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SENATE BILL NO. 1242

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 28, 2013)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact §§ 23-7.4 and 23-7.4:2 of the Code of Virginia, relating to eligibility for in-state tuition charges; military and veterans.

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 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.

"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.

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

60 domicile, the dependent student or unemancipated minor shall be entitled to such in-state tuition for one
61 year from the date of such abandonment.

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

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

76 Those factors presented in support of entitlement to in-state tuition shall have existed for the
77 one-year period prior to the date of the alleged entitlement. However, in determining the domiciliary
78 intent of active duty military personnel residing in the Commonwealth, retired military personnel
79 residing in the Commonwealth at the time of their retirement, or veterans, or the domiciliary intent of
80 their dependent spouse or children who claim domicile through them, who voluntarily elect to establish
81 Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be
82 waived if all other conditions for establishing domicile are satisfied. *Within six months of commencement*
83 *the school term for which in-state tuition is granted to a student for whom the requirement of one year*
84 *is waived, such student shall take the necessary steps to become domiciled in Virginia for state and*
85 *local tax purposes.*

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

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

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

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

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

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

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

117 E. Notwithstanding any other provision of law, all dependents, as defined by 37 U.S.C. § 401, of
118 active duty military personnel, or activated or temporarily mobilized reservists or guard members,
119 assigned to a permanent duty station or workplace geographically located in Virginia, or in a state
120 contiguous to Virginia or the District of Columbia, who reside in Virginia shall be deemed to be
121 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.

§ 23-7.4:2. Eligibility for in-state or reduced tuition for students not domiciled in Virginia; tuition grants and in-state tuition for members of the National Guard.

A. 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.

B. 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.

Notwithstanding the foregoing requirement that a member of the National Guard have a minimum of two years remaining on his service obligation, if a member is activated or deployed for federal military service, an additional day shall be added to the member's eligibility for the grant for each day of active federal service up to 365 days. Additional credit, or credit for state duty, may be given at the discretion of the Adjutant General.

183 In addition, any person who met the requirements for in-state tuition prior to being called to active
184 duty in the National Guard of another state shall be eligible for in-state tuition following completion of
185 active duty service if during active duty that person maintained one or more of the following in Virginia
186 rather than in another state or jurisdiction: a driver's license, motor vehicle registration, voter
187 registration, employment, property ownership, or sources of financial support. Any out-of-state students
188 granted in-state tuition pursuant to this subsection shall be counted as in-state students for the purposes
189 of determining college admissions, enrollment, and tuition and fee revenue policies.

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

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

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

201 3. Any high school or magnet school student, not otherwise qualified for in-state tuition, who is
202 enrolled in courses specifically designed as part of the high school or magnet school curriculum in a
203 community college for which he may, upon successful completion, receive high school and community
204 college credit pursuant to a dual enrollment agreement between the high school or magnet school and
205 the community college.

206 D. The governing board of the Virginia Community College System shall charge in-state tuition to
207 any person enrolled in one of the System's institutions who lives within a 30-mile radius of a Virginia
208 institution, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning
209 in any state which is contiguous to Virginia and which has similar reciprocal provisions for persons
210 domiciled in Virginia.

211 Any out-of-state students granted in-state tuition pursuant to this subsection shall be counted as
212 in-state students for the purposes of determining college admissions, enrollment, and tuition and fee
213 revenue policies.

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

219 In addition, the board of the University of Virginia's College at Wise and the board of visitors of the
220 University of Virginia may charge reduced tuition to any person enrolled at the University of Virginia's
221 College at Wise who lives within a 50-mile radius of the University of Virginia's College at Wise, is
222 domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Tennessee,
223 if Tennessee has similar reciprocal provisions for persons domiciled in Virginia. The board of the
224 University of Virginia's College at Wise and its partners or associates offering programs jointly at a
225 regional off-campus center may also charge reduced tuition to any person enrolled in such joint
226 programs who lives within a 50-mile radius of the University of Virginia's College at Wise, is domiciled
227 in, and is entitled to in-state tuition charges in the institutions of higher learning in Tennessee, if
228 Tennessee has similar reciprocal provisions for persons domiciled in Virginia. Any such respective
229 partners or associates shall establish and charge separately tuition rates for their independent classes or
230 programs at such regional centers.

231 Any out-of-state students granted in-state tuition pursuant to this subsection and subsection D shall
232 be counted as out-of-state students for the purposes of determining admissions, enrollment, and tuition
233 and fee revenue policies.

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

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

244 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.

G. Any active duty members, activated guard or reservist members, or guard or reservist members mobilized or on temporary active orders for six months or more, that are either stationed or assigned by their military service to a work location in Virginia, and residing in Virginia, shall pay tuition, to the public institution of higher education in which they are enrolled, in an amount no more than the institution's in-state tuition rate.

H. Notwithstanding any other provision of law, veterans residing within the Commonwealth shall be eligible for in-state tuition charges. Any students granted in-state tuition pursuant to this subsection shall be counted as in-state students for the purpose of determining college admissions, enrollment, and tuition and fee revenue policies.