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HOUSE BILL NO. 300

Offered January 13, 2010

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A BILL to amend and reenact §§ 23-7.4 and 23-7.4:2 of the Code of Virginia, relating to eligibility for in-state tuition; dependents of civilian military employees.

Patrons—Dance and Cox, M.K.

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-7.4 and 23-7.4:2 of the Code of Virginia are 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 subsection F G of § 23-7.4:2.

"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, retired military personnel  
75 residing in the Commonwealth at the time of their retirement, or the domiciliary intent of their  
76 dependent spouse or children who claim domicile through them, who voluntarily elect to establish  
77 Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be  
78 waived if all other conditions for establishing domicile are satisfied.

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

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

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

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

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

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

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

107 E. Notwithstanding any other provision of law, all dependents, as defined by 37 U.S.C. § 401, of  
108 active duty military personnel, or activated or temporarily mobilized reservists or guard members,  
109 assigned to a permanent duty station or workplace geographically located in Virginia, or in a state  
110 contiguous to Virginia or the District of Columbia, who reside in Virginia shall be deemed to be  
111 domiciled in Virginia for purposes of eligibility for in-state tuition and shall be eligible to receive  
112 in-state tuition in Virginia in accordance with this section. All such dependents shall be afforded the  
113 same educational benefits as any other individual receiving in-state tuition pursuant to this section. Such  
114 benefits and in-state tuition status shall continue so long as they are continuously enrolled in an  
115 institution of higher education in Virginia or are transferring between Virginia institutions of higher  
116 education or from an undergraduate degree program to a graduate degree program, regardless of any  
117 change of duty station or residence of the military service member.

118 For the purpose of this subsection:

119 "Date of alleged entitlement" means the date of admission or acceptance for dependents currently  
120 residing in Virginia or the final add/drop date for dependents of members newly transferred to Virginia.

121 "Temporarily mobilized" means activated for service for six months or more.

122 F. After August 1, 2006, for students who enroll at a public, baccalaureate degree-granting,  
123 institution of higher education in Virginia and who have established Virginia domicile and eligibility for  
124 in-state tuition in compliance with this section, the entitlement to in-state tuition shall be modified to  
125 require the assessment of a surcharge, as defined herein, for each semester that the student continues to  
126 be enrolled after such student has completed 125% of the credit hours needed to satisfy the degree  
127 requirements for a specified undergraduate program, hereinafter referred to as the "credit hour  
128 threshold."

129 In calculating the 125% credit hour threshold, the following courses and credit hours shall be  
130 excluded: (i) remedial courses; (ii) transfer credits from another college or university that do not meet  
131 degree requirements for general education courses or the student's chosen program of study; (iii)  
132 advanced placement or international baccalaureate credits that were obtained while in high school or  
133 another secondary school program; and (iv) dual enrollment, college-level credits obtained by the student  
134 prior to receiving a high school diploma.

135 The relevant public institution of higher education may waive the surcharge assessment for students  
136 who exceed the 125% credit hour threshold in accordance with the guidelines and criteria established by  
137 the State Council of Higher Education for Virginia. Waiver criteria may include, but shall not be limited  
138 to, illness or disability and active service in the armed forces of the United States.

139 For the purpose of this subsection, "surcharge" shall mean an amount calculated to equal 100% of  
140 the average cost of the student's education at the relevant institution less tuition and mandatory  
141 educational and general fee charges assessed to a student meeting Virginia domiciliary status who has  
142 not exceeded the 125% credit hour threshold.

143 § 23-7.4:2. Eligibility for in-state or reduced tuition for students not domiciled in Virginia; eligibility  
144 for in-state or reduced tuition for dependents of civilian personnel of the military; tuition grants for  
145 members of the National Guard of the Commonwealth of Virginia.

146 A. Students who live outside this Commonwealth and have been employed full time inside Virginia  
147 for at least one year immediately prior to the date of the alleged entitlement for in-state tuition shall be  
148 eligible for in-state tuition charges if such student has paid Virginia income taxes on all taxable income  
149 earned in this Commonwealth for the tax year prior to the date of the alleged entitlement. Students  
150 claimed as dependents for federal and Virginia income tax purposes who live outside this  
151 Commonwealth shall become eligible for in-state tuition charges if the nonresident parents claiming  
152 them as dependents have been employed full time inside Virginia for at least one year immediately prior  
153 to the date of the alleged entitlement and paid Virginia income taxes on all taxable income earned in  
154 this Commonwealth for the tax year prior to the date of the alleged entitlement. Such students shall  
155 continue to be eligible for in-state tuition charges for so long as they or their qualifying parent is  
156 employed full time in Virginia, paying Virginia income taxes on all taxable income earned in this  
157 Commonwealth and the student is claimed as a dependent for Virginia and federal income tax purposes.

158 B. *Any student who is the dependent of any civilian employee of the United States Department of*  
159 *Defense who transfers to a military base in the Commonwealth to avoid the loss of employment due to*  
160 *the closing of military bases around the country by the Department of Defense shall be eligible for*  
161 *in-state tuition charges upon the date of a parent's or guardian's reassignment to a military base in the*  
162 *Commonwealth, if the student qualifies for admission as an out-of-state student to any public two-year*  
163 *or four-year institution of higher education in Virginia. If, after becoming eligible for in-state tuition in*  
164 *accordance with this subsection, the student's parent or guardian is transferred to a military base*  
165 *outside of the Commonwealth before the end of any academic year, such student shall continue to be*  
166 *eligible for in-state tuition until the end of the relevant academic year.*

167 C. Any person who (i) is a member of the National Guard of the Commonwealth of Virginia and has  
168 a minimum remaining obligation of two years, (ii) has satisfactorily completed required initial active  
169 duty service, (iii) is satisfactorily performing duty in accordance with regulations of the National Guard,  
170 and (iv) is enrolled in any state institution of higher education, any private, accredited and nonprofit  
171 institution of higher education in the Commonwealth whose primary purpose is to provide collegiate or  
172 graduate education and not to provide religious training or theological education, any course or program  
173 offered by any such institution or any public career and technical education school shall be eligible for a  
174 grant in the amount of the difference between the full cost of tuition and any other educational benefits  
175 for which he is eligible as a member of the National Guard. Application for a grant shall be made to the  
176 Department of Military Affairs. Grants shall be awarded from funds available for the purpose by such  
177 Department.

178 Notwithstanding the foregoing requirement that a member of the National Guard have a minimum of  
179 two years remaining on his service obligation, if a member is activated or deployed for federal military  
180 service, an additional day shall be added to the member's eligibility for the grant for each day of active  
181 federal service up to 365 days. Additional credit, or credit for state duty, may be given at the discretion

182 of the Adjutant General.

183 *CD.* Notwithstanding the provisions of § 23-7.4 or any other provision of the law to the contrary, the  
184 governing board of any state institution of higher education or the governing board of the Virginia  
185 Community College System may charge the same tuition as is charged to any person domiciled in  
186 Virginia pursuant to the provisions of § 23-7.4 to:

187 1. Any person enrolled in one of the institution's programs designated by the State Council of Higher  
188 Education who is domiciled in and is entitled to reduced tuition charges in the institutions of higher  
189 learning in any state which is a party to the Southern Regional Education Compact which has similar  
190 reciprocal provisions for persons domiciled in Virginia;

191 2. Any student from a foreign country who is enrolled in a foreign exchange program approved by  
192 the state institution during the same period that an exchange student from the same state institution, who  
193 is entitled to in-state tuition pursuant to § 23-7.4, is attending the foreign institution; and

194 3. Any high school or magnet school student, not otherwise qualified for in-state tuition, who is  
195 enrolled in courses specifically designed as part of the high school or magnet school curriculum in a  
196 community college for which he may, upon successful completion, receive high school and community  
197 college credit pursuant to a dual enrollment agreement between the high school or magnet school and  
198 the community college.

199 *DE.* The governing board of the Virginia Community College System shall charge in-state tuition to  
200 any person enrolled in one of the System's institutions who lives within a 30-mile radius of a Virginia  
201 institution, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning  
202 in any state which is contiguous to Virginia and which has similar reciprocal provisions for persons  
203 domiciled in Virginia.

204 Any out-of-state students granted in-state tuition pursuant to this subsection shall be counted as  
205 in-state students for the purposes of determining college admissions, enrollment, and tuition and fee  
206 revenue policies.

207 *EF.* The board of the University of Virginia's College at Wise and the board of visitors of the  
208 University of Virginia may charge reduced tuition to any person enrolled at the University of Virginia's  
209 College at Wise who lives within a 50-mile radius of the University of Virginia's College at Wise, is  
210 domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Kentucky,  
211 if Kentucky has similar reciprocal provisions for persons domiciled in Virginia.

212 In addition, the board of the University of Virginia's College at Wise and the board of visitors of the  
213 University of Virginia may charge reduced tuition to any person enrolled at the University of Virginia's  
214 College at Wise who lives within a 50-mile radius of the University of Virginia's College at Wise, is  
215 domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Tennessee,  
216 if Tennessee has similar reciprocal provisions for persons domiciled in Virginia. The board of the  
217 University of Virginia's College at Wise and its partners or associates offering programs jointly at a  
218 regional off-campus center may also charge reduced tuition to any person enrolled in such joint  
219 programs who lives within a 50-mile radius of the University of Virginia's College at Wise, is domiciled  
220 in, and is entitled to in-state tuition charges in the institutions of higher learning in Tennessee, if  
221 Tennessee has similar reciprocal provisions for persons domiciled in Virginia. Any such respective  
222 partners or associates shall establish and charge separately tuition rates for their independent classes or  
223 programs at such regional centers.

224 Any out-of-state students granted in-state tuition pursuant to this subsection and subsection D shall  
225 be counted as out-of-state students for the purposes of determining admissions, enrollment, and tuition  
226 and fee revenue policies.

227 *FG.* Public institutions of higher education may enter into special arrangement contracts with Virginia  
228 employers or authorities controlling federal installations or agencies located in Virginia. The special  
229 arrangement contracts shall be for the purpose of providing reduced rate tuition charges for the  
230 employees of the Virginia employers or federal personnel when the employers or federal authorities are  
231 assuming the liability for paying, to the extent permitted by federal law, the tuition for the employees or  
232 personnel in question and the employees or personnel are classified by the requirements of this section  
233 as out-of-state.

234 Special arrangement contracts with Virginia employers or federal installations or agencies may be for  
235 group instruction in facilities provided by the employer or federal authority or in the institution's  
236 facilities or on a student-by-student basis for specific employment-related programs.

237 Special arrangement contracts shall be valid for a period not to exceed two years and shall be  
238 reviewed for legal sufficiency by the Office of the Attorney General prior to signing. All rates agreed to  
239 by the public institutions shall be at least equal to in-state tuition and shall only be granted by the  
240 institution with which the employer or the federal authorities have a valid contract for students for  
241 whom the employer or federal authorities are paying the tuition charges.

242 All special arrangement contracts with authorities controlling federal installations or agencies shall  
243 include a specific number of students to be served at reduced rates.

244 Nothing in this subsection shall change the domiciliary status of any student for the purposes of  
245 enrollment reporting or calculating the proportions of general funds and tuition and fees contributed to  
246 the cost of education.

247 *GH.* Any active duty members, activated guard or reservist members, or guard or reservist members  
248 mobilized or on temporary active orders for six months or more, that are either stationed or assigned by  
249 their military service to a work location in Virginia, and residing in Virginia, shall pay tuition, to the  
250 public institution of higher education in which they are enrolled, in an amount no more than the  
251 institution's in-state tuition rate.