

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

Code of Virginia Chapter 21.1 2014

§ 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.

(Code 1950, § 23-265; 1980, c. 658; 1996, cc. 691, 832; 1999, cc. 458, 499; 2002, c. 178; 2004, cc. 671, 991; 2005, c. 447; 2007, cc. 82, 115; 2008, c. 856; 2010, cc. 67, 263; 2013, c. 229.)

§ 23-276.1:1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Council is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Council may be sent by regular mail.

(2011, c. 566.)

§ 23-276.2. Exemptions.

A. The provisions of this chapter shall not apply to the public state-supported institutions 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.

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

1. The awarding of an honorary degree conferred and regarded as (i) commemorative in recognition of an individual's contributions to society and (ii) not representative of the satisfactory completion of all or any part of the requirements of a program or course of study; such degree shall clearly state on its face that it is honorary in nature;
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) other state or federal governmental agency;
4. Those courses or programs of instruction given by or approved by any professional body, fraternal organization, civic club or benevolent order that are principally for continuing or professional education or similar purpose and for which no degree credit is awarded;
5. Those courses or programs offered through approved multistate compacts, including, but not limited to, the Southern Regional Education Board's Electronic Campus;
6. Those courses offered and delivered by a postsecondary school that is accredited by an entity recognized by the U.S. Department of Education for accrediting purposes, if such courses are provided, solely on a contractual basis for which no individual is charged tuition and for which 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 related 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 cited in this chapter, if any tuition, fees and charges made by the school are collected as may be permitted by Title 22.1, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school; or

9. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in 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.

(Code 1950, § 23-266; 1980, c. 658; 1991, c. 590; 1996, cc. 691, 832; 1999, cc. 458, 499; 2002, c. 178; 2003, c. 461; 2004, cc. 671, 991; 2005, c. 447.)

§ 23-276.3. Authority of the State Council of Higher Education; delegation of authority to director.

A. The State Council of Higher Education for Virginia 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 chapter. The Council's regulations shall include, but need not be limited to, (i) procedures by which a school may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all

postsecondary schools that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing postsecondary education opportunities in schools subject to the provisions of this chapter; and (iv) information to assist persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals.

B. The minimal standards established by the Council shall include, but need not be limited to, 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 school's stated purpose with the proposed offerings, reporting requirements, and any other relevant standards or requirements promulgated by action of the Council or an accrediting agency recognized by the United States Department of Education.

C. The Council shall prescribe the manner, conditions, and language to be used by a school, person, or agent thereof in disclosing or advertising that the school has received certification from the Council to offer postsecondary programs in Virginia.

D. In addition to the other requirements of this chapter, the Council may establish separate certification criteria for various school classifications.

E. Pursuant to the provisions of this chapter and its implementing regulations, the Council may grant to its director the authority to take, on its behalf, specific actions.

(Code 1950, § 23-268; 1980, c. 658; 1996, cc. 691, 832; 2002, c. 178; 2004, c. 991; 2005, c. 447.)

§ 23-276.4. Council certification required for the conferring of certain degrees and other awards or the offering of certain programs.

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 chapter 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 nondegree credit courses, either at a site in Virginia or via telecommunications equipment located within Virginia; or

4. Initiate other programs for degree credit or award degrees, certificates, or diplomas at a new or additional level.

B. All institutions of higher education and academic-vocational noncollege degree schools subject to the provisions of this chapter shall be fully accredited by an accrediting agency recognized by the United States Department of Education. All out-of-state academic-vocational noncollege degree schools operating in good standing in the Commonwealth prior to July 1, 2006, that have not obtained accreditation by an accrediting agency recognized by the United States Department of Education shall secure accreditation candidacy status by July 1, 2009, and shall secure full accreditation by an accrediting body recognized by the United States Department of Education by July 1, 2012. Further, on and after July 1, 2006, all out-of-state academic-vocational noncollege degree schools, subject to the provisions of this chapter, shall disclose their accreditation status in all written materials advertising or describing the school that are distributed to prospective or enrolled students or the general public.

C. Institutions of higher education shall not be required to obtain another certification from the Council to operate in Virginia if they (i) were formed, chartered or established in the Commonwealth, or chartered by an Act of Congress; (ii) have maintained a main or branch campus continuously in the Commonwealth for at least 20 calendar years under their current ownership; (iii) were continuously approved or authorized to confer or grant academic or professional degrees by the Council, by the Board of Education or by an act of the General Assembly during those 20 years; and (iv) are fully accredited by an accrediting agency that is recognized by, and has met the criteria for Title IV eligibility of the United States Department of Education. If authorization to confer or grant academic or professional degrees is revoked, the institution must seek recertification and must do so annually until it meets the criteria of this subsection.

D. In addition to such other requirements as are established in this chapter or the regulations of the Council, any postsecondary school formed, chartered, or established outside of the Commonwealth shall provide verification that:

1. The institution is fully accredited by an accrediting agency recognized by the United States Department of Education;

2. All courses, degrees, certificates, or diploma programs offered at any Virginia site are also offered at the school's main out-of-state campus;

3. All credits earned at any Virginia site are transferable to an institution's main out-of-state campus; and

4. The 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.

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

(Code 1950, § 23-267; 1980, c. 658; 1996, cc. 691, 832; 2002, c. 178; 2004, c. 991; 2005, c. 447; 2006, c. 814; 2014, c. 629.)

§ 23-276.5. Approval procedures.

A. Prior to Council approval for a 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, to 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 this chapter.

B. Upon finding that the applicant has fully complied with regulations, 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 and private institutions in the Commonwealth or other questions of need when considering an application.

(Code 1950, § 23-269; 1980, c. 658; 1996, cc. 691, 832; 2002, c. 178; 2003, c. 461; 2004, c. 991; 2005, c. 447.)

§ 23-276.6. 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, as the case may be, including any approval or authorization issued prior to July 1, 1980, and may add conditions to any approval or certification, as the case may be, on such grounds as may be provided in its regulations or any of the following grounds:

1. The school submits or has submitted any false or misleading information to the Council in connection with its approval;
2. The school or any of its locations fails to meet or to maintain compliance with the Council's regulations;
3. The school publicly makes or causes to be made any false or misleading representation that it has complied with any requirement of this chapter or the Council's regulations;
4. The school violates any provision of this chapter or the Council's regulations; or
5. The school fails or refuses to furnish the Council with any requested information or records required by this chapter 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 school's affiliation or association with any public institution or system of higher education in the Commonwealth. The Council shall not, however, 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, but shall not be limited to, "public university," "public college," and "community college."

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

(Code 1950, § 23-271; 1980, c. 658; 1996, cc. 691, 832; 2002, c. 178; 2003, c. 461; 2004, c. 991; 2005, c. 447.)

§ 23-276.7. Emergency actions.

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

1. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels that have been approved by the Council;
2. Require the 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 may deem necessary.

(2002, c. 178; 2005, c. 447.)

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

A. In the event of school closure or revocation of its approval or certification, 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.

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.

(2002, c. 178; 2005, c. 447; 2013, c. 229.)

§ 23-276.9. Fees.

The Council may, as it deems necessary to comply with the provisions of this chapter and its regulations, establish fees for services and methods for collecting such fees. All fees shall be nonrefundable.

(2002, c. 178.)

§ 23-276.10. Prohibited acts.

A. Without prior Council approval, no person or other entity subject to the provisions of this chapter shall use in any manner, within the Commonwealth of Virginia, 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 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 Virginia by the Council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in Virginia after July 1, 2002; (iii) was exempted from the provisions of Chapter 21 (§ 23-265 et seq.) of this title, 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, diploma, or certificate.

C. No person or other entity shall use, or attempt to use, in connection with any business, trade, profession, or occupation, any degree or certification of degree or degree credit, including, but not limited to, a transcript of coursework that he knows or has reason to know has been fraudulently issued, obtained, forged, materially altered, or purchased.

D. No person or other entity shall issue or manufacture a fraudulent academic credential.

E. No person or other entity shall 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.

F. No person or entity that is not an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education, or having the foreign equivalent of such accreditation, shall in any way represent that the person or entity is so accredited.

G. Unless exempted from the provisions of this chapter or granted approval by the Council in accordance with this chapter and relevant regulations, no person or other entity shall represent that credits earned at or granted by any institution of higher education or academic-vocational noncollege degree school may be applied for credit toward a degree.

(Code 1950, § 23-272; 1980, c. 658; 2002, c. 178; 2004, c. 991; 2008, c. 856.)

§ 23-276.11. Virginia law to apply to contracts.

The laws of Virginia 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 Virginia and any person employed or offered employment by such school in Virginia.

(Code 1950, § 23-276; 1980, c. 658; 2002, c. 178; 2004, c. 991; 2005, c. 447.)

§ 23-276.12. Violations; criminal penalty; injunction proceeding; civil penalty.

A. Violations of this chapter or the Council's implementing regulations may be punishable as a Class 1 misdemeanor. Each degree, diploma, certificate, program,

academic transcript or course of study offered, conferred, or used in violation of this chapter or the Council's regulations shall constitute a separate offense.

B. The Council may also institute a proceeding in equity to enjoin any violation of this chapter or its implementing regulations. Further, if no criminal prosecution is instituted against such postsecondary school pursuant to subsection A, the Council shall have the authority to recover a civil penalty of at least \$200 but not more than \$1,000 per violation, with each unlawful act constituting a separate violation. In no event shall the civil penalties against any one person, corporation, or other entity exceed \$25,000 per year.

C. Upon substantially prevailing on the merits of the case and unless special circumstances would render such an award unjust, the Council shall be entitled to an award of reasonable attorney's fees and costs in any action to enjoin violations of this chapter or its implementing regulations.

(Code 1950, § 23-273; 1980, c. 658; 2002, c. 178; 2006, c. 48; 2008, c. 856.)

§ 23-276.13. Establishment of the Career College Advisory Board.

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 related to private proprietary institutions of higher education and academic-vocational noncollege 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 the private proprietary sector of institutions of higher education and academic-vocational noncollege degree schools.

B. The Career College Advisory Board shall meet at least twice each year and shall advise the Council and the private proprietary accredited institutions of higher education and academic-vocational noncollege degree schools in the Commonwealth regarding such matters as may come before it. The Council may employ such qualified personnel as may be required to assist the Career College Advisory Board in the performance of its duties.

(2004, c. 991.)

§ 23-276.14. Certificates generally.

No person shall open, operate or conduct any postsecondary school in this Commonwealth without a certificate to operate such postsecondary school issued by

the Council. The Council shall issue a certificate to those postsecondary schools in compliance with the Council regulations issued pursuant to this chapter.

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

(2004, c. 991.)

§ 23-276.15. List of postsecondary schools holding valid certificates.

The Council shall maintain a list of postsecondary schools holding valid certificates under the provisions of this chapter, which shall be available for the information of the public.

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 school's business license.

(2004, c. 991.)

§ 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.

(2013, c. 229.)
