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**SENATE BILL NO. 605**

Offered January 19, 2012

A *BILL to amend and reenact § 23-7.4 of the Code of Virginia, relating to eligibility for in-state tuition; military personnel.*

\_\_\_\_\_  
Patron—McWaters

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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 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. *For the purposes of this section, the intent to attend a public institution of higher education in the Commonwealth shall be deemed sufficient to establish domiciliary intent for active duty or retired military personnel, residing in the Commonwealth.*

"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.

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

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

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

80 Those factors presented in support of entitlement to in-state tuition shall have existed for the  
81 one-year period prior to the date of the alleged entitlement. However, in determining the domiciliary  
82 intent of active duty military personnel residing in the Commonwealth, retired military personnel  
83 residing in the Commonwealth at the time of their retirement, or veterans, or the domiciliary intent of  
84 their dependent spouse or children who claim domicile through them, who voluntarily elect to establish  
85 Virginia as their permanent residence for domiciliary purposes *and for whom all other conditions for*  
86 *establishing domicile are satisfied*, the requirement of one year shall be waived ~~if all other conditions~~  
87 ~~for establishing domicile are satisfied and the intent to attend a public institution of higher education in~~  
88 ~~the Commonwealth shall be deemed sufficient.~~

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

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

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

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

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

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

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

120 E. Notwithstanding any other provision of law, all dependents, as defined by 37 U.S.C. § 401, of

active duty military personnel, or activated or temporarily mobilized reservists or guard members, assigned to a permanent duty station or workplace geographically located in Virginia, or in a state contiguous to Virginia or the District of Columbia, who reside in Virginia shall be deemed to be domiciled in Virginia for purposes of eligibility for in-state tuition and shall be eligible to receive in-state tuition in Virginia in accordance with this section. All such dependents shall be afforded the same educational benefits as any other individual receiving in-state tuition pursuant to this section. Such benefits and in-state tuition status shall continue so long as they are continuously enrolled in an institution of higher education in Virginia or are transferring between Virginia institutions of higher education or from an undergraduate degree program to a graduate degree program, regardless of any change of duty station or residence of the military service member.

For the purpose of this subsection:

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

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

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

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

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

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