

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1549*
Committee Substitute Favorable 6/3/04

Short Title: In-State Tuition for Military Reservists.

(Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE IN-STATE TUITION FOR MEMBERS OF THE
2 RESERVE COMPONENTS WHO ARE ASSIGNED TO UNITS LOCATED IN
3 NORTH CAROLINA AND TO CLARIFY DISCRIMINATION AGAINST
4 PERSONS WHO SERVE IN THE NORTH CAROLINA NATIONAL GUARD.
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6 The General Assembly of North Carolina enacts:

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

8 **"§ 116-143.1. Provisions for determining resident status for tuition purposes.**

9 (a) As defined under this section:

10 (1) A "legal resident" or "resident" is a person who qualifies as a
11 domiciliary of North Carolina; a "nonresident" is a person who does
12 not qualify as a domiciliary of North Carolina.

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

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

20 (b) To qualify as a resident for tuition purposes, a person must have established
21 legal residence (domicile) in North Carolina and maintained that legal residence for at
22 least 12 months immediately prior to his or her classification as a resident for tuition
23 purposes. Every applicant for admission shall be required to make a statement as to his
24 length of residence in the State.

25 (c) To be eligible for classification as a resident for tuition purposes, a person
26 must establish that his or her presence in the State currently is, and during the requisite
27 12-month qualifying period was, for purposes of maintaining a bona fide domicile
28 rather than of maintaining a mere temporary residence or abode incident to enrollment
29 in an institution of higher education.

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

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

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

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

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

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

39 (h1) Any member of a North Carolina National Guard unit or a member of a
40 Reserve Component Unit based in North Carolina who is a nonresident shall be eligible
41 to be charged the in-State tuition rate and shall pay the full amount of the in-State
42 tuition rate and applicable mandatory fees. This subsection applies to members in a
43 reserve or active duty status.

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

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

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

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

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

- 35 (1) The minor has lived for five or more consecutive years continuing to
36 such term in North Carolina in the home of an adult relative other than
37 a parent, domiciled in this State; and
- 38 (2) The adult relative has functioned during those years as a de facto
39 guardian of the minor and exercised day-to-day care, supervision, and
40 control of the minor.

41 A person who immediately prior to his or her eighteenth birthday qualified for or
42 was accorded resident status for tuition purposes pursuant to this subsection shall be
43 deemed upon achieving majority to be a legal resident of North Carolina of at least 12
44 months' duration; provided, that the legal residence of such an adult person shall be

1 deemed to continue in North Carolina only so long as the person does not abandon legal
2 residence in this State.

3 (l) Any person who ceases to be enrolled at or graduates from an institution of
4 higher education while classified as a resident for tuition purposes and subsequently
5 abandons North Carolina domicile shall be permitted to reenroll at an institution of
6 higher education as a resident for tuition purposes without necessity of meeting the
7 12-month durational requirement of this section if the person reestablishes North
8 Carolina domicile within 12 months of abandonment of North Carolina domicile and
9 continuously maintains the reestablished North Carolina domicile at least through the
10 beginning of the academic term(s) for which in-State tuition status is sought. The
11 benefit of this subsection shall be accorded not more than once to any one person."

12 **SECTION 2.** G.S. 127A-202.1 is amended by adding a new subsection to
13 read:

14 "(f) This section shall apply when a member of the North Carolina National
15 Guard is called into active duty at the direction of the President, the Governor, or by any
16 other competent authority."

17 **SECTION 3.** This act becomes effective July 1, 2004.