

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**The Issue of Determination of  
Eligibility for Reduced Tuition  
Charges in the Commonwealth's  
Institutions of Higher Education**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Table of Contents**

I. Origin of the Study .....	3
II. Constitutional Issues Related to Eligibility for Reduced Tuition Charges .....	4
A. Equal protection of the laws .....	4
B. Fundamental right to travel .....	4
C. Privileges and immunities .....	5
D. Federal preemption through the Supremacy Clause .....	5
E. Substantive and procedural due process .....	5
F. Analysis of allowable criteria for determining eligibility for reduced tuition charges	6
III. Domiciliary Resident or Nonresident: What Price the Difference?.....	6
IV. Virginia's Law Prior to July 1, 1984 .....	7
V. Determining Residency: Commonly Encountered Situations and Misconceptions .....	8
VI. The Changing Tuition and Fee Policy .....	9
VII. Objectives and Data Collection for the Study .....	10
VIII. The Work of the Joint Subcommittee .....	11
IX. Analysis of the Approved Bill and Legislative Intent .....	12
X. Summary .....	16

**Report of the  
Joint Subcommittee Studying the  
Issue of Determination of Eligibility  
for Reduced Tuition Charges in the  
Commonwealth's Institutions of Higher Education  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
March, 1984**

To: Honorable Charles S. Robb, Governor of Virginia,  
and  
The General Assembly of Virginia

**I. ORIGIN OF THE STUDY**

During the last several years, Virginia's in-state tuition policy has become a matter of concern for the administrators of the Commonwealth's institutions of higher education. Institutional interpretations of § 23-7, which set forth this policy prior to its repeal on July 1, 1984, had frequently been challenged. Because of the economic conditions and the recent trends in financial aid, students whose residency is questioned have been even more aggressively seeking favorable decisions. This phenomenon has occurred simultaneously with fiscal pressures on the State which are serious and unusual for Virginia. For the first time since the mid-seventies, the Commonwealth has faced declining revenues and budget adjustments which have added pressure to establish greater differentials between in-state and out-of-state tuition rates. This situation has been magnified by Virginia's out-of-state tuition rates generally being regarded as low in comparison to those of her East Coast neighbors.

Eligibility for reduced tuition charges hinges in Virginia on residence in the State for one year and intent to stay for an indefinite period of time. Because of the large populations of federal employees, military personnel and their dependents in Northern Virginia and the Tidewater area, this policy has become increasingly difficult for the institutions to administer. These difficulties came to a head this year because of the many complaints by constituents to legislators, resulting in a number of attempts to modify the criteria for in-state tuition, and the many difficult issues raised by the administrators of the public institutions.

This situation prompted the introduction and passage of House Joint Resolution No. 60 requesting the House Committees on Education, Appropriations and Finance and the Senate Committees on Education and Health and Finance to establish a joint subcommittee to study the issue of determination of eligibility for reduced tuition charges in the Commonwealth's institutions of higher education (See Appendix A).

The Joint Subcommittee Studying the Issue of Determination of Eligibility for Reduced Tuition Charges was charged with considering the issue of determination of in-state tuition with particular emphasis on:

1. The revision of § 23-7, if necessary, to clarify its intention, but not necessarily to change it;
2. The fiscal impact on certain state institutions of the State Council of Higher Education's proposed percentage of cost plan; and
3. The possibilities of abuse of the law, if these proposals are adopted.

The Joint Subcommittee was also charged with cooperating with the Council by recommending revisions to the "Resident Tuition Guidelines" and examining the laws and regulations of other states in the course of its work.

The work of the Joint Subcommittee was to be coordinated with the Task Force on Domiciliary Residents of the Council of Higher Education.

Testimony from all relevant constituencies was required to be heard including, but not limited to, students, parents, admissions officers and institutional officials.

## II. CONSTITUTIONAL ISSUES RELATED TO ELIGIBILITY FOR REDUCED TUITION CHARGES

In establishing a policy for eligibility for reduced tuition charges, the following constitutional rules must be borne in mind: Equal protection of the laws, the fundamental right to travel, entitlement “to all privileges and immunities of citizens in the several states,” federal preemption through the Supremacy Clause, and procedural and substantive due process.

### A. Equal protection of the laws

The Fourteenth Amendment of the United States Constitution states in Section 1 that “... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

In order for a law to be constitutionally suspect under the Equal Protection clause, two tests must be met:

1. the law must be the result of intentional discrimination between classes of people and
2. the state must not have an “adequate countervailing justification” for intentionally treating various classes of people differently. (Lines, Patricia M., “Tuition Discrimination: Valid and Invalid Uses of Tuition Differentials,” The Journal of College and University Law , Vol. 9, No. 3, 1982-83).

The standard for determining “adequate countervailing justification” ( Id . at 243) may fall into three categories, i.e., rational basis or “fair and substantial relation to a legitimate state goal” ( Charlotte v. International Ass’n of Firefighters , 426 U.S. 283 (1976), a compelling state interest as approved through strict scrutiny, because of the presence of a suspect class or a fundamental right, or a reasonable relationship to a substantial state goal. The level of review will hinge on “the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn.” San Antonio School District v. Rodriguez , 411 U.S. 1, 99 (1973) (Marshall, J., dissenting). The nature of the benefit, its importance to everyday living, the nature of the class discriminated against and the character of the state interest used to justify this discrimination will control the level of scrutiny to which any given case will be subjected.

Since higher education is considered a privilege, not a fundamental right, and “suspect” classes have been defined as those based on race or national origin only, it appears that differentiation of tuition charges between resident and nonresident students will not be subject to the strict scrutiny or compelling state interest analysis. The so-called “middle tier” test, i.e. reasonable relationship to a substantial state goal, would not be used (or so it seems) except in cases where the law in question allows sex discrimination (such as the Social Security cases) or discrimination based on citizenship (such as Pyler v. Doe , the Texas case concerning education of illegal aliens’ children). Therefore, discrimination between residents and nonresidents in determining eligibility for reduced tuition charges would probably be subject to the rational basis test or a “fair and substantial relation to a legitimate state goal.” It also appears logical that providing greater access to public higher education for state taxpayers and balancing the Commonwealth’s budget would be a rational basis or would provide a “fair and substantial relation to a legitimate state goal” (see Appendix A for chart on equal protection tests).

### B. Fundamental right to travel

The fundamental right to move freely from one state to another state within this country is not set out in any specific section of the United States Constitution, but can only be gathered from the full impact of the entire document. In 1971, the Supreme Court affirmed a district court opinion in the Minnesota case of Starns v. Malkerson , 401 U.S. 965 (1971), involving a requirement that a 12-month residency be completed before becoming eligible for reduced tuition. No opinion was issued by the Court in this case. In 1975, the Court also upheld a

one-year requirement for filing for divorce in Sosna v. Iowa , 419 U.S. 393 (1975). The Court apparently does not view one-year residency requirements for these privileges as inhibiting travel.

The lower court in Starns , the tuition case, found the higher tuition rates for new residents would not limit the flow of people into the state by “any appreciable number.” This holding and later ones appear to show that one-year requirements will be upheld as not violating any fundamental right to travel.

In other cases involving services which are more necessary to everyday living, such as eligibility for welfare benefits and health services for indigents or outright financial discrimination such as an Alaskan law providing higher mineral dividends to citizens according to the number of years of residence in the state, the Court has struck down one-year residency requirements as providing disincentives to free movement.

### C. Privileges and immunities

Article IV, section 2 of the United States Constitution states: “... citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”

There does not appear to be any substantial constitutional problem related to the Privileges and Immunities clause in discrimination between residents and nonresidents for purposes of tuition charges. Nonresidents are not denied entrance through this differential treatment. If the state law provided quotas for nonresidents or limited admission to residents, a much graver problem would be presented.

### D. Federal preemption through the Supremacy Clause

Article VI of the United States Constitution states:

“This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land...”

In the 1982 case of Toll v. Moreno , 102 S.Ct. 2977 (1982), the Court, using the Supremacy Clause, struck a Maryland law which made resident alien students with “G-4” visas ineligible for reduced tuition. Persons holding “G-4” visas are allowed to acquire domicile in the States while still enjoying tax-exempt status. Therefore, the Court stated that “[s]tate regulation... is impermissible if it imposes additional burdens not contemplated by Congress.”

In Nyquist v. Mauclet , 432 U.S. 1 (1971), the Supreme Court also invalidated a New York law which only allowed financial aid to citizens or those who declared their intention to become citizens. The State argued that the statute offered “an incentive for aliens to become naturalized.” Id. , at 9. The Court replied that “Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere.” Id. , at 10. Justices Burger, Rehnquist, Powell and Stewart dissented. In his dissent, Mr. Justice Rehnquist stated, “The funds that New York wishes to spend on its higher education assistance programs are, of course, limited. New York’s choice to distribute these funds to resident citizens and to resident aliens who intend to become citizens, while denying them to aliens who have no intention of becoming citizens, is a natural legislative judgment.” Id. , at 21.

Since the Virginia law did not address citizenship, this problem did not appear to be of importance to this study. However, it was interesting to note that one of the difficulties in implementing the policy prior to July 1, 1984 that was noted by the community college administrators was the question of when the 12-month period begins to run for immigrants with “green cards” (see Section V. *Infra*). :

### E. Substantive and procedural due process

Substantive due process refers to the operation of a law or “the very core of a policy, rule, or law process” (Young, D. Parker, The Yearbook of Higher Education Law , 1981, page 131). Procedural due process refers to the “step by step method used to arrive at a decision” ( Id. ,

at 131). Due process, substantive or procedural, requires fundamental fairness. In other words, if the law is inherently unfair or if some benefit is denied without providing an individual the opportunity to present his case, then due process is violated.

In Vlandis v. Kline , 412 U.S. 441 (1973), the Supreme Court invalidated a Connecticut law which provided essentially that out-of-state students would remain classified as nonresidents. As interpreted by the Supreme Court, these irrebuttable presumptions or “lock-ins” of status are not permissible. In Vlandis , the Court stated “... it is forbidden by Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when the presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination.” The Court seems to be suggesting that the “reasonable alternative” would be to provide a rebuttable presumption and a viable due process procedure culminating in a hearing.

#### F. Analysis of allowable criteria for determining eligibility for reduced tuition charges

The constitutionality of a one-year residency requirement for new residents before becoming eligible for reduced tuition charges seems well accepted. In Vlandis , the Court stated that they “fully recognize[d] that a State has a legitimate interest in protecting and preserving . . . the right of its own bona fide residents to attend on a preferential tuition basis.” Id. , at 452-453. A State may, the Court continued, “establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, can not take advantage of the in-state rates.” Id. , at 453-454.

In the recent case of Martinez v. Bynum , 103 S. Ct. 1838 (1983), the Court approved a residency requirement for tuition-free admission to Texas public schools which denied free attendance to minors not living with their parents if the minor’s residence in the school district was “for the primary purpose of attending public free schools.” Id. , at 1840. The Court stated that, “a bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents.” Id. , at 1842. The Court continued to define residence as “generally requir[ing] both physical presence and an intention to remain.” Id. , at 1844.

Further, a mechanism for nonresidents to establish residency appears to be mandatory. In other words, procedural due process must be carefully provided. It appeared that the most serious potential constitutional problems with the original Virginia law (§ 23-7) were possible violations of due process. Although the Virginia law did not contain an irrebuttable presumption of nonresident status, there was the concern that some of the institutions may have been administering the law as though such a presumption was provided. Further, in spite of the provision of an appeals process on most campuses, there was no uniformity in these procedures and, in some instances, the requirements for these procedures may not have been well understood.

In conclusion, reasonable criteria for establishing residency have been recognized as valid and within the tests for constitutionality. However, a fine line must be drawn to avoid overstepping the parameters of permissibility.

### III. DOMICILIARY RESIDENT OR NONRESIDENT: WHAT PRICE THE DIFFERENCE?

Black’s Law Dictionary defines “domicile” as: “That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.” The definition continues by stating: “A person may have more than one residence but only one domicile. The legal domicile of a person is important since it, rather than the actual residence, often controls the jurisdiction of the taxing authorities and determines where a person may exercise the privilege of voting and other legal rights and privileges. The established, fixed, permanent, or ordinary dwelling place or place of residence of a person, as distinguished from his temporary and transient, though actual, place of residence. It is his legal residence, as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily call him.” Black’s Law Dictionary , West Publishing Company, Fifth Edition, 1979, p. 435.



“Residence,” on the other hand, is: “Bodily presence and the intention of remaining in a place, . . . made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention.” *Id.*, at 1176.

These two terms are distinguished as “residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one’s domicile.” *Id.*, at 1176, 1177.

Although these two terms are not synonymous in the common law, they are frequently used as such. The lines between these two concepts have been smudged by the courts over the years to the point where the implications of the terms are almost synonymous in terms of the benefits conveyed. For example, in *Toll v. Moreno*, the fact that the G-4 visa does not confer permanent residence on its holder or imply the intention of the holder to remain in this country permanently and become a domicile or citizen was not important. The only facts that appeared to be significant to the Court were that the federal law, which supersedes state law, allows G-4 visa holders to establish residence in a state and the law does not require these aliens to pay state taxes. Therefore, the state could not require more of these individuals.

For our purposes, the term “domiciliary resident” was considered to mean a person having his present, fixed residence in Virginia, where he intends to remain for an indefinite period and to which he intends to return following absence. His residence in Virginia under this concept must represent his legal residence or domiciliary residence.

#### IV. VIRGINIA’S LAW PRIOR TO JULY 1, 1984

The Virginia Reduced Tuition Charges Statute, § 23-7, used the commonly accepted definition of residence, which “requires both physical presence and an intention to remain.” *Martinez v. Bynum*, 103 S.Ct. 1838, 1844 (1983). The Supreme Court has referred to this definition as “This classic two-part definition . . . recognized as a minimum standard in a wide range of contexts time and time again.” *Id.*, at 1844. However, in this Virginia law, certain exceptions or extensions of this concept were provided, notably for military dependents and for dependent students under the amendments which became effective on July 1, 1983 pursuant to the passage of House Bill 159.

Section 23-7 was composed of eight subsections or paragraphs, lettered A through G. Paragraph A concerned the domicile of an unemancipated minor or, under the 1983 amendment, “dependent student as defined for income tax purposes.” This paragraph provided that the domicile of an unemancipated minor or dependent student could be the domicile of either parent, the parent having custody or the legal guardian of an orphan unless the guardianship was created primarily for the purpose of conferring Virginia domicile. Some administrators pointed out that inclusion of the “dependent student” in this paragraph could mean that dependent students who had never resided in Virginia could qualify for reduced tuition charges if their parents resided here. Conversely, some dependent students who actually resided in Virginia may have been disqualified under this provision because their parents resided in another state.

Paragraph B stated that entitlement to reduced tuition charges required an individual to be domiciled in Virginia for at least one year “immediately prior to the commencement of the term, semester or quarter for which any such reduced tuition charge is sought.” The second amendment included in House Bill 159 concluded this paragraph by stating “For purposes of this section, “domiciled” refers to maintaining legal residence in Virginia for a period of at least one year and not necessarily to physical presence in the Commonwealth.” This sentence was intended to clarify the fact that one may maintain legal residence in the State without actually being present. In most cases, it would not have been possible for a new resident to establish legal residence in Virginia without being physically present for at least one year. However, the institutions experienced difficulties with this provision. Some institutions felt that this provision allowed students to claim a relative’s home as their address, register to vote or perform some other act indicative of residence while actually living out of state and still claim residency in Virginia.

Paragraph C addressed the circumstances in which a nonresident student could become reclassified as a resident. In order to be reclassified, the student must have been, for one year prior to entitlement, eighteen or older or, if under eighteen, emancipated, and have abandoned the former domicile and have been physically present in Virginia with the “unqualified intention of remaining . . . for the period immediately after leaving such institution and indefinitely thereafter.”

Paragraph D provided that marriage did not reclassify the residency of a person who was eligible to receive reduced tuition charges until the Virginia domicile was abandoned. This paragraph appeared to be an effort to eliminate the old common law presumption of the wife assuming the husband’s domicile immediately following the marriage ceremony.

Paragraph E addressed the limited exception for the military dependents. A non-military student whose spouse or parent was in the military was entitled to reduced tuition charges if one parent or spouse had resided in Virginia, been employed full time and paid personal income taxes to Virginia for at least one year prior to the commencement of the school year. This paragraph was confusing to some of the administrators, however, because of its wording: “A student who is not a member of the armed forces and who is not otherwise eligible for reduced tuition charges and whose spouse or parent is a member of the armed forces stationed in this Commonwealth pursuant to military orders shall be entitled to reduced tuition charges if such spouse or either parent , for a period of at least one year immediately prior to and at the time of the commencement of the term, semester, or quarter for which reduced tuition charges are sought, has resided in Virginia, been employed full time and paid personal income taxes to Virginia.”

The institutions questioned whether this meant that the spouse/student was entitled to reduced tuition charges if he or she had been employed full time in Virginia for a year and met the other criteria or whether “a student” could mean the spouse of a military person. Some institutions also questioned the meaning of “full time.” They pointed out that some part time jobs pay much more than many full time jobs, that the number of hours required to establish “full time” were not designated and that many military people complained that if they had known of this law they would have paid Virginia income taxes.

Paragraph F established the requirement that entitlement to in-state tuition must have been “by convincing evidence” and that “the burden of establishing entitlement” was on the applicant. No indication of the meaning of “convincing evidence” was provided.

Paragraph G directed the Council of Higher Education and the Attorney General’s Office to “seek to ensure that all state institutions of higher education will apply uniform criteria in determining eligibility for reduced tuition charges.”

The administrators of the institutions were very concerned about the need to clarify the criteria for eligibility for reduced tuition charges. The new emphasis on residency in the calculation of general fund appropriations made it imperative that Virginia provide its public institutions with a well-understood and understandable method for determining eligibility for reduced tuition charges. This policy shift had made the administrators aware of the need for careful planning to preserve the institutions’ competitive positions and maintain the quality of nationally recognized programs. Simultaneously, the legislature had become aware of the need for accurate data on the student mix of the institutions in order to assure that general fund appropriations were made consistent with current state policy.

#### V. DETERMINING RESIDENCY: COMMONLY ENCOUNTERED SITUATIONS AND MISCONCEPTIONS

The circumstances encountered by the administrators in determining eligibility for reduced tuition charges are so varied that it would be impossible to describe all of them. Further, each situation can have many variations in terms of the evidence used to substantiate or refute Virginia domicile. Some of the most commonly encountered situations in determining residency are:

1. New residents, who immediately apply for admission to an institution as in-state students. These individuals have frequently moved into Virginia for the express purpose of establishing

domicile in order to receive the benefits of reduced tuition charges.

2. Military dependents who feel that residing in Virginia for several years should entitle them to reduced tuition charges regardless of their home of record;

3. Military dependents who have elected to remain in Virginia after their military parent has been transferred to another state or country. These individuals may be minors who have been living with a relative or friend (or even a legal guardian) while they finish high school.

4. Military dependents who have attempted to establish Virginia as their domicile while their parents maintain domicile in another state in order to reap some tax benefits;

5. Former Virginia residents who return to the State and feel that they should automatically be entitled to the benefits of their former residency;

6. Students who have been classified as nonresidents, but have taken steps to provide evidence of Virginia residency and claim an intention to remain indefinitely even though they may have been physically present in Virginia for educational purposes only;

7. Foreign students who hold visas allowing them to establish residency in a state or claim to hold such visas;

8. Students whose parents own property in Virginia but do not maintain domicile in Virginia;

9. Out-of-state students whose parents work in Virginia and pay substantial income taxes in Virginia;

10. Out-of-state students who work for a Virginia company which is paying for the retraining or continuing education. This situation is common in the Southeastern and Southwestern parts of the State; and

11. Students who are refugees domiciled in another state and who request immediate Virginia status upon moving here.

Some of the problems associated with determining residence were the result of inconsistency in administering the state law. Some institutions were very strictly applying the element of intent to deny eligibility for in-state tuition regardless of the subclass of student with which they were dealing.

Some institutions were advising their faculty to liberally assist out-of-state students in acquiring residency. The inconsistency in approach seemed inappropriate. The very strict institutions sometimes placed themselves in a vulnerable position by overinterpreting the law. For example, all of the institutions appeared to be under the impression that the law provided that "one cannot be a domiciliary of Virginia if one resides in Virginia solely for the purpose of securing an education." "Higher Education in the States," Vol. 6, No. 3 (Special Issue 1), 1978, p. 138. This provision was never specifically set out in the Virginia law. One could deduce from the statement in paragraph C of § 23-7 requiring an "unqualified intention of remaining in Virginia for the period immediately after leaving such institution and indefinitely thereafter. . . ." that presence in Virginia solely for education purposes would not have qualified an individual for residency status. This paragraph only applied to a person enrolled as an out-of-state student who wished to change his status. However, most institutional representatives appeared to believe that this criterion was in law and applied to all new residents or nonresident students seeking reclassification.

## VI. THE CHANGING TUITION AND FEE POLICY

Because of inadequate general funds in 1982, the tuition and fee policy, established by the General Assembly in 1976 and known as the 70/30 plan, was revised. Under the 70/30 plan, the State had provided 70% of the cost of education to each institution and the institution had been required to raise the remaining 30% through tuition and fees. The 70/30 plan worked to the advantage of those institutions with large numbers of out-of-state and graduate students. The cushion provided by the larger fees charged to the out-of-state students allowed these institutions

more flexibility in setting rates.

The 1982 revision of the tuition and fee policy was designed to reflect each institution's mix of in-state, out-of-state, graduate and undergraduate students. This plan provided for a calculation of each institution's share of the cost using ratios of resident and nonresident students to the total student body weighted according to the level of study, i.e. graduate and undergraduate. This revision reflected the feeling of some legislators that in-state students should not be required to pay as great a proportion of the cost of their education as out-of-state students. The emphasis was shifted from a flat percentage to be provided through general funds for support of public institutions to a calculation of a specific percentage of the cost to be borne by various classes of students in each institution. The rationale for providing in-state students with lower educational costs was to ensure access to higher education for Virginia's middle and low income students.

The Council of Higher Education prepared another revision of the tuition and fee policy for the 1984-1986 biennium budget, which might be called the 75/25 plan. Basically, this proposal as applied to the four-year institutions requires the resident students and nonresident graduate students who are significantly employed by an institution to provide 25% of the actual cost of their education and all other nonresident students to contribute 75% of the actual cost. The actual cost is calculated according to the level of study (graduate or undergraduate). As can readily be understood, Virginia's tuition and fee policy has changed substantially in the past two years and will continue to evolve. The key to this policy will probably continue to be residency; therefore, the possible general fund implications of determinations of domicile created a need to examine the interaction between Virginia's tuition and fee policy and its policy for determination of eligibility for reduced tuition charges.

## VII. OBJECTIVES AND DATA COLLECTION FOR THE STUDY

The four objectives for this study were as follows:

1. To clarify the Commonwealth's policy on eligibility for reduced tuition charges by revising § 23-7;
2. To establish a uniform due process procedure for determining eligibility for reduced tuition charges;
3. To cooperate with the Council of Higher Education in revising the "Resident Tuition Guidelines"; and
4. To examine the interaction of the Commonwealth's policy on eligibility for reduced tuition charges and the State Council of Higher Education's proposed tuition and fee policy.

In order to accomplish these objectives, it was proposed that the Subcommittee provide staff the authority to collect and examine the following data:

- a. historical data on the numbers of in-state and out-of-state students in each senior institution;
- b. 1982-83 data on the appeals of residency status in the senior institutions;
- c. survey data characterizing the difficulties experienced by the institutions in administering the reduced tuition policy as established in § 23-7;
- d. survey data on the due process procedures used by each institution;
- e. historical data on tuition and fees as a percent of E & G appropriations;

In addition, the following materials were proposed to be developed:

1. A review of procedures of selected other states for determining eligibility for in-state tuition or reduced tuition charges; and
2. An analysis of these procedures to determine the elements which might be appropriate for

use in Virginia.

### VIII. THE WORK OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee Studying Reduced Tuition Charges met six times during the 1983 interim in June, July, August, September, October and December. A staff briefing paper was prepared for the initial meeting and reviewed for the members of the Joint Subcommittee in June. The members of the Committee expressed interest in certain of the issues raised by the briefing paper and the next several meetings were planned to provide them with reviews of these problems. Among these issues were: the prospectives of the various institutions on the difficulties in determining eligibility for in-state tuition; the eligibility of the student from the military family and the view of the institutions on this problem; problems unique to the various areas of the State; an indepth review of the ratios of in-state and out-of-state students in the various state institutions and information about the policies, regulations and laws of other states.

Representatives from institutions located in the four corners of the State were invited to testify on the problems which they felt were unique to their institutions or their part of the State or inherent in the present law. These concerns were focused on:

The southwestern area community colleges (represented by Danville Community College):

1. Loss of out-of-state students because of the large increases in out-of-state tuition caused by the changes in the appropriations policy;
2. Inequity of requiring North Carolina students, who pay or whose parents pay Virginia income tax, to pay out-of-state tuition (Virginia does not have a tax reciprocity agreement with North Carolina; therefore, people, living along the border in North Carolina and working in Virginia, pay Virginia income tax);
3. Loss of continuing education students because Virginia employers can no longer afford the tuition for out-of-state students; and
4. Need for authority to provide reduced tuition rates for the North Carolina student either through some reciprocity agreement or agreements with employers to provide continuing education at lower rates.

The northern area community colleges and senior institutions (represented by Northern Virginia Community College and George Mason University):

1. Difficulties in determining the status of foreign-born students who do not hold immigration visas because of the Toll v. Moreno decision;
2. Difficulties in determining the status of the student from a military family especially the spouse; and
3. Difficulties in applying the vague concepts in the present law especially the "unqualified intention to remain in Virginia indefinitely."

The southeastern or Tidewater colleges and universities (represented by Old Dominion University):

1. Difficulties in determining the status of the military student;
2. Difficulties in applying the present law because of its lack of consistency and detail; and
3. Need for authority to enter into agreements with employers, including the military.

The central Virginia area colleges and universities (represented by Virginia Commonwealth University and the University of Virginia):

1. Difficulties with the so-called "one year wonder" - the student who moves into the State for a year and claims to intend to remain indefinitely;

2. Difficulties with the vagueness of the present law; and

3. Difficulties in determining the status of the military student, especially one who has resided in Virginia for an extended period of time and graduated from a Virginia high school.

The Joint Subcommittee requested staff to develop an issues paper for the August meeting which included a discussion of the various issues. This paper was presented and the Subcommittee requested staff to develop it further to include alternative solutions and drafting of legislation to meet these alternatives and eliminate several issues which the Committee did not consider germane.

The Issues and Alternatives paper was presented for the first time at the September meeting and commented upon by the various representatives of the institutions. This paper was revised for the following meeting to include the comments of the institutional representatives and the members of the Joint Subcommittee. Several institutional representatives appeared before the Subcommittee at the October meeting to present their preferences.

Prior to the December meeting copies of the Issues and Alternatives paper were distributed again to all of the Institutional representatives with the request that they indicate the alternatives of their choice. The responses to this survey were tabulated and a draft bill was developed for the December meeting and presented to the Subcommittee. The Subcommittee reviewed this draft, paragraph by paragraph, and made changes in the bill after receiving comments from representatives of the institutions and the Office of the Attorney General. The draft bill was then revised. The material collected by the Council of Higher Education in a survey of other states' laws was used extensively in developing details of this draft. The revised version of the bill was reviewed and again commented on by the Attorney General's Office.

The chairperson of the Joint Subcommittee, Delegate Vivian L. Watts, and the staff attorney, Norma E. Szakal, met with Mr. Paul J. Forch of the Attorney General's Office and reviewed the draft bill with him in detail. Several changes resulted following a lengthy discussion with Mr. Forch. These changes were then incorporated into the draft bill.

In early January, the chairperson and the staff attorney met with a task force established by the State Council of Higher Education for Virginia and reviewed the bill in detail. Following intense and extensive discussion, lasting more than four hours, agreement was reached on the changes needed. The revision which followed this discussion was the final draft.

Following introduction of the bill, which became House Bill No. 214, a few additional changes were made at the suggestion of Mr. Forch (see bracketed language in engrossed bill in Appendix B). The only other change made in the bill after introduction was suggested by the University of Virginia representatives and presented by the chief patron (Delegate Watts) before the Senate Education and Health Committee. This amendment consisted of a definition for "substantial financial support" as written by the Joint Subcommittee's staff attorney.

The Joint Subcommittee's bill, House Bill No. 214, was approved by both chambers of the Virginia General Assembly in March, 1984. A computer print-out of the actions taken are included and copies of the bill as introduced, the bill as engrossed in the House and the computer print-out of the bill as it will be enrolled (See Appendix B).

## IX. ANALYSIS OF THE APPROVED BILL AND LEGISLATIVE INTENT

The Joint Subcommittee felt strongly that the structure of the proposed legislation must be logical and clear. The Subcommittee also believed that the contents of the statute must in all ways relate to the purpose and rationale for the revised appropriations policy for higher education (tuition and fee policy) which pivots on the mix of students in each institution. The parts of the bill were intended to be consistent and interrelated. For these reasons, the format of the bill was designed as follows: (1) definitions; (2) general rules of construction; (3) specific rules of construction; (4) student responsibility; (5) military exception; (6) exception for nondomicile employed full-time in Virginia and paying Virginia income taxes; (7) special arrangement contracts between public institutions and Virginia employees or authorities controlling federal installations or agencies located in Virginia; (8) due process requirements and; (9) uniform guidelines and a required domiciliary status form.

The Subcommittee decided that definitions were an essential part of the statute in order to promote consistency and uniformity in administration. Therefore, definitions were provided in the first subsection of the statute and were developed for the following terms: "date of the alleged entitlement," "dependent student," "domicile," "domiciliary intent," "emancipated minor," "full-time employment," "independent student," "special arrangement contract," "substantial financial support," "unemancipated minor," and "Virginia employer" (see subsection A of the approved bill in Appendix B).

The second subsection of the statute states the general rules for determining eligibility for in-state status. The independent student must "establish by clear and convincing evidence" that he has been domiciled in Virginia for at least one year prior to the date of the alleged entitlement.

The dependent student (or unemancipated minor) is treated in the same manner and is required to "establish by clear and convincing evidence" that the person through whom he claims eligibility was domiciled in Virginia for at least one year prior to the date of the alleged entitlement.

Next the factors used for determining domiciliary intent are set out. These "applicable factors" include many specific relationships with the Commonwealth and other states as well as "any other social or economic relationships."

To make it quite clear that merely residing in the state for educational purposes does not confer domicile, the Subcommittee included two additional statements:

"Domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth. Mere physical presence or residence primarily for educational purposes shall not confer domiciliary status."

Subsection B ends with a statement intended to underscore the Subcommittee's intent that the one-year period be consistently calculated: "Those factors presented in support of entitlement to in-state tuition shall have existed for the one-year period prior to the date of the alleged entitlement" (See subsection B of the approved bill in Appendix B).

Subsection C enumerates specific rules of construction applying to identifiable groups of individuals. For example, the domicile of any married person will be determined under this statute in the same way as the domicile of an unmarried person. The emancipated minor is equated with the independent student and is required to establish domicile in the same way as the independent student. Aliens holding immigration visas or classified as political refugees are required to establish eligibility just as any other student would be.

During the course of the study, the Toll v. Moreno decision generated much discussion and some consternation. It was the feeling of the Joint Subcommittee that state benefits should be earned and should accrue primarily to those individuals who are supporting the state financially or socially. According to eligibility for in-state tuition to nontaxpaying aliens having no intention of becoming United States citizens was anathema to this philosophy. However, the Joint Subcommittee did not wish to generate a statute which would have a possible inherent defect. Therefore, "absent congressional intent to the contrary," persons holding student or temporary visas are designated as ineligible for Virginia domicile and in-state tuition charges because they cannot conform to the requisite intent.

The dependent student, in the opinion of the Joint Subcommittee, generally should assume the domicile of his supporting parent or legal guardian. However, this presumption is not universally true; therefore, the statute sets out a rebuttable presumption that the dependent student has the domicile of the claiming or supporting parent or legal guardian. It should be understood that this rule of construction interacts with the definition of dependent student - "one...listed on the federal or state income tax return of his parents or legal guardian or ...receiv[ing] substantial financial support" from them.

Since the domicile of the dependent student, a category of student which by its very nature includes the unemancipated minor, is rebuttably presumed to be that of the claiming or

supporting parent (or legal guardian in the case of the unemancipated minor), the Joint Subcommittee felt that it was only fair to provide such a student with two options, if one parent lives in Virginia. Therefore, the unemancipated minor or dependent student (regardless of age or actual domicile) may choose to assume the domicile of either parent living in Virginia.

The prevalence of divorce and separation, coupled with the mobility of today's society, has created many situations in which the supporting parent or the parent claiming a child on his tax returns may be domiciled in one state and the child and his custodial parent may be domiciled in another. The original Virginia statute (§ 23-7) required the unemancipated minor of divorced parents to assume the domicile of the custodial parent even though the other parent, who pays state income taxes and may claim the child, may be domiciled in Virginia. The inequities caused by these circumstances are remedied by the approved bill in the view of the Joint Subcommittee. The Subcommittee wanted to provide a safeguard against the possibility of individuals' appointing legal guardians for unemancipated minors in order to provide them with in-state status. Therefore, if the parents are deceased or their location unknown, the domicile of the unemancipated minor under the control of a legal guardian is noted as being the same as that of the legal guardian unless "there are circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on the unemancipated minor" (see subsection C of the approved bill in Appendix B).

Subsection D of the approved statute sets out the student's responsibility to apply for change in status when becoming eligible. Any change in status from out-of-state to in-state is noted as being prospective from the date of receipt of the application. This subsection also places the student on notice that if he provides erroneous information to obtain in-state tuition rates, he will be liable for paying the out-of-state rate on discovery and may be dismissed from the institution. Disputes about the accuracy of the information supplied are appealable through the due process procedure required in a lower subsection (see subsection D of the approved statute in Appendix B).

Subsection E sets out the narrow exception for military dependents. The first statement in this section notes that a nonmilitary dependent of a member of the armed forces is capable of establishing domicile in the same manner as any other person. This fact was set out first to emphasize its importance, for many controversies over eligibility have arisen because it was not clearly understood that adults may establish domicile independently of their parents or spouses.

The two exceptions are then specifically set forth. The student who is a child of military personnel may establish eligibility through a nonmilitary parent living in Virginia, working full-time in Virginia and paying Virginia income taxes and claiming the student as a dependent for Virginia and federal income tax purposes for at least one year prior to the date of the alleged entitlement. This eligibility can be maintained for as long as these conditions continue to be met. This subsection clarifies the eligibility of the nonmilitary spouse if these conditions are met, but does not broaden the conditions of eligibility (see subsection E of the approved statute in Appendix B).

Subsection F of the approved bill provides an exception for individuals who live outside Virginia, but work full time in Virginia and pay Virginia income taxes on all such income. This provision does not effect the residents of states with which Virginia has tax reciprocity agreements. Under tax reciprocity agreements, individuals are obligated to pay income taxes to the state where they reside, not to the state where they are employed.

During the course of the study, testimony was heard concerning the unfairness of charging out-of-state rates to people who live in the border states, work in Virginia full time and pay Virginia income taxes on all their income. Although some residents of other states are involved, most of the affected people live in North Carolina (because Virginia does not have a tax reciprocity agreement with North Carolina) and in Tennessee (because Tennessee does not have a state income tax). The affected individuals are caught in the unique situation in which they are contributing to the state's fiscal well-being, but have not previously been eligible for in-state tuition, because they are not domiciles of Virginia. The Joint Subcommittee felt this situation was inequitable and, in keeping with their belief that those who contribute to the Commonwealth should be accorded eligibility for in-state status, agreed to this narrow exception. It should be understood that this exception parallels the requirements for the military dependent exception when such person is not a domicile of Virginia.



Subsection G provides the public institutions with the flexibility to enter into agreements with Virginia employers or authorities controlling federal installations or agencies located in Virginia. These contracts will only be applicable if the employers or federal authorities are paying for the education of out-of-state students.

The institutions may contract with Virginia employers to provide group instruction in the institution or on the employers' premises or on a student-by-student basis for particular employment-related programs. The Joint Subcommittee did not feel that this breadth of flexibility was appropriate, however, for contracting with federal authorities because of the fear that the exception for nondomiciled military dependents might be circumvented or negated and because federal authorities do not pay state taxes as do other Virginia employers. Therefore, contracts with federal authorities must be to provide group instruction and the instruction may only be conducted in facilities provided by the federal authorities.

Special arrangement contracts are valid for one year and the rates provided must be at least equal to in-state tuition. The terms of these contracts are valid between the contracting parties only and must be for employment-related instruction, because the employer or federal authority must pay the tuition charges for the student. The Office of the Attorney General must review these contracts for legal sufficiency before they are signed. Each institution is responsible for registering these contracts with the State Council of Higher Education "to assure accurate tabulation of the domiciles of the students." This provision was included in the statute to ensure that these students would not be factored as in-state students in the computation of institutional student mix for purposes of state appropriations. Although not wishing to appear pejorative, the Joint Subcommittee believed that it is necessary to protect the integrity of these computations against the possibility of data shifts as a result of special arrangement contracts.

Subsection H of the approved statute mandates that each institution establish a due process procedure for handling appeals of determinations of eligibility for in-state tuition. During the study, it was discovered that some of the institutions did not have any appeals process for the determinations of domiciliary status. Further, in some institutions having due process procedures, some or all of the people making the initial determination or an appeal determination were the same. Both of these situations appeared to the Subcommittee to be at least inappropriate, if not actually violative of due process. Therefore, the Joint Subcommittee set out in the proposed statute precise requirements for the appeals process and stipulated that no one who makes one level of determination is eligible to make or participate in another level of determination. After the initial determination is made, the student must have the right to appeal to an intermediate level and then, if still aggrieved, to a final administrative level. The decision at the final level must be in writing and transmitted to the student. The Joint Subcommittee felt that one level of appeal should be conducted by an odd-numbered committee in order to provide the student with the greatest degree of objectivity.

The institutions are allowed the flexibility of writing specific procedures and setting time lines "to provide for orderly and timely resolutions of all disputes." The Joint Subcommittee did not wish to dictate to the institutions an exact form for these procedures or precise time limitations because the size and resources of the institutions vary so widely. These procedures are exempt from the Administrative Process Act for this reason. The Subcommittee did, however, wish to make it clear that "orderly and timely resolutions" meant decisions made within a reasonable time.

Although there have been a number of court cases related to determinations of in-state status, the statute has previously been silent on the matter and manner of court review. The approved bill clarifies the right to court review in the circuit court for the jurisdiction of the institution's location within thirty days of receipt of a final administrative decision. The Joint Subcommittee wanted to make absolutely certain that the statute set out this court appeal as a review of the record to determine if the decision was supported by substantial evidence and not arbitrary, capricious "or otherwise contrary to law." It was the feeling of the Subcommittee that de novo review of these administrative decisions was undesirable and inappropriate.

Subsection I of the approved bill incorporates and clarifies the present requirement for "guidelines." Therefore, the State Council of Higher Education is charged with issuing and revising the guidelines with the help of a ten member advisory committee composed of representatives of the institutions. These guidelines must include a domiciliary status form to be

used by all institutions. The Joint Subcommittee became convinced that the guidelines should not be subject to the Administrative Process Act because they constitute a document designed to assist the institutional personnel in implementation of the statute and are not intended to represent regulation of the public.

Before the guidelines are issued, the Council must consult with the Office of the Attorney General and provide opportunity for the public to comment. The Joint Subcommittee believes that the Office of the Attorney General must review these guidelines to assure their legal accuracy. The Subcommittee also felt that, even though the guidelines were for the use of the institutions, the public should be apprised of their existence and allowed an opportunity for input.

The first set of the guidelines must be published by September 1, 1984. The Joint Subcommittee put this deadline in the statute because they believed that the law must be ready for implementation when it becomes effective. Some of the members of the Subcommittee had had the experience of expecting a law to be implemented following its effective date and finding that the agency or agencies involved did not write the regulations or procedures necessary to implement the law until many months after its effective date. This situation did not appear appropriate or legally correct to the Joint Subcommittee.

The Council of Higher Education appointed the advisory committee to work on the guidelines and the domiciliary status form in January - well before the bill was even approved. This group has been working assiduously and will have the guidelines, the domiciliary status form and a brochure ready for use by the institutions by June 1, 1984 (See Appendix C for drafts of these documents). A training program is also being developed along with a long form for use by the institutions for appeals of determinations.

#### X. SUMMARY

This study has benefitted from the close cooperation between the Joint Subcommittee, its staff, the staff of the Council of Higher Education and the staffs of the public institutions of Higher Education in Virginia. The Joint Subcommittee hopes and believes that the resulting statute will provide the institutions of higher education and the legislature with relief from the controversy surrounding determinations of in-state status. The Joint Subcommittee also feels certain that the criteria of the statute will help stabilize the data required for calculating the appropriations for the institutions as a result of the recent changes in the tuition and fee policy. It was the intent of the Subcommittee to tighten the criteria for determining in-state status by providing more precise criteria, which emphasize the traditional concept of domiciliary status but provide equitable solutions for persons contributing to the fiscal integrity of the Commonwealth.

Respectfully submitted,

Vivian E. Watts, Chairman  
Hunter B. Andrews, Vice-Chairman  
Adelard L. Brault  
J. Paul Councill, Jr.  
Alan A. Diamonstein  
L. Cleaves Manning  
Joan H. Munford  
Edward E. Willey

APPENDIX A

House Joint Resolution No. 60

Tests For Equal Protection

Virginia's Law Prior to July 1, 1984 - §23-7

Issues and Alternative Paper

HOUSE JOINT RESOLUTION NO. 60

*Requesting the House Committees on Education, Appropriations and Finance and the Senate Committees on Education and Health and Finance to establish a joint subcommittee to study the issue of determination of eligibility for reduced tuition charges in the Commonwealth's institutions of higher education.*

Agreed to by the House of Delegates, February 25, 1983

Agreed to by the Senate, February 23, 1983

WHEREAS, § 23-7 of the Code of Virginia governs eligibility for in-state tuition, referred to in this statute as "reduced tuition charges"; and

WHEREAS, the Council of Higher Education has developed a set of guidelines for the determination of in-state tuition, which are accurate, but difficult to interpret for the nonlawyer; and

WHEREAS, situations have arisen in the Commonwealth's institutions of higher education which indicate a lack of uniformity in the implementation of § 23-7; and

WHEREAS, a review of these situations leads to the conclusion that the law needs to be clarified, possibly without changing the original intent, and that the guidelines of the Council are in need of revision; and

WHEREAS, the institutions of higher education in the Commonwealth have recognized a need for attention to this issue because of the many difficulties encountered in following the Council's guidelines and interpreting the law; and

WHEREAS, it is the policy of the Commonwealth to provide for a greater percentage of the costs of education for Virginia's citizens than for the education of other states' citizens; and

WHEREAS, in this fiscal climate, such a policy should be preserved and enhanced; and

WHEREAS, however, the effects of this policy as set forth in the 1982 Appropriations Act and in the proposals of the Council of Higher Education for the 1983 Appropriations Bill could encourage institutions to allow in-state tuition for students who are not legitimately so and require expediency in resolving these issues; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the House Committees on Education, Appropriations and Finance and the Senate Committees on Education and Health and Finance are hereby requested to establish a joint subcommittee to study the issues of determination of eligibility for reduced tuition charges in the Commonwealth's institutions of higher education. The joint subcommittee shall consist of eight members, two to be appointed by the Chairman of the House Committee on Education from the membership thereof, two to be appointed by the Chairman of the House Committee on Appropriations from the membership thereof, one to be appointed by the Chairman of the House Committee on Finance from the membership thereof, two to be appointed from the membership of the Senate Committee on Education and Health and one to be appointed from the membership of the Senate Committee on Finance by the Senate Committee on Privileges and Elections.

The joint subcommittee shall consider the issue of determination of in-state tuition with particular emphasis on:

1. The revision of § 23-7, if necessary, to clarify its intention, but not necessarily to change it;

2. The fiscal impact on certain state institutions of the Council's proposed percentage of cost plan; and

3. The possibilities of abuse of the law, if these proposals are adopted.

The joint subcommittee shall coordinate its work with the Task Force on Domiciliary Residency, which was established by the Council of Higher Education, and shall cooperate with the Council by recommending revisions to the "Resident Tuition Guidelines." The joint subcommittee shall receive testimony from all relevant constituencies including, but not limited to, students, parents, admissions' officers and institutional officials. The joint subcommittee shall also examine the laws and regulations of other states in the course of its work.

The joint subcommittee shall complete its work in time to submit its recommendations to the 1984 Session of the General Assembly.

The cost of this study shall not exceed \$5,000.

TESTS FOR EQUAL PROTECTION

STANDARD FOR DETERMINING "ADEQUATE COUNTERVAILING JUSTIFICATION" MIGHT BE DIAGRAMMED AS FOLLOWS:

FIRST TEST

Law intentionally provides for different treatment of various classes of people

SECOND TEST (depending on facts)

Does the state have an "adequate" countervailing justification for treating various classes of people differently?

19

	<u>WEIGHT OF STANDARD</u>	<u>CRITERIA FOR STANDARD</u>
1. Race or national origin (suspect class) or fundamental right involved.	strongest standard	1. <u>Strict</u> scrutiny requiring a <u>compelling</u> state interest
2. Sex or citizenship discrimination involved.	middle level standard	2. <u>Reasonable</u> relationship to a <u>substantial</u> state goal
3. Other classes such as residents/nonresidents involved.	less stringent standard	3. Rational basis or " <u>fair</u> and <u>substantial</u> relation to a <u>legitimate</u> state goal."

§ 23-7. Who entitled to reduced tuition charges. A. For the purposes of this section, the domicile of an unemancipated minor or dependent student as defined for income tax purposes may be the domicile of either parent; provided, however, that if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody. If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.

B. Except as provided in § 23-7.2, no person in attendance at a state institution of higher education shall be entitled to reduced tuition charges unless such person is and has been domiciled in Virginia for a period of at least one year immediately prior to the commencement of the term, semester or quarter for which any such reduced tuition charge is sought. For purposes of this section, "domiciled" refers to maintaining legal residence in Virginia for a period of at least one year and not necessarily to physical presence in the Commonwealth.

C. A person who enrolls in any such institution while not domiciled in Virginia does not become entitled to reduced tuition charges by mere presence or residence in Virginia. In order to become so entitled, any such person must establish that, one year before the date of alleged entitlement, he or she was at least eighteen years of age or, if under the age of eighteen, was an emancipated minor, and had abandoned his or her old domicile and was present in Virginia with the unqualified intention of remaining in Virginia for the period immediately after leaving such institution and indefinitely thereafter.

D. A person who is classified or classifiable at the date of his or her marriage as eligible to receive the privileges herein described may receive or continue to receive such privileges until he or she abandons his or her Virginia domicile other than through any presumption of law attaching to the ceremony of marriage.

E. A student who is not a member of the armed forces and who is not otherwise eligible for reduced tuition charges and whose spouse or parent is a member of the armed forces stationed in this Commonwealth pursuant to military orders shall be entitled to reduced tuition charges if such spouse or either parent, for a period of at least one year immediately prior to and at the time of the commencement of the term, semester, or quarter for which reduced tuition charges are sought, has resided in Virginia, been employed full time and paid personal income taxes to Virginia. Such student shall be eligible for reduced tuition through such parent under this section only if he or she is claimed as a dependent for Virginia and federal income tax purposes. Such student shall be entitled to reduced tuition charges so long as such parent or spouse continues to reside in Virginia, to be employed full time and to pay personal income taxes to Virginia.

F. Entitlement to reduced tuition charges must be established by convincing evidence and the burden of establishing entitlement shall be on the person claiming such entitlement.

G. The State Council of Higher Education for Virginia shall, in conjunction with the office of the Attorney General, seek to ensure that all state institutions of higher education will apply uniform criteria in determining eligibility for reduced tuition charges.

*ISSUES AND ALTERNATIVES RELATED TO ELIGIBILITY FOR REDUCED TUITION CHARGES (IN-STATE TUITION)*

ISSUE 1: SHOULD THE CRITERIA FOR ELIGIBILITY FOR REDUCED TUITION CHARGES FOR THE UNEMANCIPATED MINOR BE REVISED? (§ 23-7.A)

The unemancipated minor may assume the domicile of either parent, if the parents are not divorced; the domicile of the custodial parent in the case of divorce; or the domicile of a legal guardian (if there are no parents or their location is unknown) unless such guardianship was "created primarily for the purpose of conferring Virginia domicile." This section was amended pursuant to House Bill No. 159 during the 1983 Session. The amendment allows the dependent student to assume the domicile of either parent. While this new provision has created many problems, which will be discussed later, it has resulted in the resolution of one inequity. Prior to this amendment, a divorced parent, domiciled in Virginia and supporting his minor child who lives in another state, would be required to pay out-of-state tuition for his dependent. This has been difficult for many fathers to understand.

*ALTERNATIVE A - Status Quo.* Presently, the statute allows the unemancipated minor to take the domicile of either parent or, in the case of divorce, the custodial parent. If a minor has a legal guardian, such guardian must have been appointed because the parents are dead or their whereabouts are unknown, and such guardianship must not be for the purpose of conferring Virginia domicile.

*ALTERNATIVE B - § 23-7.* Who entitled to ~~reduced~~ (*resident or in-state*) tuition charges. A. For the purposes of this section, the domicile of an unemancipated minor ~~or dependent student as defined for income tax purposes~~ may be the domicile of either parent ; . ~~provided, however, that if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody.~~ If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.

*ALTERNATIVE C - § 23-7.* Who entitled to ~~reduced~~ (*resident or in-state*) tuition charges. A. For the purposes of this section, the domicile of ~~an a unemancipated minor or who is claimed as a dependent student as defined~~ for income tax purposes may be the domicile of either parent ; . ~~provided, however, that~~ *However*, if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody. If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.

*ALTERNATIVE D - § 23-7.* Who entitled to ~~reduced~~ (*resident or in-state*) tuition charges. A. For the purposes of this section, the domicile of an unemancipated minor or ~~dependent student claimed as a dependent as defined~~ for *federal and Virginia* income tax purposes *the year prior to the alleged entitlement* may be the domicile of either parent ; ~~provided, however, that if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody~~ . If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.

ISSUE 2: SHOULD THE PROVISION ALLOWING THE "DEPENDENT STUDENT AS DEFINED FOR INCOME TAX PURPOSES" TO TAKE THE DOMICILE OF EITHER PARENT REMAIN IN THE LAW? (§23-7.A)

There is no age limitation included among the criteria for defining a dependent student for income tax purposes. Although the public is not generally aware of this amendment, a number of difficult situations have already developed for the institutions. With the present appropriations

calculated on the basis of the institutions' mix of students, the loss of revenue incurred by the reclassification of even fifteen to twenty students can be a matter of concern to an institution.

This new provision has created the situation where an individual thirty years old or older may obtain in-state tuition on the basis of being claimed as a dependent on a parent's tax form even though this person *may never have lived* in Virginia.

*ALTERNATIVE A* - Status Quo. Continue to provide that a "dependent student as defined for income tax purposes" may take the domicile of either parent.

*ALTERNATIVE B* - § 23-7. Who entitled to ~~reduced~~ (*resident or in-state*) tuition charges. A. For the purposes of this section, the domicile of an unemancipated minor ~~or dependent student as defined for income tax purposes~~ may be the domicile of either parent; ~~provided, however, that if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody. If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.~~

*ALTERNATIVE C* - § 23-7. Who entitled to reduced tuition charges. A. For the purposes of this section, the domicile of an unemancipated minor ~~or dependent student as defined for income tax purposes~~ *who has been claimed as a dependent for federal and Virginia State income tax purposes for the tax year prior to the commencement of the term, semester or quarter for which reduced tuition is sought* may be the domicile of either parent ; . ~~provided, however, that if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody. If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.~~

*ALTERNATIVE D* - § 23-7. Who entitled to ~~reduced~~ (*resident or in-state*) tuition charges. A. For the purposes of this section, the domicile of an unemancipated minor ~~or dependent student as defined for income tax purposes~~ may be the domicile of either parent ; . ~~provided, however, that if one parent has custody, the domicile of an unemancipated minor shall be the domicile of the parent having custody. If there is no surviving parent or the whereabouts of the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated minor if unless there are no circumstances indicating that such guardianship was created primarily for the purpose of conferring a Virginia domicile on such unemancipated minor.~~

*The domicile of a student claimed as a dependent for federal or state income tax purposes shall be the domicile of the parent who claims the student as a dependent.*

ISSUE 3: SHOULD THE REQUIREMENT FOR "UNQUALIFIED INTENTION OF REMAINING IN VIRGINIA FOR THE PERIOD IMMEDIATELY AFTER LEAVING SUCH INSTITUTION AND INDEFINITELY THEREAFTER" BE RETAINED AND IF SO, WHAT SHOULD THIS REQUIREMENT BE? (§ 23-7.C)

An "unqualified" intention of remaining would appear to be an almost impossible standard with which to comply in today's society. Most people, if they are honest, will admit that given a better opportunity, they will move to another state. Circumstances change and the concept of domicile as a "true, fixed, and permanent home and principal establishment..." has become outmoded. The intention element of the statute should be a matter of providing evidence in the form of verifiable conduct not a matter of "unqualified" intent.

*ALTERNATIVE A* - Status Quo. Presently, the statute requires an "unqualified intention of remaining in Virginia ... indefinitely thereafter."

*ALTERNATIVE B* - C. A person who enrolls in any such institution while not domiciled in Virginia does not become entitled to reduced tuition charges by mere presence or residence in



~~Virginia.~~ In order to become so entitled to *(resident or in-state) tuition charges*, any such person must establish that, one year before the date of alleged entitlement, he or she was at least eighteen years of age or, if under the age of eighteen, was an emancipated minor, and had abandoned his or her old domicile and was present in Virginia with the ~~unqualified~~ intention of remaining in Virginia for the period immediately after leaving such institution and indefinitely thereafter .

*ALTERNATIVE C - B. Except as provided in § 23-7.2, no A person in attendance at a state institution of higher education shall be become entitled to reduced (resident or in-state) tuition charges unless if such person is and has been domiciled in Virginia for a period of at least one year immediately prior to the commencement of the term, semester or quarter for which any such reduced (resident or in-state) tuition charge is sought with the intention of remaining indefinitely . For purposes of this section, "domiciled" refers to maintaining legal residence in Virginia for a period of at least one year and not necessarily to physical presence in the Commonwealth . Mere physical presence or residence primarily for educational purposes shall not confer domiciliary status.*

*ALTERNATIVE D - C. A person who enrolls in any such institution while not domiciled in Virginia does not become entitled to reduced (resident or in-state) tuition charges by mere presence or residence in Virginia. In order to become so entitled, any such person must establish that, one year before the date of alleged entitlement, he or she was at least eighteen years of age or, if under the age of eighteen, was an emancipated minor, and had abandoned his or her old domicile and was present in Virginia with the unqualified intention of remaining in Virginia for the period immediately after leaving such institution and indefinitely thereafter.*

ISSUE 4: SHOULD THE LAW CONTAIN SOME CRITERIA TO BE USED IN THE DETERMINATION OF DOMICILE OR A LIST OF MINIMAL EVIDENCE OF INTENTION? (§ 23-7.C)

Presently, the law does not provide any guidance to the institutions as to how the "unqualified intention" must be established. The Guidelines prepared by the Attorney General's Office do include a short list of possible evidence. These are: Statement of intent, payment of taxes, long-term lease or permanent residence, employment in Virginia after graduation, membership in Virginia organizations, church, civic ties, college applications, summer employment, automobile registration and operator's license, demeanor. Some of these criteria are more relevant than others.

*ALTERNATIVE A - Status Quo.* Presently, the statute does not contain any criteria for determining domicile.

*ALTERNATIVE B -* In assessing a student's or applicant's intention to remain indefinitely in Virginia, the following criteria may be examined: continuous physical presence, voter registration, place of filing tax returns, driver's license, car registration, employment, property ownership, sources of financial assistance, location of bank accounts and any other social or economic relationships with the Commonwealth.

*ALTERNATIVE C -* In determining the domicile of a student, evidence of satisfaction of the following factors shall be considered evidence of intention to remain indefinitely: (i) maintenance of a year-round residence in Virginia and continuous presence for at least one year prior to the alleged entitlement; (ii) registration to vote in Virginia; (iii) registration of car, if such is owned, in Virginia and acquisition of a Virginia driver's license; and (iv) receipt of financial support from persons or entities who are domiciles of Virginia. None of these criteria shall be determinative alone, but all of these criteria if taken together shall be prima facie proof of Virginia domicile. However, an individual may establish that his domicile is in Virginia by using other factors as proof.

*ALTERNATIVE D -* In determining the domicile of a student, all of the following factors, if applicable, shall be considered: continuous physical presence for at least one year prior to the alleged entitlement (or year-round residency), voter registration, place of filing tax returns, place of paying state income tax, driver's license, motor vehicle registration, employment, property ownership, sources of financial support and location of bank accounts. Other social or economic relationships with the Commonwealth may also be considered. All of these factors shall be

considered in combination, and domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth.

**ISSUE 5: SHOULD THE POINT FROM WHICH THE ONE-YEAR DURATION REQUIREMENT BEGINS TO RUN BE SPECIFIED IN MORE PRECISE LANGUAGE? (§ 23-7.B, C & E)**

Presently, the institutions use various events to initiate the tolling of the one-year period. Some use the day the individual moved to Virginia, some use the date of some affirmative action such as registering to vote or obtaining a Virginia Driver's license. The statute is, at present, silent on this matter. A separate but related question is: When must the one-year period be completed to obtain eligibility? The statute uses two phrases, i.e., "immediately prior to the commencement of the term, semester or quarter..." and "before the date of alleged entitlement..."

*ALTERNATIVE A* - Status Quo. Presently, the statute is silent on when the one-year period begins to run.

*ALTERNATIVE B* - The one-year period shall begin on the day the person has abandoned his former domicile and moved into the Commonwealth.

*ALTERNATIVE C* - The one-year period shall not begin until the individual has abandoned his former domicile, is qualified to establish a new domicile, moved into the Commonwealth and established a permanent residence.

*ALTERNATIVE D* - The one-year period shall begin after such day as the individual has performed all of those acts required by law of new domiciles of Virginia, e.g., establishing a permanent residence, obtaining a car registration, and obtaining a Virginia driver's license.

**ISSUE 6: SHOULD THE PROVISION RELATING TO THE EFFECT OF MARRIAGE ON A VIRGINIAN'S DOMICILE BE RETAINED OR SHOULD THE LAW INCLUDE A STATEMENT NOTING THE LACK OF EFFECT OF MARRIAGE ON THE DOMICILE OF ANY INDIVIDUAL? (§23-7.D)**

The old common law concept that a wife takes the domicile of her husband has been discarded. Marriage has no legal effect, by itself, on the domicile of an individual. In today's society, many married people live in separate states. The present provision has the effect of confusing some people, because it only addresses the lack of effect on a Virginian's domicile. The domicile of any married person must be determined in the same way as the domicile of an unmarried person.

*ALTERNATIVE A* - Status Quo. The present law (paragraph D) provides that one who is eligible for reduced tuition charges at the date of marriage continues to be eligible until the Virginia domicile is abandoned.

*ALTERNATIVE B* - The domicile of a married person shall be determined in the same manner as the domicile of an unmarried person.

**ISSUE 7: SHOULD THE PRESENT NARROW EXEMPTION FOR THE MILITARY FAMILIES BE RETAINED AND, IF SO, SHOULD THE STATUS OF THE NONMILITARY SPOUSE WHO IS A STUDENT BE CLARIFIED? (§ 23-7.E)**

Although no estimates are available, extending this exemption would undoubtedly mean a considerable reduction in revenues to the state institutions.

Presently, there is confusion among the institutions as to whether the nonmilitary spouse, who is working full time and paying Virginia income taxes, is entitled to reduced tuition charges. The first half of paragraph E refers to "spouse or parent." The second half of the paragraph obviously refers to a dependent child. Some institutions read this section to mean that either the child or the nonmilitary spouse may qualify for in-state tuition. Other institutions read this section to mean that only the dependent child may qualify through this paragraph.

A second problem in this paragraph is the meaning of "employed full time." Perhaps this term should be defined.

A minor problem with this paragraph is that it has been read to mean that military dependents may only qualify for reduced tuition through its provisions. The first sentence states: "A student who is not a member of the armed forces and *who is not otherwise eligible for reduced tuition charges* ...." The fact that the military dependent can establish his domicile independent of his parents is often ignored.

*ALTERNATIVE A - Status Quo.* Presently, the statute allows a military dependent to establish eligibility for reduced tuition charges if the nonmilitary parent has resided in Virginia, has been and is employed "full time" and pays Virginia income taxes for one year prior to the alleged entitlement. The status of the nonmilitary spouse is uncertain and no definition of full-time employment is provided.

*ALTERNATIVE B - E.* *A student whose spouse or parent is a member of the armed forces may establish domicile in the same manner as any other student. However, A a student who is not a member of the armed forces and , who is not otherwise eligible for ~~reduced~~ (resident or in-state) tuition charges and whose spouse or parent is a member of the armed forces stationed or residing in this Commonwealth pursuant to military orders shall be entitled to ~~reduced~~ (resident or in-state) tuition charges if such spouse or either parent, for a period of at least one year immediately prior to and at the time of the commencement of the term, semester, or quarter the date of alleged entitlement for which ~~reduced~~ (resident or in-state) tuition charges are sought, has resided in Virginia, been employed full time and paid personal income taxes to Virginia. Such student who is the child of a member of the armed forces shall be eligible for ~~reduced~~ (resident or in-state) tuition through such parent under this section only if he or she is claimed as a dependent for Virginia and federal income tax purposes. Such student , whether spouse or child, shall be entitled to ~~reduced~~ (resident or in-state) tuition charges so long as such parent or spouse continues to reside in Virginia, to be employed full time and to pay personal income taxes to Virginia.*

*ALTERNATIVE C (new language) -* A student whose parent or spouse is a member of the armed forces may establish eligibility for *(resident or in-state)* tuition charges in the same manner as any other student. However, a student who is not a member of the armed forces, who is not otherwise eligible for *(resident or in-state)* tuition charges , and whose parent is a member of the armed forces stationed or residing in this Commonwealth pursuant to military orders shall be entitled to *(resident or in-state) tuition charges if the nonmilitary parent for a period of at least one year immediately prior to the date of the alleged entitlement for which (resident or in-state)* tuition charges are sought, has resided in Virginia, been employed full time and paid personal income taxes to Virginia. Such student shall be eligible for reduced tuition through such nonmilitary parent under this section only if he or she is claimed as a dependent for Virginia and federal income tax purposes. Such student shall be entitled to *(resident or in-state)* tuition charges so long as such parent continues to reside in Virginia, to be employed full time and to pay personal income taxes in Virginia.

*ALTERNATIVE D (new language) -* A student whose parent or spouse is a member of the armed forces may establish domicile in the same manner as any other student. However, a student who is not a member of the military, not otherwise eligible for *(resident or in-state)* tuition, and whose parent or spouse is a member of the military stationed or residing in the Commonwealth pursuant to military orders shall be entitled to *(resident or in-state)* tuition charges if the following conditions are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have resided in Virginia for at least one year immediately prior to the date of alleged entitlement for which *(resident or in-state)* tuition charges are sought, been employed full time and paid personal income taxes to Virginia; such student shall be eligible for *(resident or in-state)* tuition charges only if such parent claims him or her as a dependent for Virginia and federal income tax purposes; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have resided in Virginia for at least one year immediately prior to and at the time of the commencement of the term, semester, or quarter for which *(resident or in-state)* tuition charges are sought, been employed full time and paid personal income taxes to Virginia. Any student whose spouse or parent is a member of the armed forces shall be eligible for *(resident or in-state)* tuition charges for so long as these conditions continue to be met.

**ALTERNATIVE E - Definitions of full-time employment.**

1. For purposes of this section, "full-time employment" means that employment qualifying an individual for such benefits as are provided for full-time, permanent employees at his or her place of work.
2. For the purposes of this section, "full-time employment" means that employment resulting in, at least, an annual earned income reported for tax purposes equivalent to fifty work weeks of forty hours at minimum wage.
3. For purposes of this section, a student may establish that the person through which he claims eligibility for reduced tuition charges has been employed full time for one year by providing a statement to this effect from such person's employer.
4. For the purposes of this section, "full-time employment" means that employment resulting in the payment of Virginia taxes on adjusted gross income equivalent to fifty work weeks of forty hours at minimum wage.

**ISSUE 8: SHOULD THE REQUIREMENTS FOR RECLASSIFICATION FROM OUT-OF-STATE TO IN-STATE BE CLARIFIED? (§ 23-7.C)**

One of the primary problems with the present situation is that many students seek reclassification after the first year of attending school in Virginia. In many cases, the individual has no other domicile and may have decided to stay indefinitely. In other instances, the individual has no intention of remaining in Virginia for one day more than it requires to obtain a degree. Perhaps, the matriculating out-of-state student should be required to rebut by clear and convincing READY FOR TASK

**ISSUE 9: SHOULD THE PRESENT STIPULATION THAT THE COUNCIL OF HIGHER EDUCATION AND THE ATTORNEY GENERAL'S OFFICE "SEEK TO ENSURE THAT ALL... WILL APPLY UNIFORM CRITERIA..." BE RETAINED OR STRENGTHENED? (§ 23-7.G)**

In the present law, the Council and the Attorney General's Office are charged with seeking "to ensure" and the guidelines are the means chosen for this. This charge is ambiguous and does not provide any authority to the Council. Many states have regulations to implement their law (some only have regulations!). It might be stronger and more effective to strengthen the Council's role in enforcing this statute.

**ALTERNATIVE A - Status Quo.** Presently, the statute provides that the SCHEV shall seek to ensure, in conjunction with the AG's office, that the institutions apply uniform criteria.

**ALTERNATIVE B -** The State Council of Higher Education shall promulgate and from time to time revise such rules and regulations as may be necessary and appropriate to ensure that all state institutions of higher education will apply uniform criteria in determining eligibility for (*resident or in-state*) tuition charges. The first set of such rules and regulations shall become effective no later than July 1, 1985. In developing these rules and regulations, the Council shall consult with the admissions officers of the state institutions and the Office of the Attorney General.

**ALTERNATIVE C -** The State Council of Higher Education shall promulgate such rules and regulations as may be necessary and appropriate to ensure that all state institutions of higher education will apply uniform criteria in determining eligibility for (*resident or in-state*) tuition charges.

**ALTERNATIVE D -** In order to seek to ensure the application of uniform criteria in determining eligibility for reduced tuition charges, the State Council of Higher Education shall issue and from time to time revise guidelines. An advisory committee, composed of ten representatives of the public institutions, shall be appointed by the Council each year to monitor the administration of the eligibility for (*resident or in-state*) tuition charges and cooperate with the Council in developing the guidelines for determining eligibility. The Council shall consult with the Office of the Attorney General prior to issuing any such guidelines.

**ISSUE 10: SHOULD THE LAW INCLUDE A REQUIREMENT FOR A GENERAL OR SPECIFIC DUE PROCESS PROCEDURE AND/OR A STANDARDIZED FORM? (§ 23-7.F)**

Each institution uses its own due process procedure. Every institution appears to be

providing steps for appeal; however, in some cases, an individual who is responsible for making a decision at some level serves on an appeals panel later. This does not appear proper. A general outline for the due process procedure could be set out in the statute or a specific process could be required. The appeals process at present proceeds from the final administrative appeal to court. The statute does not establish whether this court appeal is to be a de novo trial on the merits or a review of the administrative decision. The burden of proof in the present law is on the claimant and the entitlement must be established "by convincing evidence." No standard of review of the administrative decision is provided for the court.

A form was developed, but it appears that each institution uses its admissions application. A separate, standard form which asks key questions and directs the applicant to proceed according to his answers would provide more consistency.

*ALTERNATIVE A* - Status Quo. Presently, there is no due process procedure in the statute. Each institution has developed its own and uses its own form.

*ALTERNATIVE B* - The Council of Higher Education shall develop, in conjunction with the Attorney General's Office, an appeals process which shall be followed by all public institutions of higher education.

*ALTERNATIVE C* - Each public institution of higher education shall establish an appeals process which shall include an initial review, an intermediate review and a final administrative appeals committee. No person who serves at one level of this appeal process shall be eligible to serve at any other level of this review. All such due process procedures shall include time limitations in order to provide for orderly and timely resolutions of all disputes.

*ALTERNATIVE D* - Each public institution of higher education shall establish an appeals process which shall include an initial review and an administrative appeal. The State Council of Higher Education shall appoint three persons each year to serve as the State Domiciliary Appeals Committee who are knowledgeable on issues related to domicile as set forth in this statute. The State Domiciliary Appeals Committee shall hear all disputes which cannot be resolved at the institutional administrative appeals level.

Any party aggrieved by the decision at the institutional administrative appeals level may obtain a final decision from the State Domiciliary Appeals Committee. Any party aggrieved by the decision of the State Domiciliary Appeals Committee shall have a right to review in the circuit court for the jurisdiction in which the relevant public institution is located. In any such action, the court shall receive the records of the prior proceedings, may request that the record be augmented or supplemented or permit any allowable and necessary proofs. The court shall review the decision of the State Domiciliary Appeals Committee to determine that it is supported by substantial evidence and is not arbitrary, capricious or otherwise contrary to law.

ISSUE 11: SHOULD THE LAW ADDRESS THE ISSUE OF NONIMMIGRANT VISA HOLDERS, IN VIEW OF THE RECENT SUPREME COURT DECISION IN *TOLL v. MORENO* ?

In the 1982 case of *Toll v. Moreno* , 102 S.Ct. 2977 (1982), the Court, using the Supremacy Clause, struck a Maryland regulation which made resident alien students with "G-4" visas ineligible for reduced tuition. Persons holding "G-4" visas are allowed to acquire domicile in the States while still enjoying tax-exempt status. Therefore, the Court stated that "[s]tate regulation... is impermissible if it imposes additional burdens not contemplated by Congress."

The result of this case is already being felt in Virginia. Most Virginians feel that the case provides an inequitable situation whereby nonimmigrant visa holders, who pay no taxes to the state, may become entitled to the privileges of tax paying domiciliaries. While in some few cases, a holder of a temporary nonimmigrant visa might be eligible for in-state status, the holding of a temporary nonimmigrant visa should raise the rebuttable presumption that the individual is not eligible to establish domicile in the Commonwealth.

*ALTERNATIVE A* - Status Quo. Presently, the statute is silent on the matter of the nonimmigrant visa holder.

*ALTERNATIVE B* - No person holding a student or other temporary visa shall be eligible for

Virginia domicile or for reduced tuition charges.

*ALTERNATIVE C* - Any person holding a student or other temporary visa the acquisition of which requires a sworn statement of intention to return to the country of origin shall not be eligible to establish a Virginia domicile for the purpose of obtaining reduced tuition charges.

*ALTERNATIVE D* - The holding of a student or a temporary nonimmigrant visa shall raise the rebuttable presumption that such individual is not eligible to establish domicile in the Commonwealth. Such presumption shall only be rebutted by clear and convincing evidence.

#### ISSUE 12: SHOULD THE LAW ADDRESS THE ISSUE OF PERMANENT VISA HOLDERS?

The law is silent as to foreign students, including refugee students. Virginia has a large population of foreign students of every variety - nonimmigrants, immigrants, political refugees - and the institutions will probably find the problem of establishing their domicile becoming more acute. The law might contain a statement to the effect that holders of permanent visas must establish domicile in the same manner as any other student.

*ALTERNATIVE A* - Status Quo.

Presently, the law does not address the permanent visa holder.

*ALTERNATIVE B*

Any alien holding an immigration visa or classified as a political refugee shall be considered a resident of the Commonwealth for the purpose of eligibility for reduced tuition charges.

*ALTERNATIVE C*

The domicile of any person holding an immigration visa or classified as a political refugee shall be determined in the same manner as that of any other student.

*ALTERNATIVE D*

Any alien holding an immigration visa or classified as a political refugee shall establish eligibility for reduced tuition charges in the same manner as any other student.

#### ISSUE 13: SHOULD AN EXEMPTION BE INCLUDED IN THE LAW FOR OUT-OF-STATE STUDENTS WHO PAY VIRGINIA INCOME TAX AND IF SO, SHOULD SOME MINIMUM TIME PERIOD OR OTHER CRITERION BE ESTABLISHED?

Under the current law, an out-of-state student who works and pays taxes in Virginia is not eligible for reduced tuition charges under any circumstances except the reciprocity provision. This has created some unfair situations. In the southwest part of the State and the southeast part of the State the institutions are losing potential students who are contributing to Virginia's economy because of this situation (North Carolina students). The question is: Would the State and its institutions gain more than they would lose if these students were granted in-state status? What criteria could be used for eligibility?

*ALTERNATIVE A* - Status Quo.

Presently, there is no provision for out-of-state students who pay Virginia income tax to be eligible for reduced tuition charges.

*ALTERNATIVE B*

Students who live outside this Commonwealth and are employed full time or whose parents are employed full time inside Virginia shall be eligible for *(resident or in-state) tuition charges if such student or one of his parents has paid Virginia income taxes on all 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 *(resident or in-state) tuition charges* for so long as they or their qualifying parent are employed full time in Virginia and paying Virginia income taxes on all

income earned in this Commonwealth.

*ALTERNATIVE C*

Students who live outside this Commonwealth, but work full time inside Virginia shall be eligible for *(resident or in-state)* tuition charges if such students have paid Virginia income taxes on all income earned in this Commonwealth for the tax year prior to the date of the alleged entitlement. Unemancipated minors who live outside this Commonwealth whose parents work full time inside Virginia shall be eligible for (resident or in-state) tuition charges if one parent has paid Virginia income taxes on all 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 (resident or in-state) tuition charges for so long as they or their qualifying parents are employed full time in Virginia and paying Virginia income taxes on all income earned in this Commonwealth.

*ALTERNATIVE D*

Students who live outside this Commonwealth, but work inside Virginia shall be eligible for reduced tuition charges if they have paid Virginia income taxes on income equal to fifty work weeks of forty hours at minimum wage.

**ISSUE 14: SHOULD AN EXEMPTION BE INCLUDED IN THE LAW FOR OUT-OF-STATE STUDENTS WHO ARE EMPLOYED BY VIRGINIA COMPANIES WHEN THE COMPANY IS PAYING THE STUDENT'S TUITION?**

The comments provided for Issue 13 are relevant to this issue as well. In addition, the present initiatives to attract industry and business to Virginia might be enhanced by providing this exemption.

*ALTERNATIVE A - Status Quo.*

Currently, the source of the student's support does not affect his eligibility for reduced tuition charges.

*ALTERNATIVE B*

The Council of Higher Education may establish rules and regulations which allow the public institutions of higher education to contract with Virginia companies for reduced tuition charges for out-of-state students when the Virginia company is paying the cost of the students' education.

*ALTERNATIVE C*

Public institutions of higher education may enter into agreements with Virginia companies to provide for eligibility for reduced tuition charges for out-of-state students in those instances in which the Virginia company is assuming the liability for paying the charges.

*ALTERNATIVE D*

Subject to the approval of the Council of Higher Education, public institutions of higher education may enter into agreements with Virginia-based companies to allow reduced tuition charges for out-of-state students who are employees of the Virginia company if the company is assuming the cost of the students' education.

**ISSUE 15: SHOULD DEFINITIONS, E.G., "DOMICILE," "DATE OF THE ALLEGED ENTITLEMENT," "UNEMANCIPATED MINOR," ETC., BE INCLUDED IN THE LAW?**

Some of the problems with the present law are attributable to the lack of the definitions. The Committee would have to decide which words to define and how they want them defined if definitions are included.

*ALTERNATIVE A - Status Quo.*

*ALTERNATIVE B*

The Council of Higher Education shall develop, in cooperation with the Attorney General's Office, appropriate and necessary rules and regulations, including definitions, for the orderly and uniform administration of this section.

*ALTERNATIVE C*

If the Committee chooses, definitions could be developed for certain terms for the purposes of this statute. For example, "domicile" might be defined as "the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely." "Date of the alleged entitlement" might be defined "the time of commencement of the term, semester or quarter." Providing a definition of this term would eliminate the need to repeal "the time of the commencement of the term, semester or quarter." throughout this section. It is possible that only a very few words or terms would need defining, e.g., "domicile," "full time employment and "date of the alleged entitlement."



APPENDIX B

Legislative Action on House Bill No. 214

House Bill No. 214 as Introduced

House Bill No. 214 as Amended by the House of Delegates

House Bill No. 214 as Approved (enrolled)

40/ALL/H/B0214/2

MORE

H.B. 214

An Act to amend the Code of Virginia by adding a section numbered 23-7.4 and to repeal § 23-7 of the Code of Virginia, relating to eligibility for in-state tuition.

(Enrolled)

Patrons - Watts, Diamonstein, Munford, and Councill; Senators: Andrews HB and Willey

Titles Affected: 23

A SUMMARY OF THIS BILL AS INTRODUCED IS AS FOLLOWS:

Eligibility for in-state tuition charges. Clarifies the eligibility for in-state tuition charges by providing definitions, basic criteria for eligibility, due process procedures for appeals of decisions and certain limited exceptions.

COMMITTEE AMENDMENTS AGREED TO BY HOUSE

Page 1, line 19, after home  
Strike for all legal purposes  
Page 1, line 24, after means

40/ALL/H/B0214/3

MORE

Insert present  
Page 1, line 31, after right to  
Strike the  
And insert his  
Page 2, line 2, after establish  
Insert by clear and convincing evidence  
Page 2, line 3, after was  
Strike the remainder of line 3  
And insert domiciled in Virginia  
Page 2, line 6, after establish  
Insert by clear and convincing evidence  
Page 2, line 7, after was  
Strike the remainder of line 7 and through the word indefinitely on line 8  
And insert domiciled in Virginia  
Page 2, line 9  
Strike exists  
And insert existed  
Page 2, line 33, after and for the  
Insert tax  
Page 2, line 39, after older  
Strike shall

40/ALL/H/B0214/4

MORE

And insert may  
Page 4, line 10, after reviewed  
Insert for legal sufficiency  
Page 4, line 22, after review.  
Insert The final administrative decision shall be in writing.  
A copy of this decision shall be sent to the student.  
Page 4, line 29, after located.  
Insert A petition for review of the final administrative  
decision shall be filed within thirty days of receiving the  
written decision.

SENATE AMENDMENT AGREED TO BY SENATE AND HOUSE

Page 1, engrossed bill, after line 38  
Insert "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.

1984

Jan 17 H Presented and ordered printed  
Jan 17 H Referred to Committee on Education  
J/ALL/H/B0214/5

MORE

Jan 31 H Reported with amendments 16-Y 0-N  
Feb 1 H Read first time  
Feb 2 H Read second time  
Feb 2 H Committee amendments agreed to  
Feb 2 H Motion for pending question agreed to  
Feb 2 H Engrossed  
Feb 2 H Engrossed bill printed HP1190  
Feb 3 H Read third time and passed 99-Y 0-N  
Feb 3 H Communicated to Senate  
Feb 6 S Constitutional reading dispensed 39-Y 0-N  
Feb 6 S Referred to Committee on Education and Health  
Feb 23 S Reported with amendment 14-Y 0-N  
Feb 24 S Constitutional reading dispensed 40-Y 0-N  
Feb 27 S Read third time  
Feb 27 S Committee amendment agreed to  
Feb 27 S Passed by for the day  
Feb 28 S Read third time  
Feb 28 S Engrossed  
Feb 28 S Passed, Senate with amendment 39-Y 0-N  
Feb 29 H Placed on Calendar  
Mar 1 H Senate amendment agreed to by House 95-Y 1-N  
Mar 21 H Enrolled  
0/ALL/H/B0214/5

Mar 21 S Signed by President  
Mar 23 H Signed by Speaker  
Apr 4 G Approved by Governor - Chapter No. 422

**HOUSE BILL NO. 214**

**Offered January 17, 1984**

*A BILL to amend the Code of Virginia by adding a section numbered 23-7.4 and to repeal § 23-7 of the Code of Virginia, relating to eligibility for in-state tuition.*

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Patrons—Watts, Diamonstein, Munford, and Councill; Senators: Andrews and Willey

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**Referred to the Committee on Education**

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Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 23-7.4 as follows:

*§ 23-7.4. Eligibility for in-state tuition charges.—A. For purposes of this section the following definitions shall apply:*

*“Date of the alleged entitlement” means the first official day of class within the term, semester or quarter of the student’s program.*

*“Dependent student” means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his parents or legal guardian.*

*“Domicile” means the present, fixed home for all legal purposes 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 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 the care, custody and earnings, have ceased to support him, and have not claimed him as a dependent on federal and state income tax returns for at least twelve months prior to the date of the alleged entitlement.*

*“Special arrangement contract” means a contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced rate tuition charges as described in paragraph G of this section.*

*“Unemancipated minor” means a student under the age of eighteen on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian or other person having legal custody.*

*“Virginia employer” means any employing unit organized under the laws of Virginia or having income from Virginia sources regardless of its organizational structure, or any public or nonprofit organization authorized to operate in Virginia.*

*B. In order to become eligible for in-state tuition, an independent student shall establish that for a period of at least one year immediately prior to the date of the alleged entitlement, he was present in Virginia with the intention of remaining indefinitely and had abandoned any previous domicile, if such existed.*

*In order to become eligible for in-state tuition, a dependent student or unemancipated minor shall establish 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 present in Virginia with the intention of remaining indefinitely and had abandoned any previous domicile, if such exists.*

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

*Those factors presented in support of entitlement to in-state tuition shall have existed for the one-year period prior to the date of the alleged entitlement.*

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

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

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

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

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

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

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

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

*E. A nonmilitary student whose parent or spouse is a member of the armed forces may establish domicile in the same manner as any other student. However, a nonmilitary student, not otherwise eligible for in-state tuition, whose parent or spouse is a member of the military stationed or residing in the Commonwealth pursuant to military orders and claiming a state other than Virginia on their State of Legal Residence Certificate, shall be entitled to in-state tuition charges when the following conditions are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have, for at least one year immediately prior to the date of alleged entitlement for in-state tuition charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such student shall be eligible for in-state tuition charges only if the nonmilitary parent claims him as a dependent for Virginia and Federal income tax purposes; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have, 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. 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 these conditions continue to be met.*

*F. 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 parent claiming him as a dependent has 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 are 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.*

*G. 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 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.*

*All special arrangement contracts with authorities controlling federal installations or agencies shall be to provide group instruction in facilities provided by the installation or agency.*

*Special arrangement contracts with Virginia employers may be for group instruction in facilities provided by the employer 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 one year and shall be reviewed 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 such contracts shall be registered with the State Council of Higher Education to assure accurate tabulation of the domiciles of the students.*

*H. Each public institution of higher education shall establish an appeals process for those students who are aggrieved by decisions on 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. 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. 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, to be supported by substantial evidence and not to be arbitrary, capricious or otherwise contrary to law.*

*1. In order 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 a domiciliary status form 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, (§§ 9-6.14:1 et seq.) of this Code.*

*An advisory committee, composed of ten representatives of the public institutions, 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.*

*The first set of such guidelines shall be issued by September 1, 1984.*

2. That § 23-7 of the Code of Virginia is repealed.

3. That if any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

HOUSE BILL NO. 214

House Amendments in [ ] - February 2, 1984

A BILL to amend the Code of Virginia by adding a section numbered 23-7.4 and to repeal § 23-7 of the Code of Virginia, relating to eligibility for in-state tuition.

Patrons—Watts, Diamonstein, Munford, and Council; Senators: Andrews and Willey

Referred to the Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 23-7.4 as follows:

§ 23-7.4. Eligibility for in-state tuition charges.—A. For purposes of this section the following definitions shall apply:

“Date of the alleged entitlement” means the first official day of class within the term, semester or quarter of the student’s program.

“Dependent student” means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his parents or legal guardian.

“Domicile” means the present, fixed home [ ~~for all legal purposes~~ ] 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 [ ~~the his~~ ] care, custody and earnings, have ceased to support him, and have not claimed him as a dependent on federal and state income tax returns for at least twelve months prior to the date of the alleged entitlement.

“Special arrangement contract” means a contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced rate tuition charges as described in paragraph G of this section.

“Unemancipated minor” means a student under the age of eighteen on the date of the



*alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian or other person having legal custody.*

*“Virginia employer” means any employing unit organized under the laws of Virginia or having income from Virginia sources regardless of its organizational structure, or any public or nonprofit organization authorized to operate in Virginia.*

*B. In order to become eligible for in-state tuition, an independent student shall establish [ by clear and convincing evidence ] that for a period of at least one year immediately prior to the date of the alleged entitlement, he was [ ~~present in Virginia with the intention of remaining indefinitely domiciled in Virginia~~ ] and had abandoned any previous domicile, if such existed.*

*In order to become eligible for in-state tuition, a dependent student or unemancipated minor shall establish [ by clear and convincing evidence ] that for a period of at least one year prior to the date of the alleged entitlement, the person through whom he claims eligibility was [ ~~present in Virginia with the intention of remaining indefinitely domiciled in Virginia~~ ] and had abandoned any previous domicile, if such [ ~~exists~~ existed ].*

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

*Those factors presented in support of entitlement to in-state tuition shall have existed for the one-year period prior to the date of the alleged entitlement.*

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

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

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

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

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

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

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

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

*E. A nonmilitary student whose parent or spouse is a member of the armed forces may establish domicile in the same manner as any other student. However, a nonmilitary student, not otherwise eligible for in-state tuition, whose parent or spouse is a member of the military stationed or residing in the Commonwealth pursuant to military orders and claiming a state other than Virginia on their State of Legal Residence Certificate, shall be entitled to in-state tuition charges when the following conditions are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have, for at least one year immediately prior to the date of alleged entitlement for in-state tuition charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such student shall be eligible for in-state tuition charges only if the nonmilitary parent claims him as a dependent for Virginia and Federal income tax purposes; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have, 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. 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 these conditions continue to be met.*

*F. 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 parent claiming him as a dependent has 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 are 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.*

*G. 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 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.*

*All special arrangement contracts with authorities controlling federal installations or agencies shall be to provide group instruction in facilities provided by the installation or agency.*

*Special arrangement contracts with Virginia employers may be for group instruction in facilities provided by the employer 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 one year 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 such contracts shall be registered with the State Council of Higher Education to assure accurate tabulation of the domiciles of the students.*

*H. Each public institution of higher education shall establish an appeals process for those students who are aggrieved by decisions on 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, to be supported by substantial evidence and not to be arbitrary, capricious or otherwise contrary to law.*

*I. In order 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 a domiciliary status form 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 (§§ 9-6.14:1 et seq.) of this Code.*

*An advisory committee, composed of ten representatives of the public institutions, 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.*

*The first set of such guidelines shall be issued by September 1, 1984.*

2. That § 23-7 of the Code of Virginia is repealed.

3. That if any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

## CHAPTER

*An Act to amend the Code of Virginia by adding a section numbered 23-7.4 and to repeal § 23-7 of the Code of Virginia, relating to eligibility for in-state tuition.*

[H 214]

### Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 23-7.4 as follows:

*§ 23-7.4. Eligibility for in-state tuition charges.—A. For purposes of this section the following definitions shall apply:*

*“Date of the alleged entitlement” means the first official day of class within the term, semester or quarter of the student’s program.*

*“Dependent student” means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his parents or legal guardian.*

*“Domicile” means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.*

*“Domiciliary intent” means present intent to remain indefinitely.*

*“Emancipated minor” means a student under the age of eighteen on the date of the alleged entitlement whose parents or guardians have surrendered the right to his care, custody and earnings and who no longer claim him as a dependent for tax purposes.*

*“Full-time employment” means employment resulting in, at least, an annual earned income reported for tax purposes equivalent to fifty work weeks of forty hours at minimum wage.*

*“Independent student” means one whose parents have surrendered the right to his care, custody and earnings, have ceased to support him, and have not claimed him as a dependent on federal and state income tax returns for at least twelve months prior to the date of the alleged entitlement.*

*“Special arrangement contract” means a contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced rate tuition charges as described in paragraph G of this section.*

*“Substantial financial support” means financial support in an amount which equals or exceeds that required to qualify the individual to be listed as a dependent on federal and state income tax returns.*

*“Unemancipated minor” means a student under the age of eighteen on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian or other person having legal custody.*

*“Virginia employer” means any employing unit organized under the laws of Virginia or having income from Virginia sources regardless of its organizational structure, or any public or nonprofit organization authorized to operate in Virginia.*

*B. In order to become eligible for in-state tuition, an independent student shall establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of the alleged entitlement, he was domiciled in Virginia and had abandoned any previous*

*domicile, if such existed.*

*In order to become eligible for in-state tuition, a dependent student or unemancipated minor shall establish by clear and convincing evidence that for a period of at least one year prior to the date of the alleged entitlement, the person through whom he claims eligibility was domiciled in Virginia and had abandoned any previous domicile, if such existed .*

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

*Those factors presented in support of entitlement to in-state tuition shall have existed for the one-year period prior to the date of the alleged entitlement.*

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

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

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

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

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

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

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*E. A nonmilitary student whose parent or spouse is a member of the armed forces may*

*establish domicile in the same manner as any other student. However, a nonmilitary student, not otherwise eligible for in-state tuition, whose parent or spouse is a member of the military stationed or residing in the Commonwealth pursuant to military orders and claiming a state other than Virginia on their State of Legal Residence Certificate, shall be entitled to in-state tuition charges when the following conditions are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have, for at least one year immediately prior to the date of alleged entitlement for in-state tuition charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such student shall be eligible for in-state tuition charges only if the nonmilitary parent claims him as a dependent for Virginia and Federal income tax purposes; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have, 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. 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 these conditions continue to be met.*

*F. 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 parent claiming him as a dependent has 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 are 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.*

*G. 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 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.*

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*Special arrangement contracts shall be valid for one year 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.*

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*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, to be supported by substantial evidence and not to be arbitrary, capricious or otherwise contrary to law.*

*1. In order 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 a domiciliary status form 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 (§ 9-6.14:1 et seq.) of this Code.*

*An advisory committee, composed of ten representatives of the public institutions, 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.*

*The first set of such guidelines shall be issued by September 1, 1984.*

2. That § 23-7 of the Code of Virginia is repealed.

3. That if any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

APPENDIX C \*

BROCHURE

Application For Virginia In-State Tuition Rates  
Guidelines

\* These documents are "drafts" and are subject to change.



### **ARE YOU ELIGIBLE FOR IN-STATE TUITION?**

The general information contained in this brochure will help clarify the requirements necessary to be eligible for in-state tuition rates in Virginia. It is not intended to cover all situations, but to give you a basic understanding of the question of domicile.

#### **DOMICILE**

To be eligible for in-state tuition rates, you must be domiciled in Virginia for a minimum of one year before the first official day of classes. Domicile is defined as your "present, fixed home where you return following temporary absences and where you intend to stay indefinitely." In essence, domicile has two parts, and you must meet both to qualify for in-state tuition. You must reside in Virginia, and you must intend to keep this as your home indefinitely.

As a minor you have the same domicile as your parents. Once you become 18 years old, you can establish a domicile that is different from your parents. However, if you are over 18 and are financially dependent on your parents, normally your parents must be domiciled in Virginia before you will be eligible for in-state tuition benefits.

#### **FACTORS USED TO DETERMINE DOMICILE**

The school will review many factors when determining your domicile, for example:

1. Residence during the past year prior to the first official day of classes
2. State to which income taxes are filed or paid
  - Driver's license
  - Motor vehicle registration

*(continued on back)*

Voter registration  
Employment  
Property ownership  
Sources of financial support  
Location of checking or passbook savings account  
Other social or economic ties with Virginia and other states

But, the presence of any or all of these factors does not automatically result in Virginia domicile. The factors used to support use for in-state tuition benefits must have existed for the one year before the first official day of classes.

**RESIDENCE OR PHYSICAL PRESENCE IN VIRGINIA PRIMARILY TO ATTEND A COLLEGE OR UNIVERSITY DOES NOT ENTITLE YOU TO IN-STATE TUITION RATES. IF YOU ENTER AN INSTITUTION CLASSIFIED AS AN OUT-OF-STATE STUDENT, YOU WILL BE REQUIRED TO GIVE CLEAR AND CONVINCING EVIDENCE TO REBUT THE PRESUMPTION THAT YOU ARE IN THE STATE TO ATTEND SCHOOL BEFORE A CHANGE OF STATUS WILL BE GRANTED.**

### **SPECIAL SITUATIONS**

If you are a member of a military family, or you are employed full-time in Virginia, but live out of state, special provisions determining eligibility for reduced tuition rates exist. Contact someone at the institution of higher education in which you are enrolled or will enroll for more information.

Eligibility is governed by Section 23-7.4 of the **Code of Virginia**. The above is not exhaustive, but a general description.

# APPLICATION FOR VIRGINIA IN-STATE TUITION RATES

***THIS FORM SHOULD BE COMPLETED IF YOU ARE CLAIMING ENTITLEMENT TO VIRGINIA IN-STATE TUITION RATES. ALL QUESTIONS MUST BE ANSWERED. WHERE NOT APPLICABLE WRITE N/A.*** Part I must be completed by the applicant. Part II of this form must be completed by the parent or legal guardian if the applicant is under the age of 19 and is not married or if the applicant is a dependent.

## PART I—APPLICANT

Name of Applicant \_\_\_\_\_ Social Security Number \_\_\_\_\_

Current Address \_\_\_\_\_  
(street) (city) (state)

Home Address \_\_\_\_\_  
(if different from above) (street) (city) (state)

Telephone Number \_\_\_\_\_ Date of Birth \_\_\_\_\_

Country of Citizenship \_\_\_\_\_ Marital Status married  separated  other

Visa type \_\_\_\_\_ Issue date \_\_\_\_\_ Expiration date \_\_\_\_\_  
(check one) single  divorced

1. Do you wish to apply for in-state tuition rates based on:

- a. Your own Virginia domiciliary status  Yes  No
  - b. Dependency on a parent or legal guardian who is domiciled in Virginia  Yes  No
- (If yes, parent or guardian must complete Part II)

2. Term for which you seek in-state tuition rates \_\_\_\_\_  
term year

3. Date you moved permanently to Virginia \_\_\_\_\_  
month day year

List your address(es) for the two year period preceding the term in which you will enroll. List current address first:

From Mo./Yr.	To Mo./Yr.	Street Address	City	State

4. List high schools, colleges and universities attended; indicate classification (in-state or out of state) when appropriate:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Employment information (for at least one year prior to the date for which in-state tuition rates are sought):

Employer/City and State	No. of hours/week	From	To

6. Did you earn \$6700 or more during the year prior to the date for which in-state tuition rates are sought?  Yes  No

7. State in which you filed a tax return or paid income taxes during the previous year \_\_\_\_\_  
 If no state income taxes were paid anywhere, check here

8. Voter Registration: State \_\_\_\_\_ Date of Registration \_\_\_\_\_  
 If not registered, check here

9. Driver's License: State of issue \_\_\_\_\_ Date issued \_\_\_\_\_  
 If you have no driver's license, check here

10. Do you own a motor vehicle?  Yes  No If yes, state and date of registration \_\_\_\_\_

11. Location of any real property owned by you \_\_\_\_\_  
(city, state) (date of purchase)

12. Location of checking and passbook/savings accounts and date account was opened \_\_\_\_\_  
(city, state) (date)

13. If you, or any member of your family is in the military please check the appropriate box and answer applicable questions.

	Date of Assignment	Home of Record	State claimed for tax purposes
<input type="checkbox"/> You	_____	_____	_____
<input type="checkbox"/> Spouse	_____	_____	_____
<input type="checkbox"/> Parent/Legal Guardian	_____	_____	_____

14. Do you have the present intention to remain in Virginia indefinitely?  Yes  No

15. Other evidence of social or economic ties to Virginia \_\_\_\_\_

I certify under penalty of disciplinary action that the information I have provided is true.

\_\_\_\_\_  
 Signature of Applicant

\_\_\_\_\_  
 Date

Supporting Documents May Be Requested

**PART II—PARENT(S) OR LEGAL GUARDIAN**

***THIS FORM MUST BE COMPLETED BY THE PARENT OR LEGAL GUARDIAN THROUGH WHOM THE APPLICANT IS SEEKING IN-STATE TUITION STATUS. PRIOR TO COMPLETING THE FORM, PLEASE READ THE INSTRUCTIONS ON THE FRONT OF THIS PAGE CAREFULLY.***

Name of Parent or Legal Guardian \_\_\_\_\_ Relationship to applicant \_\_\_\_\_

Current Address \_\_\_\_\_  
(street) (city) (state)

Home Address \_\_\_\_\_  
(street) (city) (state)

Telephone Number \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
 Visa type \_\_\_\_\_ Issue date \_\_\_\_\_ Expiration date \_\_\_\_\_

1. Date you moved permanently to Virginia \_\_\_\_\_  
month day year

List your address(es) for the two-year period preceding the term in which the applicant will enroll. List current address first:

From Mo./Yr.	To Mo./Yr.	Street Address	City	State

2. Have you been a legal domiciliary (permanent resident) of Virginia for the past 12 months?  Yes  No  
 If no, state of permanent residence \_\_\_\_\_

3. Will the applicant be claimed as a dependent on your federal or state income tax return for the tax year prior to the date for which in-state tuition rates are sought?  Yes  No

4. Will you provide over half of the applicant's financial support for the year prior to the date for which in-state tuition rates are sought?  
 Yes  No

5. Employment information (for at least one year prior to the date for which in-state tuition rates are sought):

Employer/City and State	No. of hours/week	From	To

6. Did you earn \$6700 or more during the year prior to the date for which in-state tuition rates are sought?  Yes  No

7. State in which you filed or paid income taxes during the previous year \_\_\_\_\_  
 State in which you will file or pay income taxes for the year prior to the date for which in-state tuition rates are sought \_\_\_\_\_

8. Voter Registration: State \_\_\_\_\_ Date of Registration \_\_\_\_\_

9. Driver's License: State of issue \_\_\_\_\_ Date issued \_\_\_\_\_

10. Do you own a motor vehicle?  Yes  No If yes, state and date of registration \_\_\_\_\_

11. Location of any real property owned by you \_\_\_\_\_  
(city, state) (date of purchase)

12. Location of checking and passbook/savings accounts and date account was opened \_\_\_\_\_  
(city, state) (date)

13. If you, or any member of your family is in the military please check the appropriate box and answer applicable questions.

	Date of Assignment	Home of Record	State claimed for tax purposes
<input type="checkbox"/> You	_____	_____	_____
<input type="checkbox"/> Spouse	_____	_____	_____
<input type="checkbox"/> Parent/Legal Guardian	_____	_____	_____

14. Do you have the present intention to remain in Virginia indefinitely?  Yes  No

15. You may set forth in a cover letter any further evidence of social or economic ties to Virginia which you believe should be considered in determining the domiciliary status of the applicant.

I certify that all the information provided is true.

\_\_\_\_\_  
 Signature of Parent or Legal Guardian Date

Supporting Documents May Be Requested

GUIDELINES

Pursuant to S 23.7-4(I), these guidelines have been duly issued by the State Council of Higher Education to promote the application of uniform criteria in determining eligibility for in-state tuition rates at public institutions of higher education in Virginia. Until revised, all such institutions shall employ these guidelines in determining eligibility for in-state tuition rates.

Section 23.7-4, of the Code of Virginia, governs eligibility for in-state tuition. Effective July 1, 1984, the statute provides:

*S 23-7.4. Eligibility for in-state tuition charges.--A. For purposes of this section the following definitions shall apply:*

*"Date of the alleged entitlement" means the first official day of class within the term, semester or quarter of the student's program.*

*"Dependent student" means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his parents or legal guardian.*

*"Domicile" means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.*

*"Domiciliary intent" means present intent to remain indefinitely.*

*"Emancipated minor" means a student under age of eighteen on the date of the alleged entitlement whose parents or guardians have surrendered the right to his care, custody and earnings and who no longer claim him as a dependent for tax purposes.*

*"Full-time employment" means employment resulting in, at least, an annual earned income reported for tax purposes equivalent to fifty work weeks of forty hours at minimum wage.*

*"Independent student" means one whose parents have surrendered the right to his care, custody and earnings, have ceased to support him, and have not claimed him as a dependent on federal and state income tax returns for at least twelve months prior to the date of the alleged entitlement.*

"Special arrangement contract" means a contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced rate tuition charges as described in paragraph G of this section.

"Substantial financial support" means financial support in an amount which equals or exceeds that required to qualify the individual to be listed as a dependent on federal and state income tax returns.

"Unemancipated minor" means a student under the age of eighteen on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian or other person having legal custody.

"Virginia employer" means any employing unit organized under the laws of Virginia or having income from Virginia sources regardless of its organizational structure, or any public or nonprofit organization authorized to operate in Virginia.

B. In order to become eligible for in-state tuition, an independent student shall establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of the alleged entitlement, he was domiciled in Virginia and had abandoned any previous domicile, if such existed.

In order to become eligible for in-state tuition, a dependent student or unemancipated minor shall establish by clear and convincing evidence that for a period of at least one year prior to the date of the alleged entitlement, the person through whom he claims eligibility was domiciled in Virginia and had abandoned any previous domicile, if such existed.

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

Those factors presented in support of entitlement to in-state tuition shall have existed for the one-year period prior to the date of the alleged entitlement.

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

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

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

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

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

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

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

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

E. A nonmilitary student whose parent or spouse is a member of the armed forces may establish domicile in the same manner as any other student. However, a nonmilitary student, not otherwise eligible for in-state tuition, whose parent or spouse is a member of the military stationed or residing in the Commonwealth pursuant to military orders and claiming a state other than Virginia on their State of Legal Residence Certificate, shall be entitled to in-state tuition charges when the following conditions are met: (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have, for at least one year immediately prior to the date of alleged entitlement for in-state tuition charges, resided in Virginia, been employed full time and paid individual income taxes to Virginia. Such student shall be eligible for in-state tuition charges only if the nonmilitary parent claims him as a dependent for Virginia and Federal income tax purposes; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have, 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 in Virginia. 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 these conditions continue to be met.

F. 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 parent claiming him as a dependent has



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 are 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.

G. 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 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.

All special arrangement contracts with authorities controlling federal installations or agencies shall be to provide group instruction in facilities provided by the installation or agency.

Special arrangement contracts with Virginia employers may be for group instruction in facilities provided by the employer 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 one year 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 federal authorities have a valid contract for students for whom the employer or federal authorities are paying the tuition charges.

All such contracts shall be registered with the State Council of Higher Education to assure accurate tabulation of the domiciles of the students.

H. Each public institution of higher education shall establish an appeals process for those students who are aggrieved by decisions on eligibility for in-state tuition charges. The Administrative Process Act (SS 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, to be supported by substantial evidence and not to be arbitrary, capricious or otherwise contrary to law.

I. In order 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 a domiciliary status form 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 (SS 9-6.14:1 et seq.) of this Code.

An advisory committee, composed of ten representatives of the public institutions, 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 the Attorney General and provide opportunity for public comment prior to issuing any such guidelines.

The first set of such guidelines shall be issued September 1, 1984.

DEFINITIONS

Date of alleged entitlement is the first official day of class within the term, semester, or quarter of the program in which the student is enrolled. For special classes, short courses, intensive courses, or courses not otherwise following the normal calendar schedule, the date of alleged entitlement refers to the starting date of the non-traditional course in which the student is enrolled.

Dependent Student is one who (1) is listed as a dependent on the federal or state income tax returns of the parent(s) or legal guardian(s) or, even if not so listed, (2) receives substantial financial support from a parent or legal guardian. Substantial financial support is defined as the amount of support which equals or exceeds the amount necessary to qualify the individual to be listed as a tax dependent. In unusual cases, the institution may need to consult with tax authorities to determine if the amount of support a student receives from parent or legal guardian would qualify the student to be claimed as a tax dependent. Normally, a student will be classified as a dependent of the parent or legal guardian who provides more than 1/2 of the student's expenses for food, shelter, clothing, medical and dental expenses, transportation and education. As noted, the definition considers only the financial support provided by a parent or legal guardian. Three additional points are to be noted: first, a dependent student is not required to live with a parent or legal guardian; second, a dependent student does not have to be a full-time student; and thirdly, a dependent student may be over the age of eighteen. In fact, a married student may qualify as a dependent student if claimed as a tax dependent or provided substantial financial support as above indicated.

The definition of a dependent student should be compared and contrasted with the definition of an independent student. In the case of the independent student, the parents or guardian do not list the student on any tax return, nor have they done so for at least twelve months prior to the date of the alleged entitlement. Further, the student is not relying on the parents or legal guardians for substantial financial support.

Domicile and domiciliary intent should be considered together. Domiciliary intent is a part of the definition of domicile. A person's domicile is the present, fixed home of the person to which he or she returns following temporary absences and at which he or she intends to stay indefinitely. A person becomes domiciled in Virginia when he or she is legally capable of establishing a domicile and is physically present in Virginia with the present intention of remaining here indefinitely. Thus, a person who has never been to Virginia, or who is not here when he or she forms the intent to make Virginia his or her home indefinitely, cannot be a domicile of Virginia. To establish domicile initially, there must be residence in the state and, second, there must be the present intention of remaining

indefinitely. Remaining indefinitely means that the individual has no fixed plans to move from the Commonwealth of Virginia. Residence in Virginia for a temporary purpose or stay, even if that stay is lengthy, with intent to return to another state or country upon completion of such purpose, does not constitute domicile. Further, while a person may have more than one residence, a person may have only one domicile. Thus, an individual cannot claim two states as his or her domicile. Domiciliary intent is determined from the affirmative declaration and conduct of the person. When evidence is conflicting, the opposing facts must be balanced against each other. In the final analysis, keep in mind that the students bear the burden of demonstrating such intent clearly and convincingly.

Emancipated minor and unemancipated minor should be compared and contrasted. A minor is a person under the age of eighteen. Emancipation requires that the parental rights have been relinquished completely by the parents. Emancipation requires that the parents or guardian consider the child emancipated. For example, a minor who runs away from home is not necessarily emancipated, even though he or she may not desire any further contacts with the parents. A minor's declaration of emancipation is not conclusive. The parents or guardian must no longer support the minor and they must recognize the minor's right to retain his or her own wages, and to live independently of them. Moreover, if the parents or legal guardian list the minor as a dependent on their income tax return, he or she cannot be emancipated.

Full-time employment does not require that the person work full-time for all fifty weeks each year. Rather, the person must earn the equivalent amount of fifty weeks of work, for forty hours, at minimum wage. Currently, minimum wage is \$3.35 per hour. Therefore, the person must have earned income of at least \$6,700 to be considered as a full-time employee (50 x 40 x \$3.35). The person may have earned this money in less than 50 weeks, but the time period in which the money is earned (up to one year) is irrelevant. He or she simply must have earned this minimum amount; furthermore, these wages must be reported for Virginia income tax purposes.

The special arrangement contract is a new concept for the in-state tuition statute. It is a formal written contract between an institution of higher education and a Virginia employer, the authorities controlling a federal installation, or an agency located in Virginia. Under this contract the employer must pay the tuition for the employee. This contract must also be approved as to form and legal sufficiency by the Office of the Attorney General. Under the contract, the institution may agree to charge the employer the in-state tuition rate, even if the employee attending classes is not a Virginia domiciliary.

A Virginia employer includes corporations, partnerships, or sole-proprietorships, organized under the laws of Virginia, or having income from Virginia sources. Thus, a private New York corporation doing business in Virginia would meet the definition. Also included

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are public or non-profit organizations authorized to operate in Virginia.

### GENERAL RULES

Assessing eligibility for in-state tuition is essentially a three-step process. First, the institution must determine from the information furnished by the applicant whether the applicant is a dependent or independent student, emancipated or unemancipated minor. Second, the institution must apply the domicile test depending upon the category. An independent student or emancipated minor must establish by clear and convincing evidence that for a period of at least one year prior to the date of alleged entitlement, he or she was domiciled in Virginia and had abandoned any previous domicile. An unemancipated minor must establish by clear and convincing evidence that for a period of at least one year prior to the date of alleged entitlement, the parent or legal guardian through whom the eligibility is claimed was domiciled in Virginia and had abandoned any previous domicile. A dependent student is evaluated like an unemancipated minor; however, the dependent student is rebuttably presumed to have the domicile of the parent or legal guardian claiming the student for tax purposes or providing substantial financial support. If the date of alleged entitlement is, for example, September 1, 1985, then the Virginia domicile must have been established no later than September 1, 1984 and continued for the entire year. Third, if the student is not eligible as a domicile, then eligibility under paragraph (E) (Military exception), paragraph (F) (non-resident taxpayers exception), or paragraph (G) (Special Arrangement Contracts) should be considered.

#### Domicile: Residence Requirement

Domicile is defined in the law as "the present fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely." Domicile cannot be initially established in Virginia unless one actually resides, in the sense of being physically present in Virginia, with the requisite domiciliary intent. (Note, however, that once domicile has initially been established, actual residence is no longer necessarily required. Temporary absence from the State does not negate a claim of Virginia domicile unless the person does something incompatible with that claim, such as registering to vote in the new state which indicates an intent to establish his or her domicile in another state). The physical presence requirement means that a person who has never resided in Virginia, or who was not residing here at the time he or she formed the intent to make Virginia his or her home, cannot be domiciled here. A New York resident who has resolved to move to Virginia and remain indefinitely in Virginia is still domiciled in New York for tuition eligibility purposes until he or she actually moves to Virginia and has resided here for at least the one year period with the requisite domiciliary intent.

Domicile: Intent Requirement

Where a person resides is relatively easy to determine. Whether the person has resided in Virginia with the requisite domiciliary intent is more difficult to ascertain. Intent is necessarily a subjective element; however, a person demonstrates his or her intent through objective means, i.e., by his or her conduct. One's subjective intent may be unsupportable by his or her conduct. In short, actions generally speak louder than words. The law requires that a person claiming eligibility for in-state tuition as a domicile (or the person through whom eligibility is being claimed) shall have demonstrated this domiciliary intent by clear and convincing evidence at least one year prior to the date of alleged entitlement. The burden is on the applicant to prove this intent.

Section 23.7-4 includes a list of objective conduct to be weighed in evaluating a claim of domiciliary intent:

1. Continuous residence for at least one year prior to the date of alleged entitlement. Continuous residence during this period as evidence of domiciliary intent should be distinguished from the residence required to initially establish domicile in Virginia. As noted above, once Virginia domicile has been affirmatively established, actual residence is not necessarily required in order to retain it. Continuous residence in the context of evaluating domiciliary intent simply makes it more likely that the person intends to make Virginia his or her home indefinitely; he or she is demonstrating his or her domiciliary intent by currently residing in the Commonwealth. (If the student returns each summer to his or her parents' domicile outside Virginia, this may be evidence that he or she is retaining the previous domicile.)
2. State to which income taxes are filed or paid. A person who does not file a state income tax return in Virginia, if he or she has income, is not normally considered to be domiciled here since domiciliaries are required to file returns regardless of the fact that they may reside elsewhere. Failure to file a tax return in Virginia when one is required to is strong evidence that one is not a Virginia domicile. Likewise, a member of the armed forces who does not claim Virginia as his or her tax situs for military income is not a Virginia domiciliary. The filing of an income tax return in Virginia or the paying of income taxes to Virginia is not conclusive evidence that a person is domiciled in Virginia. For example, a student with a part-time job may pay income tax to Virginia on

wages earned in the State, even though he or she may be a temporary resident. In short, fulfilling the obligation to pay taxes to Virginia on income earned in Virginia is not conclusive of one's domicile.

3. Driver's license. Possession of a Virginia driver's license is evidence of intent to be domiciled here. Possession of a driver's license from another state is evidence of intent to retain domicile in that state.
4. Motor vehicle registration. Registration of a motor vehicle in Virginia is evidence of intent to be domiciled here. Registration of a motor vehicle in another state is evidence of intent to be domiciled in that state. Virginia law permits, but does not require, registration by a non-resident student. Thus, a student-owner who does register in Virginia, when not required to by law, has shown a positive intent of Virginia domicile.
5. Voter registration.
  - a. Actual voting. If a citizen has voted in person or by absentee ballot in another state during the year immediately prior to the date of the alleged entitlement then he or she will normally be ineligible for in-state tuition. Voting in Virginia, in local or state elections, is very strong evidence of domicile, but it is not determinative.
  - b. Voting registration. Registering to vote in Virginia within the past year is evidence of domiciliary intent, although it is not determinative. The institution is not bound by the voting registrar's findings. The fact that a person is still registered in another state, but has not voted there in the past year does not conclusively mean that he or she is not domiciled in Virginia, but must be taken into account. Failure to register to vote by a person who, on principle, has never registered to vote anywhere should not be taken as conclusive evidence that the person lacks domiciliary intent.
6. Employment. Employment is not a prerequisite to eligibility for in-state tuition. If a person's residence in the State and domiciliary intent have otherwise been satisfactorily documented, unemployment does not preclude a finding that the person is a Virginia domiciliary. Fulfillment of state licensing requirements in order to be certified to practice a profession in Virginia, e.g.

bar examination, clinical psychologist, nursing certificates, is evidence, albeit not conclusive, of domiciliary intent.

a. Employment in Virginia post-graduation. This is particularly important in reclassification cases. If the person has accepted an offer of permanent employment with a Virginia employer following completion of the degree program in which he or she is currently enrolled, this is strong evidence of domiciliary intent. The burden is on the student to demonstrate that such employment exists, i.e., through a written commitment from his or her prospective employer.

b. Summer employment. This is usually relevant in reclassification cases. Employment in Virginia during the summer is evidence of domiciliary intent, albeit not conclusive evidence. (If the student returns each summer to his or her parents' domicile outside Virginia, this may be evidence that he or she is retaining the previous domicile.)

7. Ownership of real property in Virginia may be evidence of domiciliary intent; however, payment of real property taxes to Virginia in the absence of other supportive evidence is insufficient to establish that a person is domiciled in Virginia. A person who may have purchased real property in Virginia while domiciled here, but who subsequently left to take up residence in another state, cannot establish eligibility solely through continued ownership of Virginia property.
8. Sources of financial support. Acceptance of financial assistance from public agencies or private institutions located in another state precludes eligibility for in-state tuition when such financial assistance is offered only to domiciliaries of the other state. Otherwise, acceptance of financial assistance from sources outside Virginia is simply evidence (but not conclusive evidence) of continued ties to the other state.
9. Location of checking or passbook savings accounts.
10. Other social and economic relationships with the Commonwealth and other jurisdictions. The fact that a person has immediate family ties, such as a brother or sister, domiciled in Virginia is evidence of domiciliary intent. Professional and business licenses issued by Virginia agencies support a person's claim of domicile. Other factors to



consider are membership in religious, community organizations and social clubs; involvement in political parties, and the jurisdiction in which the person's last will and testament has been executed.

EACH CASE PRESENTS A UNIQUE COMBINATION OF FACTORS, AND THE INSTITUTION MUST DETERMINE FROM AMONG THEM THOSE CORE FACTORS WHICH CLEARLY AND CONVINCINGLY DEMONSTRATE THE PERSON'S DOMICILIARY INTENT. HAVING ISOLATED THIS CORE OF FACTORS IN A GIVEN CASE, THE INSTITUTION MUST THEN LOOK AT THE DATE ON WHICH THE LAST OF THESE ESSENTIAL ACTS WAS PERFORMED. AT SUCH TIME, DOMICILIARY INTENT IS ESTABLISHED AND STARTS THE CLOCK RUNNING FOR PURPOSES OF THE ONE-YEAR DURATIONAL REQUIREMENT. IT MIGHT BE HELPFUL IN COMPLEX CASES TO CHART THE PERSON'S OBJECTIVE MANIFESTATIONS OF DOMICILIARY INTENT ON A TIMELINE. THE FACTORS ESSENTIAL TO THE DEMONSTRATION OF DOMICILIARY INTENT MUST EXIST FOR THE ONE-YEAR PERIOD PRIOR TO THE DATE OF ALLEGED ENTITLEMENT. IN OTHER WORDS, DOMICILE MUST CONTINUOUSLY EXIST FOR THE ENTIRE ONE YEAR PERIOD.

It is important to reiterate the definition of clear and convincing evidence. A student who claims in-state tuition rates must establish that claim by clear and convincing evidence. Clear and convincing evidence does not mean proof beyond a reasonable doubt as required in the criminal context, nor is it clear and unequivocal. It is that degree of proof that will produce a firm belief in the allegation. The evidence must justify the claim both clearly and convincingly.

In the context of determining domiciliary intent, Section 23.7-4 of the Code of Virginia states two very important caveats:

1. Mere physical presence or residence primarily for educational purposes shall not confer domiciliary status. For example, a student who moves to Virginia for the primary purpose of becoming a full-time student is not a Virginia domicile, even if the student has been in Virginia for the statutory twelve month period. The issue is whether the individual has moved to Virginia with the primary purpose of becoming a full-time student or with the primary purpose of making an indefinite home in Virginia. In questionable cases, the acts performed by the individual which indicate his or her intent to become a Virginian should be closely scrutinized.
2. Domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or which are required or routinely performed by temporary residents of the Commonwealth.

SPECIAL RULES AND EXCEPTIONS

Section C of the statute describes special circumstances which may affect eligibility for in-state tuition, and specifies situations in which Virginia domicile may be claimed through a parent or legal guardian.

Unemancipated Minors

An unemancipated minor automatically takes the domicile of his or her parents. If the unemancipated minor is in the care of a legal guardian, the minor takes the domicile of the legal guardian unless there are circumstances indicating that the guardianship was created primarily for the purpose of conferring a Virginia domicile on a minor. With parents surviving, the guardianship must have been created by court order, and a copy of the court decree should routinely be required as proof of guardianship.

In most cases the domicile of the parents will be the same; however, it is possible for the parents to have different domiciles.

1. Where the parents have not been divorced or legally separated by court order, the unemancipated minor may claim the domicile of either parent. For example, in the case of military families, under federal law, the military parent may reside in Virginia but choose not to claim Virginia as his or her domicile. To determine the domicile of the military parent, the critical question is where the military parent files tax returns on military income. If the return is filed in Virginia, that is strong evidence that the military parent is a Virginia domicile and should be evaluated with all of the other pertinent information. If the return is filed in another state, on military income earned while stationed in Virginia, the military parent is not a Virginia domicile. However, if the spouse of the military parent is a Virginia domicile, the unemancipated minor may claim through the spouse and receive in-state rates if the requisite one year period is met. As with anyone else, the strength of the non-military parent's ties to Virginia should withstand scrutiny. In addition to the factors listed above under domiciliary intent, the institution should consider the duration of residence in Virginia and the non-military parent's domiciliary history. Evidence that the non-military parent has accompanied the military parent on each tour of duty outside Virginia and taken steps to establish domicile in other states is evidence that the non-military parent has not established a Virginia domicile independent of the military parent, or that he or she has abandoned a Virginia domicile previously established.

Section E of the statute enlarges the eligibility of military dependents for in-state rates. The minor may still be eligible, despite the fact that neither parent is a Virginia domicile, under the conditions set forth in Section E.

2. Parents are separated or divorced. Under the new law, the unemancipated minor is not automatically assigned the domicile of the custodial parent. Rather, the domicile of the unemancipated minor may be either the domicile of the parent with whom he or she resides or the domicile of the parent who claimed the minor as a dependent for federal and Virginia income tax purposes for the tax year prior to the date of alleged entitlement and is currently so claiming the minor. For example, if a minor lives with the mother in Maryland, but the father, who is a Virginia domiciliary, claims the minor as a dependent on his federal and Virginia income tax returns, the father's domicile may be used to establish a Virginia domicile for the minor. Note that if the minor lives with the mother in Maryland, and the mother claims the minor as a dependent for tax purposes, the minor may still claim Virginia domicile through the father, if it is shown that the father provides substantial support to the minor. This derives from the definitions of unemancipated minor and dependent student.

### Dependent Students

The domicile of a dependent student is rebuttably presumed to be the domicile of the parent or legal guardian claiming him or her as an exemption for federal or state income tax purposes currently and for the tax year prior to the date of alleged entitlement or providing substantial financial support. When the parents are separated or divorced, and the parent claiming the student as a dependent for income tax purposes is domiciled in another state, for example Maryland, the student may rebut this presumption by showing that he or she resides with the other parent, who is a Virginia domiciliary.

A dependent student 18 years of age or over may also rebut the presumption that he or she has the domicile of the parent claiming the student as a dependent for income tax purposes by showing that he or she has established a Virginia domicile independent of the parents. The burden is on the student to prove by clear and convincing evidence that he or she has established a Virginia domicile independent of the out-of-state parents despite the fact that the parents are claiming the student as a dependent for income tax purposes or providing substantial financial support. An example of this is the person who has lived and worked in Virginia for several years and has clearly established a Virginia domicile, but who is now returning to school and receiving substantial financial support from a parent domiciled elsewhere.

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Finally, a student may rebut the presumption that he or she has the same domicile as an out-of-state parent by offering clear and convincing evidence that the parent claimed the student as a dependent for tax purposes illegally or unrightfully. In this case the student should be evaluated as an independent student.

### Independent Students

Upon reaching the age of majority (18), a student is capable of establishing a legal domicile independent of his or her parents or guardian. Such a student must demonstrate through positive steps the establishment of an independent domicile. Due to the one-year requirement, the earliest an independent student would be eligible for in-state rates by virtue of having established an independent domicile in Virginia would be on his or her 19th birthday.

### Emancipated Minors

The domicile of an emancipated minor is established in the same manner as that of an independent student. Note, however, that by virtue of having been emancipated prior to his or her 18th birthday, an emancipated minor becomes eligible to establish a domicile independent of parents as of the date of emancipation. If positive steps are necessary in order to establish a Virginia domicile, the earliest an emancipated minor may become eligible for in-state tuition is one year after the date of emancipation.

### Married Persons

The domicile of a married person shall be determined in the same manner as the domicile of an unmarried person. A person's domicile is not automatically altered by marriage. For example, if a woman domiciled in Virginia marries a man domiciled in Washington, D.C., her domicile remains Virginia unless she takes positive steps to acquire a Washington, D.C. domicile. By the same token, a person cannot acquire Virginia status simply by marrying a Virginia domiciliary. Marriage is a factor in determining whether or not an individual is emancipated from his or her parents.

### Aliens

The mere fact that a person is a citizen of another country does not automatically disqualify the person from establishing domicile in Virginia. When a foreign national claims that he or she is a Virginia domiciliary, the institution should initially examine the federal immigration documents controlling the alien's purpose and length of stay in the United States. The purpose of such examination is to determine whether the alien is required to maintain a foreign residence, as well as the terms and conditions governing the alien's presence in the United States relevant to evaluating the claim of domicile.

There are two general categories of aliens in the United States, immigrant and non-immigrant. However, there is a hybrid classification for individuals admitted as political refugees or given asylum status (for example, the U.S. Vietnamese Refugee Program).{1} Treatment of each category is discussed below.

a. Immigrant Status

Aliens holding immigration visas are lawfully admitted for permanent residence in the United States.{2} Such aliens may establish and claim Virginia domicile as anyone else. Immigrant status does not confer upon the alien any special residentiary advantage. As with any other student, the burden is on the alien to establish, by clear and convincing evidence, that he or she has been a domicile of Virginia for the entire requisite one year period. It may well be that the immigrant's contacts with another jurisdiction fail to demonstrate clearly and convincingly that Virginia is his or her domicile. Keep in mind that in passing upon the facts of each case, there may be some factors normally considered but inapplicable to foreign nationals; for example, salaries paid by many international organizations to non-U.S. citizens are exempt from federal and state taxation by treaty or international agreement (an illustration would be the International Bank for Reconstruction and Development, also known as the World Bank). In such a case, an alien's non-payment of taxes to Virginia would be immaterial to domicile considerations. Unless the institution is already aware of the inapplicability of any factor normally utilized in judging a claim of domicile, the responsibility and burden is on the student to bring such information to the attention of the institution.

b. Political Refugees

Such aliens are generally admitted into the United States for an indefinite period of time and without restriction on the maintenance of a foreign domicile.{3} Although some may be granted refugee status for a more limited period (e.g., one year) they are generally renewed indefinitely. As with immigrants, such political refugees are eligible for in-state tuition rates upon clear and convincing evidence that they have been domiciled in Virginia for the entire requisite one year period.

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{1} 8 U.S.C. S 1101 (a) 15; 8 C.F.R. S 214 et seq. 22 C.F.R. 41.67 et seq.

{2} Generally, such aliens have in their possession Form I-551 (Alien Registration and Receipt Card). The front side of the card contains the photograph and fingerprints of the alien on a white background. The reverse side of the card states that "the person identified by this card is entitled to reside permanently and work in the U.S."

{3} Such aliens are generally required to carry Form I-94 endorsed to show parole status.

## c. Non-Immigrants

Unlike immigrants, non-immigrants are authorized entry into the United States temporarily for specific purposes. The immigration laws provide for several classifications of non-immigrant visas. The function of the institution is not to judge the appropriateness of the classification, but to analyze the claim of domicile taking into account the terms and conditions attendant to such classification. The following is a general description of the 1984 non-immigrant classifications with the designated symbol that is generally affixed to the visa by the consular officer.{4}

<u>Symbol</u>	<u>Classification</u>
A-1	Includes ambassadors, public ministers, career diplomats and consular officers accredited by a foreign government and recognized by the Secretary of State and immediate family.
A-2	Other foreign government officials and employees accepted by Secretary of State, and immediate family.
A-3	Attendants, servants or personal employees of A-1 or A-2, and immediate family.
B-1	Temporary visitor for business having residence in foreign country which he or she has no intention of abandoning.
B-2	Temporary visitor for pleasure having residence in foreign country which he or she has no intention of abandoning.
B-1/B-2	Temporary visitor for pleasure and business having residence in foreign country which he or she has no intention of abandoning.
C-1	Alien in immediate and continuous transit through the U.S.
C-2	Alien in transit to United States headquarters.
C-3/D	Foreign government officials, members of immediate family, attendants, servants, in transit.
D.	Alien crewman serving on board a vessel or aircraft, who intends to land temporarily and solely in pursuit of his or her duties and to depart with vessel on which arrived or on another vessel.
E-1	Aliens and immediate family permitted to enter the United States under treaty to engage in substantial business.
E-2	Aliens and immediate family permitted to enter

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{4} Visas are issued by the Department of State at Offices in foreign countries. The visa is a stamp placed on one of the pages of the alien's passport. Non-immigrants are generally required to carry form I-95 which is endorsed at the point of entry into the U.S. to show the visa classification and usually stapled in the passport. Any extension of stay is shown on the reverse pages of the passport.

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- F-1 United States under treaty for investment purposes.  
Bona fide student permitted entry solely for purpose of pursuing a full course of study, having a residence in a foreign country which he or she has no intention of abandoning.
- F-2 Spouse or child of F-1, having a residence in a foreign country which he or she has no intention of abandoning.
- G-1 Principal resident representative or recognized foreign member government to international organization, staff and members of immediate family.
- G-2 Other representatives of recognized foreign member government to international organization and immediate family.
- G-3 Representative of nonrecognized or nonmember foreign government to international organization and members of immediate family.
- G-4 International organization, officer or employee thereof, and members of immediate family.
- G-5 Attendant, servant, or personal employee of G-1, G-2, G-3 and G-4 classes and members of immediate family.
- H-1 Temporary worker of distinguished merit and ability and having a residence in a foreign country which he or she has no intention of abandoning.
- H-2 Aliens who are temporarily in the United States to perform temporary services or labor and who have residence in a foreign country which they have no intention of abandoning.
- H-3 Trainee and having a residence in a foreign country which he or she has no intention of abandoning.
- H-4 Spouse or child of alien classified H-1, H-2, H-3 and having a residence in a foreign country which he or she has no intention of abandoning.
- I. Representative of foreign information media, spouse and children.
- J-1 Exchange visitor under educational program designated by Secretary of State and having a residence in a foreign country which he or she has no intention of abandoning.
- J-2 Spouse or child of exchange visitor and having a residence in a foreign country which he or she has no intention of abandoning.
- K-1 Fiance or fiancée of U.S. citizen who seeks to enter United States solely to conclude a valid marriage in ninety days.
- K-2 Minor child of fiance or fiancée of U.S. citizen.
- L-1 Intra-company transferee (executive, managerial, and specialized personnel) continuing employment with international firm or corporation.
- L-2 Spouse or minor child of alien classified as L-1.
- M-1 Vocational or other recognized nonacademic student and having residence in a foreign country which he or she has no intention of abandoning.

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- M-2 Spouse or minor child of M-1, having residence in a foreign country which he or she has no intention of abandoning.
- NATO-1 Principal permanent representative of member state to NATO, and resident staff and immediate family.
- NATO-2 Other representatives to NATO, including dependents of member of force entering U.S. in accordance with the NATO Status of Forces Agreement.
- NATO-3 Official clerical staff and immediate family accompanying representative of member state to NATO.
- NATO-4 Officials of NATO (other than NATO-1) and immediate family.
- NATO-5 Experts, other than NATO officials classifiable under NATO-4, employed on missions on behalf of NATO and their dependents.
- NATO-6 Members of civilian component accompanying a force entering U.S. in accordance with the NATO Status of Forces Agreement; members of civilian components employed by Allied Headquarters; and dependents.
- NATO-7 Attendants and servants of NATO-1, -2, -3, -4, -5 and -6.

Restricted Non-Immigrant Visas. Aliens holding B,F,H,J, and M non-immigrant visas are not eligible for in-state tuition rates. Even though the alien may subjectively intend to make Virginia his or her domicile of choice, nonetheless, by operation of both federal and state law, the individual may not establish domicile in Virginia. As condition of entry into the United States, the alien has pledged to retain his or her foreign residence while living temporarily in this country. Also, aliens admitted into the United States pursuant to the NATO Status of Forces Agreement are ineligible since the terms of the said treaty preclude the alien from forming domicile in the United States.{5} Aliens who are associated with NATO, who hold visas with a NATO designation, should be examined to determine whether entry into the U.S. has been permitted under the provisions of the NATO Status of Forces Agreement.

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{5} NATO Status of Forces Agreement, June 19, 1951, 4 U.S.T., 1793, T.I.A.S. 2846. Article III thereof provides that the NATO force "shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State." For example, it has been held that a member of the Royal Air Force of the United Kingdom stationed to a U.S. Naval aircraft base in Virginia Beach, pursuant to a NATO visa, cannot be a Virginia domicile for purposes of initiating a divorce suite in Virginia's state courts. Official opinion of the Attorney General to Delegate Howard E. Copeland, dated May 16, 1983.



Unrestricted Non-Immigrant Visas. Unrestricted visas do not require the alien to maintain a foreign residence. However, aliens who hold C or D visas are ineligible for in-state tuition rates as the terms of their visas are fundamentally incompatible with formation of a bona fide domiciliary intent. Also, such visaholders are presently ineligible to petition for an extension of stay.

A-1, A-2, G-1, G-2, G-3 and G-4 visaholders are permitted to remain in the United States for an indefinite period, generally for so long as their authorized purpose continues.{6} Such non-immigrants may claim and prove eligibility for in-state tuition rates as anyone else.

All other unrestricted non-immigrant visas, with the exception of K and L, are generally admitted into the U.S. for a fixed time up to a one year period, but may be granted (by Immigration) indefinite numbers of extensions in increments of up to one year. K visaholders are granted ninety days to conclude a marriage, and L visaholders are granted initial admission for up to a three year period. K visaholders are not eligible for extension of their 90 day stay and must therefore be granted permanent residence status if they wish to remain in this country. L visaholders are granted renewals for up to a one year period so long as there is an established need for the alien to remain. Claims of domiciliary intent by such visaholders who are permitted only temporary residence in this country until a fixed date are suspect. Nonetheless, it is important that each institution not automatically disqualify such aliens simply on the basis of their visa designation, since there can be indefinite renewals of their authorized stay in the United States, but allow an equal opportunity to establish their claim. Remember, the burden is on all students to establish their claim by clear and convincing evidence.{7}

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{6} Also, such aliens are presently not required to petition Immigration for an extension of stay. 8 C.F.R. S 214.1 and 214.2

{7} For example, the non-immigrant may have petitioned for an immigrant visa or reclassification to an unrestricted non-immigrant visa and demonstrates that such petition will likely be approved; or the visaholder may demonstrate that Immigration will likely permit him or her to remain indefinitely in the U.S. under his or her present visa classification. As an illustration, an L visaholder may be granted a renewal for so long as there is an established need. The L visaholder may be able to present a document from his or her employer in this country indicating the likelihood of employment indefinitely in Virginia, and a document from Immigration indicating that he or she will be permitted to remain in U.S. so long as there is an established need therefor. Keep in mind that Immigration will ordinarily not provide any unqualified advance guarantee that the alien will be permitted to remain in this country after the existing expiration date of the visa; however, the burden is on the student to come forward with evidence that he or she will be permitted to remain. The alien may be able to demonstrate that even though Immigration will not help his or her case, his or her stay has been successively extended in the past and likely to be in the future. The important point is to give

Status Reclassification

It is presumed that a matriculating student who enters an institution classified as an out-of-state student is in the Commonwealth for the purpose of attending school and not as a bona fide domiciliary. The student seeking status reclassification is required to rebut this presumption by clear and convincing evidence. The statute also explicitly states that mere physical presence or residence primarily for educational purposes shall not confer domiciliary status. Furthermore, domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or are required or routinely performed by temporary residents of the Commonwealth.

One of the ways in which a matriculated non-Virginian may be able to clearly and convincingly rebut the above presumption is by acceptance of a permanent post-graduation job offer from a Virginia employer. This is likely to occur most frequently in the student's last year in a degree program. Both the offer and the acceptance should be in writing. Job offers which are remote in time, such as an offer made to a college sophomore to join a Virginia law firm as an attorney, are obviously not conclusive, but may be evaluated to determine whether the student has changed his or her domicile.

POLICY CONCERNING RECLASSIFICATION AND FALSIFICATION  
OF INFORMATION

Changes from out-of-state to in-state classification. If a student is classified initially as out-of-state, it is the responsibility of the student thereafter to petition the responsible official for reclassification to in-state status if the student believes that subsequent changes in facts justify such a reclassification. The institution will not assume responsibility for initiating such an inquiry independently. The change in classification, if deemed to be warranted, shall be effective for the academic term, semester or quarter next following the date of the application for reclassification. No change to in-state status may be obtained by a student for an academic term that has begun before the date of the application for reclassification.

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the alien the equal chance to prove his or her claim, and each claim must be evaluated independently on a case-by-case basis. It may well be that the alien's contact with another jurisdiction or country, apart from questions over the likelihood of being permitted by Immigration to remain indefinitely in Virginia, demonstrates that Virginia is not his or her domicile.

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Changes from in-state to out-of-state classification. If a student is classified initially as in-state, again, either the student or the institution thereafter may initiate a reclassification inquiry. The institution may initiate the reclassification inquiry independently at any time after the occurrence of events or changes in facts which give rise to a reasonable doubt about the validity of the existing residential classification.

Changes due to administrative errors and fraudulent applications. Administrative errors may include letters announcing an incorrect domicile, actual misclassification or tuition billing notices.

1. In the absence of fraud or knowingly providing false information, where a student receives from an institutional officer an erroneous notice announcing the student to be, or treating the student as, eligible for in-state tuition, the student shall not be responsible for paying the out-of-state tuition differential for any enrolled term, semester or quarter commencing before the classifying institution gives to the student notice in writing of the administrative error in the prior notice.
2. Where a student has been erroneously classified as a domicile for tuition purposes due to fraud or knowingly providing erroneous information in an attempt to evade payment of out-of-state fees, the application of the student is fraudulent. An institution may re-examine an application suspected as being fraudulent, make a domicile status redetermination thereof, and change the status of the student, if warranted, retroactively to the beginning of the term with respect to which the fraudulent application had originally been made. Such a retroactive change will make the student responsible for the out-of-state tuition differential for the enrolled term(s) intervening between the fraudulent application and its discovery. The student may also be subject to dismissal from the institution or such other action as the institution deems proper. Institutional procedures must be followed to dismiss the student and to appeal such action.

Student responsibility to register under proper classification. The responsibility to register under proper domicile classification is that of the student, and if there is any question of the right to classification as a domicile of Virginia it is the student's obligation, prior to or at the time of registration, to raise the question with the administrative officials of the institution in which the student is registering and have such officially determined.

Responsibility for supplying information. An applicant or enrolled student subject to either a classification or reclassification inquiry is responsible for supplying all pertinent information requested by the institution in connection with the classification process. Failure to comply with such requests may be attended by the following consequences:

1. Where the initial classification inquiry affects a prospective enrollee, the student shall be classified out-of-state for tuition purposes;
2. Where the reclassification petition is initiated by the student to acquire a change from out-of-state to in-state status, the student shall continue to be classified as out-of-state for tuition purposes;
3. Where the reclassification inquiry anticipates a change from in-state to out-of-state status for tuition purposes, the student may be subjected to retroactive reclassification, cancellation of registration and enrollment or dismissal.

A student who knowingly provides erroneous information in an attempt to evade payment of out-of-state tuition fees for each term, semester or quarter attended may be subject to dismissal or other disciplinary action by the institution.

### MILITARY PROVISIONS

Section E of the statute deals with children of military parents and spouses of military personnel who do not otherwise qualify for in-state tuition privileges.\* The section provides an exception for the benefit of military spouses and dependents. It allows these students to establish eligibility for resident tuition without meeting

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\* Always keep in mind that military personnel and dependents may claim eligibility as state domiciles. If domicile is claimed, as with anyone else, all of the relevant factors and information provided must be considered. In the military context this may include residency information on the Leave and Earnings Statement and the "home of record." Payment of taxes to another state or claiming another state for tax purposes on military income excludes the person as a Virginia domicile. The weight to be given the home of record may vary greatly depending upon how recently the home of record was declared and with what branch of service the individual is affiliated. (Some branches do not permit a change in a previously declared home of record). A non-military spouse may have a domicile separate from the military spouse. Clear and convincing evidence may be presented to support a claim of separate domicile.

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the requirements of domicile when the following conditions are met:

1. The student is not a member of the armed forces.
2. One of the parents or the spouse is a member of the armed forces stationed or residing in Virginia.
3. The non-military parent or the spouse of the military person has resided in Virginia, has been employed full-time, and has paid personal income tax to Virginia for the year prior to the semester for which reduced tuition is sought.
4. The non-military parent of a student must claim the student as a dependent.

This section applies only as long as the non-military parent or the spouse of the non-military person continues to live, work full-time and pay taxes to Virginia.

Thus, in the situation where the father of the student is stationed in Virginia and the student seeks to obtain reduced tuition through the mother, the mother must fulfill the following conditions: she must have lived in Virginia, worked full-time for the year prior to the term in question, paid to Virginia income tax on that income, and listed the student as a dependent on her tax return.

Similarly, if the wife of a naval officer is employed full-time and lived in Virginia for the year prior to the term in question and paid taxes on her income to Virginia, she will be eligible for reduced tuition as long as the stated conditions continue to be met. In other words, she must continue to be employed full-time, and must continue to pay income tax to Virginia.

It is incumbent upon the student to provide to the institution current information concerning his or her classification. For example, if a student has qualified for in-state tuition through a non-military parent or spouse employed full-time in Virginia, and that person changes his or her domicile, the student must inform the institution of the resulting change in his or her classification.

### NON-VIRGINIA RESIDENTS EMPLOYED IN VIRGINIA

Section F of the statute provides an exception to the general rule of domicile for individuals who reside outside Virginia but who work full-time in the Commonwealth, if the following conditions are met: Individuals who live in other states may gain in-state tuition rates if they have been employed full-time in Virginia for at least one year immediately prior to the term or semester for which reduced tuition is sought and if they have paid Virginia income taxes on all

taxable income earned in the Commonwealth of Virginia for the tax year prior to the date of alleged entitlement. Similarly, a student who is not a domiciliary of Virginia will be eligible under this exception if a nonresident parent claims the student as a dependent and that parent has been employed full-time in Virginia for at least one year immediately prior to the date of alleged entitlement and paid Virginia income taxes on all taxable income earned in Virginia for the tax year prior to the date of the alleged entitlement. Such students shall continue to be eligible for in-state tuition charges so long as they or their qualifying parent are 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. It is incumbent upon the student to provide to the institution current information concerning his or her classification.

### SPECIAL ARRANGEMENT PROVISIONS

Section G of the statute allows any non-domiciliaries employed by a Virginia based company or state, federal, or private agencies located in Virginia to enjoy in-state tuition benefits if their Virginia employer assumes the total liability of paying the tuition of these employees and if the employer has entered into a "Special Arrangement Contract" with public institutions of higher education. Special contractual agreements with federal installations or agencies must be for group instruction only and in facilities of the federal installation or agency located in Virginia\*.

In applying the provisions of Section G, the important factors to remember are the following:

1. The public institution that the non-domiciliary wishes to attend must have in force a valid "Special Arrangement Contract" with the employee's Virginia employer in order to qualify for the reduced tuition charges.
2. The Virginia based employer must be paying the total tuition charges of his or her employee and not just a portion thereof. Verification from the employer must be in writing.
3. The employee may be a domiciliary of another state or a foreign country, but may still enjoy reduced tuition charges as long as his or her Virginia based employer agrees to pay his or her total tuition fees.

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\* These guidelines apply to all instruction which is reported to the State Council of Higher Education for F.T.E. purposes.

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4. The tuition charged to the employer shall be at least equal to in-state tuition fees, but the public institution of higher education may specify tuition charges in the "Special Arrangement Contract" that are greater than in-state tuition charges, but less than out-of-state charges.
5. The reduced tuition charges are available only to the employee of the Virginia-based company and not to his or her dependents.
6. It is incumbent upon the public institution of higher education and the Virginia-based employer to reach a tentative "Special Arrangement Contract" which would specify the employees covered, the period of time (not to exceed one year), the location of classes, and the amount of tuition to be charged to the employer. The tentative "Special Arrangement Contract" must be forwarded to the Office of the Attorney General for approval as to legal sufficiency prior to signing and then to the State Council of Higher Education.

APPEALS PROCESS

Section H of this statute specifies that public institutions of higher education in Virginia are required to establish an appeals process for applicants denied in-state tuition. Each institution is required to have in place such an appeals process, which includes an intermediate review of the initial determination and a final administrative review. The final administrative decision must be in writing and a copy must 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. The appellate procedure of the institution must be in writing and must state time limitations in which decisions will be made, in order to provide for the orderly and timely resolution of all disputes.

An applicant who is denied in-state tuition privileges by a final administrative decision may have the decision reviewed by the circuit court for the jurisdiction where the public institution is located, if a petition for review of the final administrative decision is filed within 30 days of receipt of the final decision. To the extent practicable, each institution should attempt to record the date of actual receipt as in the case of hand deliveries.

Upon the filing of a petition for review with the court, and being noticed thereof, the institution shall promptly file with the court a copy of these guidelines, the written decision of the institution, including the application forms and all other documentary information considered by, or made available to, the institution. "Necessarily, the institution's decision should be in writing, be

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clearly stated with explanation, and be reached in accordance with the statute and these implementing guidelines. Legal counsel for the institution should also be promptly advised whenever a petition for review is filed with the circuit court.





