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HOUSE BILL NO. 1598

Offered January 12, 2005

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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 in-state tuition for certain alien students.

Patrons—Callahan, Ebbin and Eisenberg

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~~ 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 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~~ 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 ~~fifty~~ 50 work weeks of ~~forty~~ 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 § 23-7.4:2 G.

"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~~ 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.

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

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

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

82 Any alien holding an immigration visa or classified as a political refugee shall also establish
83 eligibility for in-state tuition in the same manner as any other student. However, absent congressional
84 intent to the contrary *and except as provided in subsection H of § 23-7.4:2*, any person holding a student
85 or other temporary visa shall not have the capacity to intend to remain in Virginia indefinitely and,
86 therefore, shall be ineligible for Virginia domicile and for in-state tuition charges.

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

90 For the purposes of this section, the domicile of an unemancipated minor or a dependent student
91 ~~eighteen~~ 18 years of age or older may be either the domicile of the parent with whom he resides, the
92 parent who claims the student as a dependent for federal and Virginia income tax purposes for the tax
93 year prior to the date of the alleged entitlement and is currently so claiming the student, or the parent
94 who provides the student substantial financial support. If there is no surviving parent or the whereabouts
95 of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the
96 legal guardian of such unemancipated minor unless there are circumstances indicating that such
97 guardianship was created primarily for the purpose of conferring a Virginia domicile on the
98 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 § 23-7.4:2. Eligibility for in-state or reduced tuition for students not domiciled in Virginia; tuition
108 grants for members of the National Guard of the Commonwealth of Virginia.

109 A. A nonmilitary student whose parent or spouse is a member of the armed forces may establish
110 domicile in the same manner as any other student. However, a nonmilitary student, not otherwise
111 eligible for in-state tuition, whose parent or spouse is a member of the military residing in the
112 Commonwealth pursuant to military orders and claiming a state other than Virginia on his State of Legal
113 Residence Certificate, shall be entitled to in-state tuition charges when the following conditions are met:
114 (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have, for
115 at least one year immediately prior to the date of alleged entitlement for in-state tuition charges, resided
116 in Virginia, been employed full time and paid individual income taxes to Virginia. Such student shall be
117 eligible for in-state tuition charges only if the nonmilitary parent claims him as a dependent for Virginia
118 and federal income tax purposes, as evidenced by claiming him as a dependent on an individual or joint
119 return; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have,
120 for at least one year immediately prior to the date of alleged entitlement for in-state tuition, resided in

Virginia, been employed full time and paid individual income taxes to Virginia; or (iii) if the student is the child or the spouse of a member of the armed forces, then the student shall be entitled to in-state tuition charges for a maximum of one year during the period that the military parent or spouse is residing in the Commonwealth. Any student whose spouse or parent is a member of the armed forces shall be eligible for in-state tuition charges for so long as the conditions of clauses (i) and (ii) of this subsection continue to be met. Military dependents provided in-state tuition for one year during the period the military parent or spouse is residing in Virginia shall be counted as out-of-state students for admissions, enrollment and tuition and fee revenue policy purposes.

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

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

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

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

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

3. Any high school or magnet school student, not otherwise qualified for in-state tuition, who is 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 30-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.

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

In addition, the board of the University of Virginia's College at Wise and the board of visitors of the University of Virginia may charge reduced tuition to any person enrolled at the University of Virginia's College at Wise who lives within a 50-mile radius of the University of Virginia's College at Wise, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Tennessee,

182 if Tennessee has similar reciprocal provisions for persons domiciled in Virginia. The board of the
183 University of Virginia's College at Wise and its partners or associates offering programs jointly at a
184 regional off-campus center may also charge reduced tuition to any person enrolled in such joint
185 programs who lives within a 50-mile radius of the University of Virginia's College at Wise, is domiciled
186 in, and is entitled to in-state tuition charges in the institutions of higher learning in Tennessee, if
187 Tennessee has similar reciprocal provisions for persons domiciled in Virginia. Any such respective
188 partners or associates shall establish and charge separately tuition rates for their independent classes or
189 programs at such regional centers.

190 Any out-of-state students granted in-state tuition pursuant to this subsection and subsection E shall be
191 counted as out-of-state students for the purposes of determining admissions, enrollment, and tuition and
192 fee revenue policies.

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

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

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

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

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

213 *H. Notwithstanding any other provision of state law to the contrary and to the extent consistent with*
214 *federal law, a person holding a student or other temporary visa shall be entitled to in-state tuition*
215 *charges if the parent of such student is a legal alien holding a valid permanent or temporary visa who*
216 *has, for at least one year immediately prior to the date of alleged entitlement for in-state tuition*
217 *charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such*
218 *student shall be eligible for in-state tuition charges only if the alien parent claims him as a dependent*
219 *for income tax purposes, as evidenced by claiming him as a dependent on an individual or joint return.*

220 *However, such student not have the capacity to intend to remain in Virginia indefinitely and,*
221 *therefore, shall be ineligible for Virginia domicile required for any other benefits conferred in this Title.*