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HOUSE BILL NO. 2216

Offered January 23, 1995

A BILL to amend and reenact § 23-7.4 of the Code of Virginia, relating to in-state tuition for certain students.

Patrons—Hamilton, Diamonstein, Morgan and Purkey; Senators: Holland, C.A. and Norment

Referred to Committee on Education

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 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 parents or legal guardian.

"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, have ceased to support him, and have not claimed him as a dependent on federal and state income tax returns for at least twelve months prior to the date of the alleged entitlement.

"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 G of this section.

"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. In order 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.

In order 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.

In determining domiciliary intent, all of the following applicable factors shall be considered: continuous residence for at least one year prior to the date of alleged entitlement, state to which income taxes are filed or paid, driver's license, motor vehicle registration, voter registration, employment, property ownership, sources of financial support, location of checking or passbook savings accounts and any other social or economic relationships with the Commonwealth and other jurisdictions. Domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth. Mere physical presence or residence primarily for educational purposes shall not confer domiciliary status.

Those factors presented in support of entitlement to in-state tuition shall have existed for the

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60 one-year period prior to the date of the alleged entitlement. However, in determining the domiciliary  
61 intent of active duty military personnel residing in the Commonwealth, who voluntarily elect to establish  
62 Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be  
63 waived if all other conditions for establishing domicile are satisfied.

64 C. The domicile of a married person shall be determined in the same manner as the domicile of an  
65 unmarried person.

66 The domicile of an emancipated minor shall be established in the same manner as any other  
67 independent student.

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

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

76 A matriculating student who has entered an institution classified as out-of-state shall be required to  
77 rebut by clear and convincing evidence the presumption that he is in the Commonwealth for the purpose  
78 of attending school and not as a bona fide domicile.

79 For the purposes of this section, the domicile of an unemancipated minor or a dependent student  
80 eighteen years of age or older may be either the domicile of the parent with whom he resides or the  
81 parent who claims the student as a dependent for federal and Virginia income tax purposes for the tax  
82 year prior to the date of the alleged entitlement and is currently so claiming the student. If there is no  
83 surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated  
84 minor shall be the domicile of the legal guardian of such unemancipated minor unless there are  
85 circumstances indicating that such guardianship was created primarily for the purpose of conferring a  
86 Virginia domicile on the unemancipated minor.

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

90 A student who knowingly provides erroneous information in an attempt to evade payment of  
91 out-of-state fees shall be charged out-of-state tuition fees for each term, semester or quarter attended and  
92 may be subject to dismissal from the institution. All disputes related to the veracity of information  
93 provided to establish Virginia domicile shall be appealable through the due process procedure required  
94 by subsection H below.

95 E. A nonmilitary student whose parent or spouse is a member of the armed forces may establish  
96 domicile in the same manner as any other student. However, a nonmilitary student, not otherwise  
97 eligible for in-state tuition, whose parent or spouse is a member of the military residing in the  
98 Commonwealth pursuant to military orders and claiming a state other than Virginia on their State of  
99 Legal Residence Certificate, shall be entitled to in-state tuition charges when the following conditions  
100 are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall  
101 have, for at least one year immediately prior to the date of alleged entitlement for in-state tuition  
102 charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such  
103 student shall be eligible for in-state tuition charges only if the nonmilitary parent claims him as a  
104 dependent for Virginia and federal income tax purposes; or (ii) if the student is the spouse of a member  
105 of the armed forces, then such student shall have, for at least one year immediately prior to the date of  
106 alleged entitlement for in-state tuition, resided in Virginia, been employed full time and paid individual  
107 income taxes to Virginia; or (iii) if the student is the child or the spouse of a member of the armed  
108 forces, then the student shall be entitled to in-state tuition charges for a maximum of one year during  
109 the period that the military parent or spouse is residing in the Commonwealth. Any student whose  
110 spouse or parent is a member of the armed forces shall be eligible for in-state tuition charges for so  
111 long as these conditions continue to be met. Military dependents provided in-state tuition for one year  
112 during the period the military parent or spouse is residing in Virginia shall be counted as out-of-state  
113 students for admissions, enrollment and tuition and fee revenue policy purposes.

114 *Notwithstanding the foregoing provisions of this subsection, public institutions of higher education*  
115 *may charge in-state tuition to members of the armed forces residing in the Commonwealth pursuant to*  
116 *military orders and claiming a state other than Virginia on their State of Legal Residence Certificate,*  
117 *and their dependents. Such military personnel and their dependents shall be counted as out-of-state*  
118 *students for admissions, enrollment and tuition and fee revenue policy purposes.*

119 F. Students who live outside this Commonwealth and have been employed full time inside Virginia  
120 for at least one year immediately prior to the date of the alleged entitlement for in-state tuition shall be  
121 eligible for in-state tuition charges if such student has paid Virginia income taxes on all taxable income

122 earned in this Commonwealth for the tax year prior to the date of the alleged entitlement. Students  
 123 claimed as dependents for federal and Virginia income tax purposes who live outside this  
 124 Commonwealth shall become eligible for in-state tuition charges if the nonresident parent claiming him  
 125 as a dependent has been employed full time inside Virginia for at least one year immediately prior to  
 126 the date of the alleged entitlement and paid Virginia income taxes on all taxable income earned in this  
 127 Commonwealth for the tax year prior to the date of the alleged entitlement. Such students shall continue  
 128 to be eligible for in-state tuition charges for so long as they or their qualifying parent is employed full  
 129 time in Virginia, paying Virginia income taxes on all taxable income earned in this Commonwealth and  
 130 the student is claimed as a dependent for Virginia and federal income tax purposes.

131 G. Public institutions of higher education may enter into special arrangement contracts with Virginia  
 132 employers or authorities controlling federal installations or agencies located in Virginia. The special  
 133 arrangement contracts shall be for the purpose of providing reduced rate tuition charges for the  
 134 employees of the Virginia employers or federal personnel when the employers or federal authorities are  
 135 assuming the liability for paying, to the extent permitted by federal law, the tuition for the employees or  
 136 personnel in question and the employees or personnel are classified by the requirements of this section  
 137 as out-of-state.

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

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

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

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

151 H. Each public institution of higher education shall establish an appeals process for those students  
 152 who are aggrieved by decisions on eligibility for in-state tuition charges. The Administrative Process Act  
 153 (§ 9-6.14:1 et seq.) shall not apply to these administrative reviews.

154 An initial determination shall be made. Each appeals process shall include an intermediate review of  
 155 the initial determination and a final administrative review. The final administrative decision shall be in  
 156 writing. A copy of this decision shall be sent to the student. Either the intermediate review or the final  
 157 administrative review shall be conducted by an appeals committee consisting of an odd number of  
 158 members. No person who serves at one level of this appeals process shall be eligible to serve at any  
 159 other level of this review. All such due process procedures shall be in writing and shall include time  
 160 limitations in order to provide for orderly and timely resolutions of all disputes.

161 Any party aggrieved by a final administrative decision shall have the right to review in the circuit  
 162 court for the jurisdiction in which the relevant institution is located. A petition for review of the final  
 163 administrative decision shall be filed within thirty days of receiving the written decision. In any such  
 164 action, the institution shall forward the record to the court, whose function shall be only to determine  
 165 whether the decision reached by the institution could reasonably be said, on the basis of the record, to  
 166 be supported by substantial evidence and not to be arbitrary, capricious or otherwise contrary to law.

167 I. In order to ensure the application of uniform criteria in administering this section and determining  
 168 eligibility for in-state tuition charges, the State Council of Higher Education shall issue and from time to  
 169 time revise guidelines, including domiciliary status questions to be incorporated by all state institutions  
 170 of higher education in their admissions applications. These guidelines shall not be subject to the  
 171 Administrative Process Act.

172 An advisory committee, composed of ten representatives of the public institutions, shall be appointed  
 173 by the Council each year to cooperate with the Council in developing the guidelines for determining  
 174 eligibility or revisions thereof. The Council shall consult with the Office of Attorney General and  
 175 provide opportunity for public comment prior to issuing any such guidelines.