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HOUSE BILL NO. 626

Offered January 19, 1996

A *BILL to amend and reenact §§ 23-7.4 and 23-38.10:2 of the Code of Virginia, to amend the Code of Virginia by adding Chapter 1 of Title 23 sections numbered 23-7.4:1 through 23-7.4:3, and to repeal §§ 23-7.1, 23-7.1:01, 23-7.2, 23-7.2:1, and 23-7.3 of the Code of Virginia, relating to eligibility for in-state, free, or reduced tuition charges.*

Patrons—Dillard, Councill and Howell

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-7.4 and 23-38.10:2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 1 of Title 23 sections numbered 23-7.4:1 through 23-7.4:3 as follows:

§ 23-7.4. Eligibility for in-state tuition charges based on domicile; definitions.

A. For purposes of this section *and §§ 23-7.4:1 through 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 a dependent student, 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, have ceased to *provide him substantial financial 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~~ 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~~ To become eligible for in-state tuition, a dependent student or unemancipated minor shall

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60 establish by clear and convincing evidence that for a period of at least one year prior to the date of the
61 alleged entitlement, the person through whom he claims eligibility was domiciled in Virginia and had
62 abandoned any previous domicile, if such existed.

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

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

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

81 C. ~~The domicile of a married person shall be determined~~ *may establish domicile* in the same
82 manner as ~~the domicile of an unmarried person.~~

83 ~~The domicile of an emancipated minor shall be established~~ *An emancipated minor may establish*
84 *domicile in the same manner as any other independent student. A nonmilitary student whose parent or*
85 *spouse is a member of the armed forces may establish domicile in the same manner as any other*
86 *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.

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

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

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

110 A student who knowingly provides erroneous information in an attempt to evade payment of
111 out-of-state fees shall be charged out-of-state tuition fees for each term, semester or quarter attended and
112 may be subject to dismissal from the institution. All disputes related to the veracity of information
113 provided to establish Virginia domicile shall be appealable through the due process procedure required
114 by ~~subsection H § 23-7.4:4 below.~~

115 *§ 23-7.4:1. Waiver of tuition and required fees for certain students.*

116 A. 1. *All sums appropriated by law for the purpose of effecting the provisions of this subsection shall*
117 *be used for the sole purpose of providing for free tuition and required fees at the state-supported*
118 *institutions and institutional charges, general or college fees, or any charges by whatever term referred*
119 *to, board and room rent and books and supplies at any education or training institution of collegiate or*
120 *secondary grade in the Commonwealth of Virginia approved in writing by the Director of the*
121 *Department of Veterans' Affairs for the use and benefit of the children not under sixteen and not over*

twenty-five years of age either of whose parents was killed in action, is missing in action or a prisoner of war in any armed conflict subsequent to December 6, 1941, while serving in the Army, Navy, Marine Corps, Air Force or Coast Guard of the United States, or was or is or may hereafter become totally and permanently disabled due to service during such periods if such parent (i) was a citizen of Virginia at the time of entering such service; (ii) is and has been, for at least ten years immediately prior to the date on which application was submitted by or on behalf of such child for admission to any education or training institution of collegiate or secondary grade in this Commonwealth, a citizen of Virginia; (iii) if such parent is deceased, was a citizen of Virginia on the date of his or her death and had been a citizen of Virginia for at least ten years immediately prior to his or her death; or (iv) if such parent is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a citizen of Virginia for at least ten years and is and has been a citizen of Virginia for at least ten years immediately prior to the date on which application was submitted by or on behalf of such child for admission to any education or training institution of collegiate or secondary grade in this Commonwealth.

2. Such children, upon recommendation of the Director of the Department of Veterans' Affairs shall be admitted to state institutions of secondary or higher education, free of tuition and all required fees. Each state-supported institution shall include in its catalogue or equivalent publication a statement describing the benefits provided by this subsection.

3. The amounts that may be or may become due by reason of attendance at any such educational or training institution, not in excess of the amount specified in subdivision 5, shall be payable on vouchers approved by the Director of the Department of Veterans' Affairs.

4. The Director of the Department of Veterans' Affairs shall determine the eligibility of the children who may make application for the benefits provided for in this subsection; and shall satisfy himself of the attendance and satisfactory progress of such children at such institution and of the accuracy of the charge or charges submitted on account of the attendance of any such children at any such institution. However, neither the Director nor any employee of the Department of Veterans' Affairs shall receive any compensation for such services.

5. To carry out the provisions of this subsection, there may be expended such funds as shall be appropriated for the purpose in the general appropriation acts. However, the maximum amount to be expended for each such child shall not be more, when combined with any federal allowance which may be made for such tuition, charges, fees, rent, books and supplies, than the actual amount of the benefits provided for in this subsection.

6. For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

B. Any child between the ages of sixteen and twenty-five whose parent or any person whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, firefighter, member of a rescue squad, sworn law-enforcement officer, special agent of the Department of Alcoholic Beverage Control, state correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, deputy sheriff, or member of the Virginia National Guard while such member is serving in the Virginia National Guard or as a member of the United States Armed Forces, shall be entitled to free undergraduate tuition and required fees at any public institution of higher education in Virginia under the following conditions:

1. The chief administrative officer of the Alcoholic Beverage Control Board, emergency medical services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer or a firefighter or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to a public institution of higher education. Any child or spouse who believes he is eligible shall apply to the public institution of higher education to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

C. Senior citizens shall be entitled to free tuition and required fees pursuant to the provisions of Chapter 45 (§ 23-38.54 et seq.) of Title 23.

D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public institution of higher education through a student exchange program approved by such institution,

183 provided the number of foreign students does not exceed the number of students paying full tuition and
184 required fees to the institution under the provisions of the exchange program for a given three-year
185 period.

186 23-7.4:2. Eligibility for in-state or reduced tuition for students not domiciled in Virginia.

187 A. A nonmilitary student whose parent or spouse is a member of the armed forces may establish
188 domicile in the same manner as any other student. However, a nonmilitary student, not otherwise
189 eligible for in-state tuition, whose parent or spouse is a member of the military residing in the
190 Commonwealth pursuant to military orders and claiming a state other than Virginia on their State of
191 Legal Residence Certificate, shall be entitled to in-state tuition charges when the following conditions
192 are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall
193 have, for at least one year immediately prior to the date of alleged entitlement for in-state tuition
194 charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such
195 student shall be eligible for in-state tuition charges only if the nonmilitary parent claims him as a
196 dependent for Virginia and federal income tax purposes, as evidenced by claiming him as a dependent
197 on an individual or joint return; or (ii) if the student is the spouse of a member of the armed forces,
198 then such student shall have, for at least one year immediately prior to the date of alleged entitlement
199 for in-state tuition, resided in Virginia, been employed full time and paid individual income taxes to
200 Virginia; or (iii) if the student is the child or the spouse of a member of the armed forces, then the
201 student shall be entitled to in-state tuition charges for a maximum of one year during the period that the
202 military parent or spouse is residing in the Commonwealth. Any student whose spouse or parent is a
203 member of the armed forces shall be eligible for in-state tuition charges for so long as the conditions of
204 (i) and (ii) of this subsection continue to be met. Military dependents provided in-state tuition for one
205 year during the period the military parent or spouse is residing in Virginia shall be counted as
206 out-of-state students for admissions, enrollment and tuition and fee revenue policy purposes.

207 B. Students who live outside this Commonwealth and have been employed full time inside Virginia
208 for at least one year immediately prior to the date of the alleged entitlement for in-state tuition shall be
209 eligible for in-state tuition charges if such student has paid Virginia income taxes on all taxable income
210 earned in this Commonwealth for the tax year prior to the date of the alleged entitlement. Students
211 claimed as dependents for federal and Virginia income tax purposes who live outside this
212 Commonwealth shall become eligible for in-state tuition charges if the nonresident parent claiming him
213 as a dependent has been employed full time inside Virginia for at least one year immediately prior to
214 the date of the alleged entitlement and paid Virginia income taxes on all taxable income earned in this
215 Commonwealth for the tax year prior to the date of the alleged entitlement. Such students shall continue
216 to be eligible for in-state tuition charges for so long as they or their qualifying parent is employed full
217 time in Virginia, paying Virginia income taxes on all taxable income earned in this Commonwealth and
218 the student is claimed as a dependent for Virginia and federal income tax purposes.

219 C. Any person who:

220 1. Is a member of the National Guard of the Commonwealth of Virginia and has a minimum
221 remaining obligation of two years,

222 2. Has satisfactorily completed required initial active duty service,

223 3. Is satisfactorily performing duty in accordance with regulations of the National Guard, and

224 4. Is enrolled in any state institution of higher education, any private, accredited and nonprofit
225 institution of higher education in the Commonwealth whose primary purpose is to provide collegiate or
226 graduate education and not to provide religious training or theological education, any course or
227 program offered by any such institution or any public vocational or technical school, shall be eligible
228 for a grant in the amount of one-half of the tuition not exceeding \$500 per term, semester or quarter.
229 No person shall receive grants totaling more than \$1,000 in any one year. Application for a grant shall
230 be made to the Department of Military Affairs. Grants shall be awarded from funds available for the
231 purpose by such Department.

232 D. Notwithstanding the provisions of § 23-7.4 or any other provision of the law to the contrary, the
233 governing board of any state institution of higher education or the governing board of the Virginia
234 Community College System may charge the same tuition as is charged to any person domiciled in
235 Virginia pursuant to the provisions of § 23-7.4 to:

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

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

243 3. Any high school or magnet school student, not otherwise qualified for in-state tuition, who is
244 enrolled in courses specifically designed as part of the high school or magnet school curriculum in a

community college for which he may, upon successful completion, receive high school and community college credit pursuant to a dual enrollment agreement between the high school or magnet school and the community college.

E. The governing board of the Virginia Community College System may charge reduced tuition to any person enrolled in one of the System's institutions who lives within a thirty mile radius of a Virginia institution, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in any state which is contiguous to Virginia and which has similar reciprocal provisions for persons domiciled in Virginia. This subsection shall expire on July 1, 1998.

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

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

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

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

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

§ 23-7.4:3. Determinations of eligibility; appeals and guidelines.

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

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

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

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

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

§ 23-38.10:2. Definitions.

As used in this chapter:

1. "Council" means the State Council of Higher Education for Virginia.

2. "Fund" means a student loan fund.

3. "Institution" means a state institution of higher education which has established a student loan fund from appropriations from the general fund of the state treasury for fellowships, scholarships and loans.

306 4. "Student" means a medical student, dental student, intern, resident or undergraduate student who is
307 entitled to reduced tuition charges pursuant to the provisions of ~~§ 23-7.4~~*subsection F of § 23-7.4:2*.
308 2. That §§ 23-7.1, 23-7.1:01, 23-7.2, 23-7.2:1, and 23-7.3 of the Code of Virginia are repealed.