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**HOUSE BILL NO. 1678**

Offered January 12, 2005

Prefiled December 17, 2004

*A BILL to amend and reenact §§ 22.1-3 and 22.1-5 of the Code of Virginia, relating to persons to whom public schools shall be free.*

Patrons—Cosgrove and Lingamfelter

Referred to Committee on Education

**Be it enacted by the General Assembly of Virginia:****1. That §§ 22.1-3 and 22.1-5 of the Code of Virginia are amended and reenacted as follows:**

§ 22.1-3. Persons to whom public schools shall be free.

The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent, or a parent by legal adoption;

2. When the person is living with an individual who is defined as a parent in § 22.1-1, not solely for school purposes, pursuant to a Special Power of Attorney executed under Title 10, United States Code, § 1044b, by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces;

3. When the person (i) is the child of a parent called to active military duty as defined in § 2.2-2903.1 and (ii) resides on a military or naval reservation located wholly or partly within the geographical boundaries of any school division-;

34. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

45. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is either (i) the court-appointed guardian, or has legal custody, of the person or (ii) acting in loco parentis pursuant to placement of the person for adoption by a person or entity authorized to do so under § 63.2-1200;

56. When the person is living in the school division not solely for school purposes, as an emancipated minor; or

67. When the person living in the school division is a homeless child or youth, as set forth in this subdivision, who lacks a fixed, regular, and adequate nighttime residence. Such persons shall include (i) children and youths, including unaccompanied youths who are not in the physical custody of their parents, who (a) are sharing the housing of other persons due to loss of housing, economic hardship, or other causes; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations or in emergency, congregate, temporary, or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (b) are living in an institution that provides a temporary residence for the mentally ill or individuals intended to be institutionalized; (c) have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or (d) are living in parked cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (ii) migratory children, as defined in the Elementary and Secondary Education Act of 1965, as amended, who are deemed homeless as they are living in circumstances set forth in clause (i) of this subdivision.

For purposes of clause (i) of subdivision 6, "temporary shelter" means (i) any home, single or multi-unit dwelling or housing unit in which persons who are without housing or a fixed address receive temporary housing or shelter or (ii) any facility specifically designed or approved for the purpose of providing temporary housing or shelter to persons who are without permanent housing or a fixed address.

If a person resides within housing, temporary shelter, or primary nighttime residence as described in subdivision 6 that is situated in more than one school division, the person shall be deemed to reside in and shall be entitled to attend a public school within either school division. However, if a person resides in housing, temporary shelter, or primary nighttime residence as described in subdivision 6 that is located in one school division, but the property on which such housing, temporary shelter, or primary nighttime residence is located lies within more than one school division, such person shall be deemed to reside only in the single school division in which the housing, temporary shelter, or primary nighttime residence is located. Notwithstanding any such residency determination, any person residing in housing, a temporary shelter, or primary nighttime residence as described in subdivision 6 that is located in one school division, but the property on which such housing, temporary shelter, or primary nighttime

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59 residence is located lies within more than one school division, shall be deemed to reside in either school  
60 division, if such person or any sibling of such person residing in the same housing or temporary shelter  
61 attends, prior to July 1, 1999, or, in the case of a primary nighttime residence as described in  
62 subdivision 6, prior to July 1, 2000, a school within either school division in which the property on  
63 which the housing, temporary shelter, or primary nighttime residence is located.

64 School divisions shall comply with the requirements of the federal McKinney-Vento Homeless  
65 Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.), to ensure that  
66 homeless children and youths shall receive the educational services comparable to those offered to other  
67 public school students.

68 School divisions serving the students identified in subdivision 6 shall coordinate the identification  
69 and provision of services to such students with relevant local social services agencies and other agencies  
70 and programs providing services to such students, and with other school divisions as may be necessary  
71 to resolve interdivisional issues.

72 § 22.1-5. Regulations concerning admission of certain persons to schools; tuition charges.

73 A. Consistent with Article VIII, Section 1 of the Constitution of Virginia, no person may be charged  
74 tuition for admission or enrollment in the public schools of the Commonwealth, whether on a full-time  
75 or part-time basis, who meets the residency criteria set forth in § 22.1-3. No person of school age shall  
76 be charged tuition for enrollment in a general education development or alternative program offered as a  
77 regional or divisionwide initiative by the local school division in which such person is deemed to reside  
78 pursuant to § 22.1-3.

79 Further, no person of school age shall be denied admission or charged tuition when (i) such person's  
80 custodial parent has been deployed outside the United States as a member of the Virginia National  
81 Guard or as a member of the United States Armed Forces; (ii) such person's custodial parent has  
82 executed a Special Power of Attorney under Title 10, United States Code, § 1044b providing for the  
83 care of the person of school age by an individual who is defined as a parent in § 22.1-1 during the time  
84 of his deployment outside the United States; and (iii) such person has been attending a public school in  
85 this Commonwealth while residing with his custodial parent. The person of school age shall be allowed  
86 to attend a school in the school division in which the individual providing for his care, pursuant to the  
87 Special Power of Attorney under Title 10, United States Code, § 1044b, resides or, when practicable, to  
88 continue to attend the school in which he was enrolled while residing with his custodial parent.

89 *Any child who (i) is the child of a parent called to active military duty as defined in § 2.2-2903.1*  
90 *and (ii) resides on a military or naval reservation located wholly or partly within the geographical*  
91 *boundaries of any school division, shall be admitted into the public schools of any adjacent school*  
92 *division and shall not be charged tuition.*

93 The following persons may, however, in the discretion of the school board of a school division and  
94 pursuant to regulations adopted by the school board, be admitted into the public schools of the division  
95 and may, in the discretion of the school board, be charged tuition:

96 1. Persons who reside within the school division but who are not of school age.

97 2. Persons of school age who are residents of the Commonwealth but who do not reside within the  
98 school division, except as provided in this section.

99 3. Persons of school age who are attending school in the school division pursuant to a foreign  
100 student exchange program approved by the school board.

101 4. Persons of school age who reside beyond the boundaries of the Commonwealth but near thereto in  
102 a state or the District of Columbia which grants the same privileges to residents of the Commonwealth.

103 5. Persons of school age who reside on a military or naval reservation located wholly or partly  
104 within the geographical boundaries of the school division and who are not domiciled residents of the  
105 Commonwealth of Virginia; however, no person of school age residing on a military or naval  
106 reservation located wholly or partly within the geographical boundaries of the school division may be  
107 charged tuition if federal funds provided under P.L. 874 of 1950, commonly known as Impact Aid, shall  
108 fund such students at not less than 50 percent of the total per capita cost of education, exclusive of  
109 capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school  
110 division.

111 6. Persons of school age who, as domiciled residents of the Commonwealth who were enrolled in a  
112 public school within the school division, are required as a result of military or federal orders issued to  
113 their parents to relocate and reside on federal property in another state or the District of Columbia, if the  
114 school division subsequently enrolling such persons is contiguous to such state or District of Columbia.

115 7. Persons of school age who reside in the school division and who are enrolled in summer  
116 programs, exclusive of required remediation as provided in § 22.1-253.13:1, or in local initiatives or  
117 programs not required by the Standards of Quality or the Standards of Accreditation.

118 For the purposes of determining the residency of persons described in subdivisions 1 and 2 of this  
119 subsection, local school boards shall adopt regulations consistent with the residency requirements  
120 regarding persons residing in housing or temporary shelter, or on property located in multiple

jurisdictions, as articulated in § 22.1-3.

B. Persons of school age who are not residents of the Commonwealth but are living temporarily with persons residing within a school division may, in the discretion of the school board and pursuant to regulations adopted by it, be admitted to the public schools of the school division. Tuition shall be charged such persons.

C. No tuition charge authorized or required in this section shall exceed the total per capita cost of education, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school division and the actual, additional costs of any special education or gifted and talented program provided the pupil, except that if the tuition charge is payable by the school board of the school division of the pupil's residence pursuant to a contract entered into between the two school boards, the tuition charge shall be that fixed by such contract.

D. School boards may accept and provide programs for students for whom English is a second language who entered school in Virginia for the first time after reaching their twelfth birthday, and who have not reached 22 years of age on or before August 1 of the school year. No tuition shall be charged such students, if state funding is provided for such programs.