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SENATE BILL NO. 542

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 23-7.4 of the Code of Virginia, relating to eligibility for in-state tuition; surcharge to be assessed under certain circumstances.

Patron—Stosch

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 23-7.4 of the Code of Virginia is amended and reenacted as follows:**

§ 23-7.4. Eligibility for in-state tuition charges.

A. For purposes of this section and §§ 23-7.4:1, 23-7.4:2 and 23-7.4:3, the following definitions shall apply:

"Date of the alleged entitlement" means the first official day of class within the term, semester or quarter of the student's program.

"Dependent student" means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his spouse, parents or legal guardian. It shall be presumed that a student under the age of twenty-four on the date of the alleged entitlement receives substantial financial support from his parents or legal guardian, and therefore is dependent on his parents or legal guardian, unless the student (i) is a veteran or an active duty member of the U.S. Armed Forces; (ii) is a graduate or professional student; (iii) is married; (iv) is a ward of the court or was a ward of the court until age 18; (v) has no adoptive or legal guardian when both parents are deceased; (vi) has legal dependents other than a spouse; or (vii) is able to present clear and convincing evidence that he is financially self-sufficient.

"Domicile" means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.

"Domiciliary intent" means present intent to remain indefinitely.

"Emancipated minor" means a student under the age of eighteen on the date of the alleged entitlement whose parents or guardians have surrendered the right to his care, custody and earnings and who no longer claim him as a dependent for tax purposes.

"Full-time employment" means employment resulting in, at least, an annual earned income reported for tax purposes equivalent to fifty work weeks of forty hours at minimum wage.

"Independent student" means one whose parents have surrendered the right to his care, custody and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support.

"Special arrangement contract" means a contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced rate tuition charges as described in § 23-7.4:2 G.

"Substantial financial support" means financial support in an amount which equals or exceeds that required to qualify the individual to be listed as a dependent on federal and state income tax returns.

"Unemancipated minor" means a student under the age of eighteen on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian or other person having legal custody.

"Virginia employer" means any employing unit organized under the laws of Virginia or having income from Virginia sources regardless of its organizational structure, or any public or nonprofit organization authorized to operate in Virginia.

B. To become eligible for in-state tuition, an independent student shall establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of the alleged entitlement, he was domiciled in Virginia and had abandoned any previous domicile, if such existed.

To become eligible for in-state tuition, a dependent student or unemancipated minor shall establish by clear and convincing evidence that for a period of at least one year prior to the date of the alleged entitlement, the person through whom he claims eligibility was domiciled in Virginia and had abandoned any previous domicile, if such existed. If the person through whom the dependent student or unemancipated minor established such domicile and eligibility for in-state tuition abandons his Virginia domicile, the dependent student or unemancipated minor shall be entitled to such in-state tuition for one

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59 year from the date of such abandonment.

60 In determining domiciliary intent, all of the following applicable factors shall be considered:
61 continuous residence for at least one year prior to the date of alleged entitlement, state to which income
62 taxes are filed or paid, driver's license, motor vehicle registration, voter registration, employment,
63 property ownership, sources of financial support, military records, a written offer and acceptance of
64 employment following graduation, and any other social or economic relationships with the
65 Commonwealth and other jurisdictions.

66 Domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to
67 fulfilling educational objectives or are required or routinely performed by temporary residents of the
68 Commonwealth. Mere physical presence or residence primarily for educational purposes shall not confer
69 domiciliary status. A matriculating student who has entered an institution and is classified as an
70 out-of-state student shall be required to rebut by clear and convincing evidence the presumption that he
71 is in the Commonwealth for the purpose of attending school and not as a bona fide domiciliary.

72 Those factors presented in support of entitlement to in-state tuition shall have existed for the
73 one-year period prior to the date of the alleged entitlement. However, in determining the domiciliary
74 intent of active duty military personnel residing in the Commonwealth, or the domiciliary intent of their
75 dependent spouse or children who claim domicile through them, who voluntarily elect to establish
76 Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be
77 waived if all other conditions for establishing domicile are satisfied.

78 C. A married person may establish domicile in the same manner as an unmarried person.

79 An emancipated minor may establish domicile in the same manner as any other independent student.
80 A nonmilitary student whose parent or spouse is a member of the armed forces may establish domicile
81 in the same manner as any other student.

82 Any alien holding an immigration visa or classified as a political refugee shall also establish
83 eligibility for in-state tuition in the same manner as any other student. However, absent congressional
84 intent to the contrary, any person holding a student or other temporary visa shall not have the capacity
85 to intend to remain in Virginia indefinitely and, therefore, shall be ineligible for Virginia domicile and
86 for in-state tuition charges.

87 The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent or
88 legal guardian claiming him as an exemption on federal or state income tax returns currently and for the
89 tax year prior to the date of the alleged entitlement or providing him substantial financial support.

90 For the purposes of this section, the domicile of an unemancipated minor or a dependent student
91 eighteen years of age or older may be either the domicile of the parent with whom he resides, the parent
92 who claims the student as a dependent for federal and Virginia income tax purposes for the tax year
93 prior to the date of the alleged entitlement and is currently so claiming the student, or the parent who
94 provides the student substantial financial support. If there is no surviving parent or the whereabouts of
95 the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal
96 guardian of such unemancipated minor unless there are circumstances indicating that such guardianship
97 was created primarily for the purpose of conferring a Virginia domicile on the unemancipated minor.

98 D. It is incumbent on the student to apply for change in domiciliary status on becoming eligible for
99 such change. Changes in domiciliary status shall only be granted prospectively from the date such
100 application is received.

101 A student who knowingly provides erroneous information in an attempt to evade payment of
102 out-of-state fees shall be charged out-of-state tuition fees for each term, semester or quarter attended and
103 may be subject to dismissal from the institution. All disputes related to the veracity of information
104 provided to establish Virginia domicile shall be appealable through the due process procedure required
105 by § 23-7.4:3.

106 *E. For students enrolling in a Virginia public institution of higher education after August 1, 2006,*
107 *who have established Virginia domicile and eligibility for in-state tuition in compliance with this section,*
108 *the entitlement to in-state tuition shall be modified to require the assessment of a surcharge, as defined*
109 *herein, for each semester that the student continues to be enrolled after such student has completed*
110 *125% of the time-to-completion for his specific degree program. A waiver of the surcharge may be*
111 *granted by the State Council of Higher Education upon a determination that an extenuating*
112 *circumstance, such as, but not limited to, illness or disability or active service in the armed forces of the*
113 *United States, has delayed the student's progress towards graduation.*

114 *For the purpose of this subsection, "surcharge" shall mean an amount calculated to equal 100% of*
115 *the average cost of the student's education at the relevant institution less tuition and mandatory*
116 *educational and general fee charges assessed to a student meeting Virginia domiciliary status who has*
117 *not exceeded 125% of the time-to-completion for his program.*

118 **2. That, upon the passage of this provision and pursuant to subsection B of § 23-7.4:3, the State**
119 **Council of Higher Education shall revise its guidelines for determining in-state tuition charges,**
120 **which are not subject to the Administrative Process Act, to incorporate subsection E of § 23-7.4 by**

121 July 1, 2006, including, but not limited to, notice to students who may be or may become subject
122 to the surcharge and determinations of extenuating circumstances.