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HOUSE BILL NO. 732

Offered January 13, 2010

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A BILL to amend and reenact §§ 23-7.4 and 23-9.2:3 of the Code of Virginia, relating to in-state tuition charges.

 Patron—Albo

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:**1. That §§ 23-7.4 and 23-9.2:3 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 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 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, 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 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. 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, retired military personnel
75 residing in the Commonwealth at the time of their retirement, or the domiciliary intent of their
76 dependent spouse or children who claim domicile through them, who voluntarily elect to establish
77 Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be
78 waived if all other conditions for establishing domicile are satisfied.

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

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

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

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

91 For the purposes of this section, the domicile of an unemancipated minor or a dependent student
92 eighteen years of age or older may be either the domicile of the parent with whom he resides, the parent
93 who claims the student as a dependent for federal and Virginia income tax purposes for the tax year
94 prior to the date of the alleged entitlement and is currently so claiming the student, or the parent who
95 provides the student substantial financial support. If there is no surviving parent or the whereabouts of
96 the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal
97 guardian of such unemancipated minor unless there are circumstances indicating that such guardianship
98 was created primarily for the purpose of conferring a Virginia domicile on the 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 E. Notwithstanding any other provision of law, all dependents, as defined by 37 U.S.C. § 401, of
108 active duty military personnel, or activated or temporarily mobilized reservists or guard members,
109 assigned to a permanent duty station or workplace geographically located in Virginia, or in a state
110 contiguous to Virginia or the District of Columbia, who reside in Virginia shall be deemed to be
111 domiciled in Virginia for purposes of eligibility for in-state tuition and shall be eligible to receive
112 in-state tuition in Virginia in accordance with this section. All such dependents shall be afforded the
113 same educational benefits as any other individual receiving in-state tuition pursuant to this section. Such
114 benefits and in-state tuition status shall continue so long as they are continuously enrolled in an
115 institution of higher education in Virginia or are transferring between Virginia institutions of higher
116 education or from an undergraduate degree program to a graduate degree program, regardless of any
117 change of duty station or residence of the military service member.

118 For the purpose of this subsection:

119 "Date of alleged entitlement" means the date of admission or acceptance for dependents currently
120 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~~ 2010, for students (i) who enroll at a public, baccalaureate degree-granting institution of higher education in Virginia ~~and~~, (ii) who have established Virginia domicile and eligibility for in-state tuition in compliance with this section, *and (iii) who have completed eight semesters for a four-year degree or 10 semesters for a five-year degree at a Virginia institution of higher education*, the entitlement to in-state tuition shall be modified to require ~~the assessment of a surcharge, as defined herein that each additional credit hour be charged at the rate charged for non-Virginia domiciles~~, for each semester that the student continues to be enrolled after such student has completed ~~125%~~ 110 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%~~ 110 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%~~ 110 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% 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% credit hour threshold.~~

Any revenue generated as a result of this subsection and any space for new students created by this subsection shall be allocated to the creation of additional student slots for Virginia domicile students.

§ 23-9.2:3. Power of governing body of educational institution to establish rules and regulations; offenses occurring on property of institution; state direct student financial assistance; release of educational records.

A. In addition to the powers now enjoyed by it, the board of visitors or other governing body of every educational institution shall have the power:

1. To establish rules and regulations for the acceptance and assistance of students except that (i) individuals who have failed to meet the federal requirement to register for the selective service shall not be eligible to receive any state direct student assistance; (ii) the accreditation status of a Virginia public high school shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education; and (iii) the governing boards of the four-year institutions shall establish policies providing for the admission of certain graduates of Virginia community colleges as set forth in § 23-9.2:3.02.

2. To establish rules and regulations for the conduct of students while attending such institution.

3. To establish programs, in cooperation with the State Council of Higher Education and the Office of the Attorney General, to promote compliance among students with the Commonwealth's laws relating to the use of alcoholic beverages.

4. To establish rules and regulations for the rescission or restriction of financial aid, within the discretionary authority provided to the institution by federal or state law and regulations, and the suspension and dismissal of students who fail or refuse to abide by such rules and regulations for the conduct of students.

5. To establish rules and regulations for the employment of professors, teachers, instructors and all other employees and provide for their dismissal for failure to abide by such rules and regulations.

6. To provide parking and traffic rules and regulations on property owned by such institution.

7. To establish guidelines for the initiation or induction into any social fraternity or sorority in accordance with § 18.2-56.

8. To establish programs, in cooperation with the State Council of Higher Education for Virginia and the Office of the Attorney General, to promote the awareness and prevention of sexual crimes committed upon students.

B. Upon receipt of an appropriate resolution of the board of visitors or other governing body of an educational institution, the governing body of a political subdivision which is contiguous to the institution shall enforce state statutes and local ordinances with respect to offenses occurring on the property of the institution.

The governing bodies of the public institutions of higher education shall assist the State Council of Higher Education in enforcing the provisions related to eligibility for financial aid.

C. Notwithstanding any other provision of state law, the board of visitors or other governing body of

every public institution of higher education in Virginia shall establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if the student's treating physician or treating clinical psychologist has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection shall be civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees.

D. The board of visitors or other governing body of every public institution of higher education in Virginia shall establish policies and procedures requiring the release of the educational record of a dependent student, as defined by 20 U.S.C. § 1232g, to a parent at his request.

E. In order to improve the quality of the Commonwealth's work force and educational programs, the governing bodies of the public institutions of higher education shall establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the 21st Century and, particularly, that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology.

F. The board of visitors or other governing body of each public institution of higher education in Virginia shall set a goal and establish a plan eventually requiring that at least 75 percent of the undergraduate students admitted and enrolled at each institution be Virginia domiciles as defined in § 23-7.4. The plan shall provide (i) for an increase in out-of-state tuition charges to the level of similarly situated private institutions, to be determined by the State Council of Higher Education for Virginia, with the additional money raised being allocated to the creation of additional student slots for Virginia domiciles and (ii) that any funds received by an institution from the state on or after July 1, 2010, above and beyond inflation shall be allocated to the creation of additional student slots for Virginia domiciles, until 75 percent of the undergraduate students admitted and enrolled at the institution are Virginia domiciles.

2. That, upon passage of this provision and pursuant to subsection B of § 23-7.4:3 of the Code of Virginia, the State Council of Higher Education for Virginia shall revise its guidelines for determining in-state tuition charges, which are not subject to the Administrative Process Act, to incorporate the amendments to subsection F of § 23-7.4 of the Code of Virginia by August 1, 2010, including but not limited to notice to students who may be or may become subject to the surcharge and guidelines and criteria for granting waivers of the surcharge.

3. That the provisions of this act shall not apply to any public four-year institution at which 75 percent or greater of its enrolled students are Virginia domiciles.

4. That the provisions of this act shall not apply to any public four-year institution at which fewer than 75 percent of its enrolled students are Virginia domiciles, but which has expanded the total number of in-state slots by 10 percent or more beyond its 2009 level.