide advisory services in academic and administrative matters relating to proprietary private postsecondary schools, excluding vocational non-college degree schools. The Career College Advisory Board shall be composed of college and university representatives and such other members as the Council may select and shall be broadly representative of proprietary private postsecondary schools, excluding vocational non-college degree schools.

B. The Career College Advisory Board shall meet at least twice each year and advise the Council and proprietary private postsecondary schools, excluding vocational non-college degree schools, regarding such matters as may come before the Career College Advisory Board. The Council may employ such qualified personnel as may be required to assist the Career College Advisory Board in the performance of its duties.

§ 23.1-217. Certification required.

A. No person shall open, operate, or conduct any postsecondary school in the Commonwealth without certification to operate such postsecondary school issued by the Council. The Council shall certify those postsecondary schools in compliance with Council regulations issued pursuant to this article.

B. Postsecondary schools shall seek such certification from the Council immediately after receipt of a valid business license issued by the relevant official of the locality in which it seeks to operate.

§ 23.1-218. List of postsecondary schools holding valid certification.

A. The Council shall maintain a list of postsecondary schools holding valid certification under the provisions of this article and shall make such list available to the public.

B. Upon confirmation of any notification or discovery of any postsecondary school operating without its certification or approval, the Council shall notify in writing the relevant local Commissioner of the Revenue or other official serving such equivalent functions of the postsecondary school's violation of such certification or approval requirement and shall recommend revocation of the postsecondary school's business license.

§ 23.1-219. Council certification; requirements and prohibitions.

A. Without obtaining the certification of the Council or a determination that the activity or program is exempt from such certification requirements, no postsecondary school subject to the provisions of this article 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 courses for nondegree credit, either at a site or via telecommunications equipment located within the Commonwealth; or
4. Initiate other programs for degree credit or award degrees or certificates at a new or additional level.

B. All institutions of higher education and academic-vocational non-college degree schools subject to the provisions of this article shall be fully accredited by an accrediting agency recognized by the U.S. Department of Education.

C. All out-of-state academic-vocational non-college degree schools subject to the provisions of this article shall disclose their accreditation status in all written materials advertising or describing such school that are distributed to prospective or enrolled students or the general public.

D. No postsecondary school shall be required to obtain another certification from the Council to operate in the Commonwealth if it (i) was formed, chartered, or established in the Commonwealth or chartered by an Act of Congress; (ii) has maintained its main campus continuously in the Commonwealth for at least 20 calendar years under its current ownership; (iii) was continuously approved or authorized to confer or grant academic or professional degrees by the Council, the Board of Education, or an act of the General Assembly during those 20 years; and (iv) is fully accredited by an accrediting agency that is recognized by and has met the criteria for Title IV eligibility of the U.S. Department of Education. If the Council revokes an institution's authorization to confer or grant academic or professional degrees, the institution is required to seek recertification annually until it meets the criteria of this subsection.

E. In addition to such other requirements as are established in this article or the regulations of the Council, any out-of-state institution of higher education or academic-vocational non-college degree school shall provide verification that:

1. The institution or school is fully accredited by an accrediting agency recognized by the U.S. Department of Education;
2. All courses, degrees, or certificates offered at any site are also offered at an out-of-state campus of the institution or school;
3. All credits earned at any site are transferable to an out-of-state campus of the institution or

school; and

4. The institution or 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. Any postsecondary school that seeks to conduct telecommunications activities from a site shall apply for Council approval to conduct such activity and shall comply with this article and the Council's regulations in the same manner as any other postsecondary school subject to this article.

§ 23.1-220. Approval procedures.

A. Prior to Council approval for a postsecondary 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, 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 § 23.1-215.

B. Upon finding that the applicant has fully complied with the regulations adopted pursuant to § 23.1-215, 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 institutions of higher education and private institutions of higher education or other questions of need when considering an application.

§ 23.1-221. Refusal, suspension, and revocation of approval or certification.

A. The Council may refuse to grant a certification, may revoke or suspend a prior approval or certification, including any approval or authorization issued prior to July 1, 1980, and may add conditions to any approval or certification on such grounds as may be provided in its regulations or if the postsecondary school:

1. Submits or has submitted any false or misleading information to the Council in connection with its approval;

2. Fails to meet or to maintain compliance with the Council's regulations at any of its locations;

3. Publicly makes or causes to be made any false or misleading representation that it has complied with any requirement of this article or the Council's regulations;

4. Violates any provision of this article or the Council's regulations; or

5. Fails or refuses to furnish the Council with any requested information or records required by this article 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 postsecondary school's affiliation or association with any public institution of higher education but shall not 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 "public university," "public college," and "community college."

C. The Council shall notify a postsecondary school by certified mail, return receipt requested, of its intention to deny an application, suspend or revoke a prior approval or certification, or add conditions to an approval or certification and state in writing the reasons for the denial, suspension, revocation, or conditions. The postsecondary 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 article; 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 postsecondary school aggrieved by (i) a decision of the Council to deny an application, suspend or revoke a prior approval or certification, or add conditions to an approval or certification or (ii) any order to comply with this article or the Council's regulations 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, a postsecondary school that has had its approval or certification revoked or suspended by the Council shall file a new application for certification and provide clear and convincing evidence that the conditions resulting in the suspension or revocation have been remedied and the postsecondary school is in compliance with this article and the Council's regulations.

§ 23.1-222. Emergency actions.

A. The Council may, by regulation, authorize its director to take immediate action on its behalf in any instance in which a postsecondary school holding certification to operate in the Commonwealth is the subject of an adverse action by the U.S. Department of Education or the postsecondary school's accrediting agency. When such adverse action threatens a disruption of the operation of the postsecondary school and exposes students to a loss of course or degree credit or financial loss, the director may:

1. Suspend new enrollment in specified programs or degree levels or all programs and degree levels that have been approved by the Council;

2. Require the postsecondary 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 deems necessary.

§ 23.1-223. Preservation of students' records.

A. In the event of school closure or revocation of its approval or certification, the postsecondary 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 into an agreement with another postsecondary school. An out-of-state postsecondary school that is public or corporately held may retain records at the postsecondary 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.

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).

§ 23.1-224. Fees.

The Council may establish nonrefundable fees for services and methods for collecting such fees.

§ 23.1-225. Prohibited acts.

A. Without prior Council approval, no person or other entity subject to the provisions of this article shall use in any manner within the Commonwealth the term "college" or "university" or abbreviations or words of similar meaning in its name, in connection with its academic affairs or business, or in any literature, catalog, pamphlet, or descriptive material.

This subsection shall not apply to any person or other entity that (i) used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in the Commonwealth by the Council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in the Commonwealth on or after July 1, 2002; (iii) was exempted from the provisions of former Chapter 21 (§ 23-265 et seq.) of Title 23, as such law was in effect prior to July 1, 2002; or (iv) was authorized by the Council to use a name while its request for approval to enroll students is pending before the Council.

B. No person or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree credit, degree, or certificate.

C. No person or other entity shall:

1. Use or attempt to use, in connection with any business, trade, profession, or occupation, any degree credit, degree, or certificate, including any transcript of coursework that it knows or has reason to know has been fraudulently issued, obtained, forged, materially altered, or purchased;

2. Issue or manufacture a fraudulent academic credential;

3. Physically present a fraudulent academic credential, knowing it is fraudulent, in an attempt to obtain employment, promotion, licensure, or admission to an institution of higher education;

4. In any way represent that it is an institution of higher education that is accredited by an accrediting agency recognized by the U.S. Department of Education or has the foreign equivalent of such accreditation if the person or entity is not so accredited; or

5. Represent that credits earned at or granted by any institution of higher education or academic-vocational non-college degree school may be applied for credit toward a degree unless such person is exempted from the provisions of this article or granted certification or approval by the Council in accordance with this article and the Council's regulations.

§ 23.1-226. Exemptions.

A. The provisions of this article shall not apply to any public institution of higher education as that term is defined in § 23.1-100 or any entity authorized to issue bonds pursuant to Chapter 11 (§ 23.1-1100 et seq.).

B. The following activities or programs offered by postsecondary schools that are otherwise subject to this article are exempt from its provisions:

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

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) another state or federal governmental agency;

4. Any course or program of instruction provided or approved by any professional body, fraternal organization, civic club, or benevolent order for which the principal purpose is continuing or professional education or a similar purpose and for which no degree credit is awarded;

5. Any course or program offered through approved multistate compacts, including the Southern Regional Education Board's Electronic Campus;

6. Any course offered and delivered by a postsecondary school solely on a contractual basis for which no individual is charged tuition and there is no advertising for open enrollment;

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

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 as provided in this article, if the school collects any tuition, fees, or charges as permitted by Title 22.1 in the case of a public school or pursuant to regulations prescribed by the relevant governing body in the case of a private school; or

9. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or prepare an individual for an examination for professional practice or higher education.

C. The Council shall exempt from the provisions of this article any postsecondary school whose primary purpose is to provide religious or theological education. Postsecondary schools shall apply for exemptions to confer certificates or degrees relating to religion and theology. Exemptions may be granted for a maximum of five years, unless the postsecondary school has been granted a standing exemption prior to July 1, 2002. Each postsecondary school seeking such an exemption or continuation of such 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 postsecondary school shall be notified in writing with the reasons for the exemption denial. The affected postsecondary school has 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 postsecondary schools are subject to the provisions of subsection B of § 23.1-221 and a postsecondary school may seek Council approval for an otherwise exempt activity or program.

§ 23.1-227. Virginia law to apply to contracts.

The laws of the Commonwealth 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 school in the Commonwealth or any person employed or offered employment by such school in the Commonwealth.

§ 23.1-228. Violations; penalties; remedies.

A. Violations of this article or the Council's implementing regulations are punishable as a Class 1 misdemeanor. Each degree, certificate, program, academic transcript, or course of study offered, conferred, or used in violation of this article or the Council's regulations shall constitute a separate offense.

B. If no criminal prosecution is instituted against such postsecondary school pursuant to subsection A, the Council may recover a civil penalty of at least \$200 but not more than \$1,000 per separate offense set forth in subsection A. In no event shall the civil penalties against any one person, corporation, or other entity exceed \$25,000 per year.

C. The Council may institute a proceeding in equity to enjoin any violation of this article or its implementing regulations and upon substantially prevailing on the merits of the case and unless special circumstances would render such an award unjust, the Council is entitled to an award of reasonable attorney fees and costs in any such action.

§ 23.1-229. Postsecondary school closure procedures.

A. Each postsecondary 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 such postsecondary school or at another postsecondary school certified by the Council or authorized to operate in the Commonwealth. Each closing postsecondary school shall obtain the Council's approval of the teachout plan prior to implementation.

B. Each closing postsecondary 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 postsecondary school or if the closing postsecondary school is unable to enter a teachout agreement with another postsecondary school. This information shall be provided at the time the closing postsecondary 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.