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HOUSE BILL NO. 1461

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on January 28, 2013)

(Patron Prior to Substitute—Delegate Lingamfelter)

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 charges; military and veterans.*

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 24 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 (i) mere transient or temporary physical presence in another jurisdiction or (ii) the establishment and maintenance of a place of residence in another jurisdiction for the purpose of maintaining a joint household with an active duty United States military spouse.

"Domiciliary intent" means present intent to remain indefinitely.

"Emancipated minor" means a student under the age of 18 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 50 work weeks of 40 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 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 18 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.

"Veteran" means an individual who has served in the active military, naval or air service and who was discharged or released therefrom under conditions other than dishonorable.

"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

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60 domicile, the dependent student or unemancipated minor shall be entitled to such in-state tuition for one
61 year from the date of such abandonment.

62 In determining domiciliary intent, all of the following applicable factors shall be considered:
63 continuous residence for at least one year prior to the date of alleged entitlement, except in the event of
64 the establishment and maintenance of a place of residence in another jurisdiction for the purpose of
65 maintaining a joint household with an active duty United States military spouse; state to which income
66 taxes are filed or paid; driver's license; motor vehicle registration; voter registration; employment;
67 property ownership; sources of financial support; military records; a written offer and acceptance of
68 employment following graduation; and any other social or economic relationships with the
69 Commonwealth and other jurisdictions.

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

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

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

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

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

92 The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent or
93 legal guardian claiming him as an exemption on federal or state income tax returns currently and for the
94 tax year prior to the date of the alleged entitlement or providing him substantial financial support. The
95 spouse of an active duty military service member, if such spouse has established domicile and claimed
96 the dependent student on federal or state income tax returns, shall not be subject to minimum income
97 tests or requirements.

98 For the purposes of this section, the domicile of an unemancipated minor or a dependent student 18
99 years of age or older may be either the domicile of the parent with whom he resides, the parent who
100 claims the student as a dependent for federal or Virginia income tax purposes for the tax year prior to
101 the date of the alleged entitlement and is currently so claiming the student, or the parent who provides
102 the student substantial financial support. If there is no surviving parent or the whereabouts of the parents
103 are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian
104 of such unemancipated minor unless there are circumstances indicating that such guardianship was
105 created primarily for the purpose of conferring a Virginia domicile on the unemancipated minor.

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

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

114 E. Notwithstanding any other provision of law, all dependents, as defined by 37 U.S.C. § 401, of
115 active duty military personnel, or activated or temporarily mobilized reservists or guard members,
116 assigned to a permanent duty station or workplace geographically located in Virginia, or in a state
117 contiguous to Virginia or the District of Columbia, who reside in Virginia shall be deemed to be
118 domiciled in Virginia for purposes of eligibility for in-state tuition and shall be eligible to receive
119 in-state tuition in Virginia in accordance with this section. All such dependents shall be afforded the
120 same educational benefits as any other individual receiving in-state tuition pursuant to this section. Such
121 benefits and in-state tuition status shall continue so long as they are continuously enrolled in an

122 institution of higher education in Virginia or are transferring between Virginia institutions of higher
123 education or from an undergraduate degree program to a graduate degree program, regardless of any
124 change of duty station or residence of the military service member.

125 For the purpose of this subsection:

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

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

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

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

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

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

150 **§ 23-7.4:2. Eligibility for in-state or reduced tuition for students not domiciled in Virginia;**
151 **tuition grants and in-state tuition for members of the National Guard.**

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

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

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

180 In addition, any person who met the requirements for in-state tuition prior to being called to active
181 duty in the National Guard of another state shall be eligible for in-state tuition following completion of
182 active duty service if during active duty that person maintained one or more of the following in Virginia

183 rather than in another state or jurisdiction: a driver's license, motor vehicle registration, voter
184 registration, employment, property ownership, or sources of financial support. Any out-of-state students
185 granted in-state tuition pursuant to this subsection shall be counted as in-state students for the purposes
186 of determining college admissions, enrollment, and tuition and fee revenue policies.

187 C. Notwithstanding the provisions of § 23-7.4 or any other provision of the law to the contrary, the
188 governing board of any state institution of higher education or the governing board of the Virginia
189 Community College System may charge the same tuition as is charged to any person domiciled in
190 Virginia pursuant to the provisions of § 23-7.4 to:

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

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

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

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

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

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

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

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

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

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

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

245 whom the employer or federal authorities are paying the tuition charges.

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

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

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

256 *H. Notwithstanding any other provision of law, veterans residing within the Commonwealth shall be*
257 *eligible for in-state tuition charges. Any students granted in-state tuition pursuant to this subsection*
258 *shall be counted as in-state students for the purpose of determining college admissions, enrollment, and*
259 *tuition and fee revenue policies.*