

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 409

Short Title: No In-State Tuition if Unlawfully in US. (Public)

Sponsors: Representatives Cleveland; Avila, Blackwood, Blust, Boylan, Brown, Coates, Daughtridge, Dockham, Folwell, Frye, Gillespie, Gulley, Hilton, Holloway, Howard, Killian, Langdon, Lewis, Moore, Pate, Setzer, Starnes, Steen, Stiller, Thomas, Walend, and Wiley.

Referred to: Education.

March 1, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PERSONS NOT LAWFULLY IN THE UNITED STATES ARE NOT ELIGIBLE FOR IN-STATE TUITION AT ANY CONSTITUENT INSTITUTION OR AT ANY COMMUNITY COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-143.1 reads as rewritten:

"§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who is lawfully in the United States and who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges under the jurisdiction of the State Board of Community Colleges.

(b) To qualify as a resident for tuition purposes, a person must lawfully be in the United States and must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the ~~State.~~State and as to whether he or she is lawfully in the United States.

1 (c) To be eligible for classification as a resident for tuition purposes, a person
2 must establish that his or her presence in the State currently is, and during the requisite
3 12-month qualifying period was, for purposes of maintaining a bona fide domicile
4 rather than of maintaining a mere temporary residence or abode incident to enrollment
5 in an institution of higher education.

6 (d) An individual shall not be classified as a resident for tuition purposes and,
7 thus, not rendered eligible to receive the in-State tuition rate, until he or she has
8 provided such evidence related to legal residence and its duration as may be required by
9 officials of the institution of higher education from which the individual seeks the
10 in-State tuition rate.

11 (d1) An individual who is unlawfully present in the United States and therefore
12 ineligible to establish domicile pursuant to this section shall not be eligible on the basis
13 of residency within North Carolina to receive the in-State tuition rate.

14 (e) When an individual presents evidence that the individual has living parent(s)
15 or court-appointed guardian of the person, the legal residence of such parent(s) or
16 guardian shall be prima facie evidence of the individual's legal residence, which may be
17 reinforced or rebutted relative to the age and general circumstances of the individual by
18 the other evidence of legal residence required of or presented by the individual;
19 provided, that the legal residence of an individual whose parents are domiciled outside
20 this State shall not be prima facie evidence of the individual's legal residence if the
21 individual has lived in this State the five consecutive years prior to enrolling or
22 reregistering at the institution of higher education at which resident status for tuition
23 purposes is sought.

24 (f) In making domiciliary determinations related to the classification of persons
25 as residents or nonresidents for tuition purposes, the domicile of a married person,
26 irrespective of sex, shall be determined, as in the case of an unmarried person, by
27 reference to all relevant evidence of domiciliary intent. For purposes of this section:

- 28 (1) No person shall be precluded solely by reason of marriage to a person
29 domiciled outside North Carolina from establishing or maintaining
30 legal residence in North Carolina and subsequently qualifying or
31 continuing to qualify as a resident for tuition purposes;
- 32 (2) No persons shall be deemed solely by reason of marriage to a person
33 domiciled in North Carolina to have established or maintained a legal
34 residence in North Carolina and subsequently to have qualified or
35 continued to qualify as a resident for tuition purposes;
- 36 (3) In determining the domicile of a married person, irrespective of sex,
37 the fact of marriage and the place of domicile of his or her spouse shall
38 be deemed relevant evidence to be considered in ascertaining
39 domiciliary intent.

40 (g) Any nonresident person, irrespective of sex, who marries a legal resident of
41 this State or marries one who later becomes a legal resident, may, upon becoming a
42 legal resident of this State, accede to the benefit of the spouse's immediately precedent
43 duration as a legal resident for purposes of satisfying the 12-month durational
44 requirement of this section.

1 (h) No person shall lose his or her resident status for tuition purposes solely by
2 reason of serving in the armed forces outside this State.

3 (h1) Any member of a North Carolina National Guard unit who is a nonresident
4 shall be eligible to be charged the in-State tuition rate and shall pay the full amount of
5 the in-State tuition rate and applicable mandatory fees. This subsection applies to
6 members in a reserve or active duty status.

7 (i) A person who, having acquired bona fide legal residence in North Carolina,
8 has been classified as a resident for tuition purposes but who, while enrolled in a State
9 institution of higher education, loses North Carolina legal residence, shall continue to
10 enjoy the in-State tuition rate for a statutory grace period. This grace period shall be
11 measured from the date on which the culminating circumstances arose that caused loss
12 of legal residence and shall continue for 12 months; provided, that a resident's marriage
13 to a person domiciled outside of North Carolina shall not be deemed a culminating
14 circumstance even when said resident's spouse continues to be domiciled outside of
15 North Carolina; and provided, further, that if the 12-month period ends during a
16 semester or academic term in which such a former resident is enrolled at a State
17 institution of higher education, such grace period shall extend, in addition, to the end of
18 that semester or academic term.

19 (j) Notwithstanding the prima facie evidence of legal residence of an individual
20 derived pursuant to subsection (e), notwithstanding the presumptions of the legal
21 residence of a minor established by common law, and notwithstanding the authority of a
22 judicially determined custody award of a minor, for purposes of this section, the legal
23 residence of a minor whose parents are divorced, separated, or otherwise living apart
24 shall be deemed to be North Carolina for the time period relative to which either parent
25 is entitled to claim and does in fact claim the minor as a dependent for North Carolina
26 individual income tax purposes. The provisions of this subsection shall pertain only to a
27 minor who is claimed as a dependent by a North Carolina legal resident.

28 Any person who immediately prior to his or her eighteenth birthday would have
29 been deemed under this subsection a North Carolina legal resident but who achieves
30 majority before enrolling at an institution of higher education shall not lose the benefit
31 of this subsection if that person:

- 32 (1) Upon achieving majority, acts, to the extent that the person's degree of
33 actual emancipation permits, in a manner consistent with bona fide
34 legal residence in North Carolina; and
- 35 (2) Begins enrollment at an institution of higher education not later than
36 the fall academic term next following completion of education
37 prerequisite to admission at such institution.

38 (k) Notwithstanding other provisions of this section, a minor who satisfies the
39 following conditions immediately prior to commencement of an enrolled term at an
40 institution of higher education, shall be accorded resident tuition status for that term:

- 41 (1) The minor has lived for five or more consecutive years continuing to
42 such term in North Carolina in the home of an adult relative other than
43 a parent, domiciled in this State; and

1 (2) The adult relative has functioned during those years as a de facto
2 guardian of the minor and exercised day-to-day care, supervision, and
3 control of the minor.

4 A person who immediately prior to his or her eighteenth birthday qualified for or
5 was accorded resident status for tuition purposes pursuant to this subsection shall be
6 deemed upon achieving majority to be a legal resident of North Carolina of at least 12
7 months' duration; provided, that the legal residence of such an adult person shall be
8 deemed to continue in North Carolina only so long as the person does not abandon legal
9 residence in this State.

10 (l) Any person who ceases to be enrolled at or graduates from an institution of
11 higher education while classified as a resident for tuition purposes and subsequently
12 abandons North Carolina domicile shall be permitted to reenroll at an institution of
13 higher education as a resident for tuition purposes without necessity of meeting the
14 12-month durational requirement of this section if the person reestablishes North
15 Carolina domicile within 12 months of abandonment of North Carolina domicile and
16 continuously maintains the reestablished North Carolina domicile at least through the
17 beginning of the academic term(s) for which in-State tuition status is sought. The
18 benefit of this subsection shall be accorded not more than once to any one person.

19 (m) Notwithstanding subsection (b) of this section, a person who is a full-time
20 employee of The University of North Carolina, or is the spouse or dependent child of a
21 full-time employee of The University of North Carolina, and who is a legal resident of
22 North Carolina, qualifies as a resident for tuition purposes without having maintained
23 that legal residence for at least 12 months immediately prior to his or her classification
24 as a resident for tuition purposes."

25 **SECTION 2.** G.S. 115D-39 reads as rewritten:

26 **"§ 115D-39. Student tuition and fees.**

27 (a) The State Board of Community Colleges shall fix and regulate all tuition and
28 fees charged to students for applying to or attending any institution pursuant to this
29 Chapter.

30 The receipts from all student tuition and fees, other than student activity fees, shall
31 be State funds and shall be deposited as provided by regulations of the State Board of
32 Community Colleges.

33 The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and
34 G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this
35 Chapter; provided, however, that when an employer other than the armed services, as
36 that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an
37 institution operating pursuant to this Chapter and when the employee works at a North
38 Carolina business location, the employer shall be charged the in-State tuition rate;
39 provided further, however, a community college may charge in-State tuition to up to
40 one percent (1%) of its out-of-state students, rounded up to the next whole number, to
41 accommodate the families transferred by business, the families transferred by industry,
42 or the civilian families transferred by the military, consistent with the provisions of
43 G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who
44 lawfully entered the United States and who is living in this State shall be deemed to

1 qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident
2 for community college tuition purposes as defined in G.S. 116-143.1(a)(2). Also, a
3 nonresident of the United States who has resided in North Carolina for a 12-month
4 qualifying period and has filed an immigrant petition with the United States
5 Immigration and Naturalization Service shall be considered a State resident for
6 community college tuition ~~purposes~~purposes, provided the immigrant is lawfully in the
7 United States.

8 (b) In addition, any person lawfully admitted to the United States who satisfied
9 the qualifications for assignment to a public school set out under ~~G.S. 115C-366~~ and
10 G.S. 115C-366, graduated from the public school to which the student was ~~assigned~~
11 assigned, and is lawfully present in the United States, shall also be eligible for the State
12 resident community college tuition rate. This subsection does not make a person a
13 resident of North Carolina for any other purpose.

14 (c) In addition, a person sponsored under this subsection who is lawfully
15 admitted to the United States is eligible for the State resident community college tuition
16 rate. For purposes of this subsection, a North Carolina nonprofit entity is a charitable or
17 religious corporation as defined in G.S. 55A-1-40 that is incorporated in North Carolina
18 and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code,
19 or a civic league incorporated in North Carolina under Chapter 55A of the General
20 Statutes that is exempt from taxation under section 501(c)(4) of the Internal Revenue
21 Code. A nonresident of the United States is sponsored by a North Carolina nonprofit
22 entity if the student resides in North Carolina while attending the community college
23 and the North Carolina nonprofit entity provides a signed affidavit to the community
24 college verifying that the entity accepts financial responsibility for the student's tuition
25 and any other required educational fees. Any North Carolina nonprofit entity that
26 sponsors a nonresident of the United States under this subsection may sponsor no more
27 than five nonresident students annually under this subsection. This subsection does not
28 make a person a resident of North Carolina for any other purpose.

29 (d) Notwithstanding any other provision of law, an individual who is unlawfully
30 present in the United States shall not be eligible on the basis of residency within North
31 Carolina to receive the State resident community college tuition rate."

32 **SECTION 3.** This act is effective when it becomes law.