

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1058
Education/Higher Education Committee Substitute Adopted 7/7/04
House Committee Substitute Favorable 7/17/04

Short Title: UNC & Comm. Coll. Tuition/Military Students.

(Public)

Sponsors:

Referred to:

May 13, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MEMBER OF THE MILITARY OR A
DEPENDENT RELATIVE OF A MEMBER OF THE MILITARY WHO
ATTENDS A CONSTITUENT UNIVERSITY OR A COMMUNITY COLLEGE
SHALL BE CHARGED ONLY THE IN-STATE TUITION RATE AND TO
AUTHORIZE IN-STATE TUITION FOR NONRESIDENT MEMBERS OF THE
NORTH CAROLINA NATIONAL GUARD AND TO CLARIFY LAWS
PROHIBITING DISCRIMINATION AGAINST PERSONS WHO SERVE IN THE
NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116-143.3 reads as rewritten:

"§ 116-143.3. Tuition of active duty personnel in the armed services.

(a) Definitions. – The following definitions apply in this section:

- (1) The term "abode" shall mean the place where a person actually lives, whether temporarily or permanently; the term "abide" shall mean to live in a given place.
- (2) The term "armed services" shall mean the United States Air Force, Army, Coast Guard, Marine Corps, and Navy; the North Carolina National Guard; and any Reserve Component of the foregoing.
- (3) The term "tuition assistance" shall be used as defined in the United States Department of Defense Directive 1322.8, implementing 10 U.S.C. § 2007.

(b) Any active duty member of the armed services qualifying for admission to a ~~community college under the jurisdiction of the State Board of Community Colleges an~~ institution of higher education as defined in G.S. 116-143.1(a)(3) but not qualifying as a resident for tuition purposes under G.S. 116-143.1 shall be charged the ~~out of State tuition rate; provided, that the out of State tuition shall be forgiven to the extent that the out of State tuition rate exceeds any amounts payable to the institution or the service~~

1 ~~member by the service member's employer by reason of enrollment pursuant to such~~
2 ~~admission while the member is abiding in this State incident to active military duty, plus~~
3 ~~the amount that represents the percentage of the out of State tuition rate paid to the~~
4 ~~institution or the service member by the service member's employer multiplied by the~~
5 ~~in-State tuition rate and then subtracted from the in-State tuition rate.~~in-State tuition rate
6 and applicable mandatory fees for enrollments while the member of the armed services
7 is abiding in this State incident to active military duty in this State. In the event the
8 active duty member of the armed services is reassigned outside of North Carolina, the
9 member shall continue to be eligible for the in-State tuition rate and applicable
10 mandatory fees so long as the member is continuously enrolled in the degree or other
11 program in which the member was enrolled at the time the member is reassigned.

12 ~~(b1) Any active duty member of the armed services qualifying for admission to a~~
13 ~~constituent institution of The University of North Carolina but not qualifying as a~~
14 ~~resident for tuition purposes under G.S. 116-143.1 shall be charged the maximum~~
15 ~~available tuition assistance as the required payment for tuition and mandatory fees not~~
16 ~~to exceed the established out of state tuition and mandatory fee rates. The Board of~~
17 ~~Governors of The University of North Carolina shall determine which mandatory fees~~
18 ~~apply to active duty members of the armed services attending The University of North~~
19 ~~Carolina.~~

20 ~~(b2) Any active duty member of the armed services who does not qualify for any~~
21 ~~payment by the member's employer pursuant to subsections (b) or (b1) of this section~~
22 ~~shall be eligible to be charged the in-State tuition rate and shall pay the full amount of~~
23 ~~the in-State tuition rate and applicable mandatory fees.~~

24 (c) Any dependent relative of a member of the armed services who is abiding in
25 this State incident to active military duty, as defined by the Board of Governors of The
26 University of North Carolina and by the State Board of Community Colleges while
27 sharing the abode of that member shall be eligible to be charged the in-State tuition rate,
28 if the dependent relative qualifies for admission to an institution of higher education as
29 defined in G.S. 116-143.1(a)(3). The dependent relatives shall comply with the
30 requirements of the Selective Service System, if applicable, in order to be accorded this
31 benefit. ~~In the event the member of the armed services removes his abode from North~~
32 ~~Carolina during an academic year, the dependent relative shall continue to be eligible~~
33 ~~for the in-State tuition rate during the remainder of that academic year.~~ In the event the
34 member of the armed services is reassigned outside of North Carolina, the dependent
35 relative shall continue to be eligible for the in-State tuition rate and applicable
36 mandatory fees so long as the dependent relative is continuously enrolled in the degree
37 or other program in which the dependent relative was enrolled at the time the member is
38 reassigned.

39 (d) The burden of proving entitlement to the benefit of this section shall lie with
40 the applicant therefor.

41 (e) A person charged less than the out-of-state tuition rate solely by reason of this
42 section shall not, during the period of receiving that benefit, qualify for or be the basis
43 of conferring the benefit of G.S. 116-143.1(g), (h), (i), (j), (k), or (l)."

44 **SECTION 2.** G.S. 116-143.1 reads as rewritten:

1 **"§ 116-143.1. Provisions for determining resident status for tuition purposes.**

2 (a) As defined under this section:

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

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

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

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

18 (c) To be eligible for classification as a resident for tuition purposes, a person
19 must establish that his or her presence in the State currently is, and during the requisite
20 12-month qualifying period was, for purposes of maintaining a bona fide domicile
21 rather than of maintaining a mere temporary residence or abode incident to enrollment
22 in an institution of higher education.

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

28 (e) When an individual presents evidence that the individual has living parent(s)
29 or court-appointed guardian of the person, the legal residence of such parent(s) or
30 guardian shall be prima facie evidence of the individual's legal residence, which may be
31 reinforced or rebutted relative to the age and general circumstances of the individual by
32 the other evidence of legal residence required of or presented by the individual;
33 provided, that the legal residence of an individual whose parents are domiciled outside
34 this State shall not be prima facie evidence of the individual's legal residence if the
35 individual has lived in this State the five consecutive years prior to enrolling or
36 reregistering at the institution of higher education at which resident status for tuition
37 purposes is sought.

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

42 (1) No person shall be precluded solely by reason of marriage to a person
43 domiciled outside North Carolina from establishing or maintaining

1 legal residence in North Carolina and subsequently qualifying or
2 continuing to qualify as a resident for tuition purposes;

3 (2) No persons shall be deemed solely by reason of marriage to a person
4 domiciled in North Carolina to have established or maintained a legal
5 residence in North Carolina and subsequently to have qualified or
6 continued to qualify as a resident for tuition purposes;

7 (3) In determining the domicile of a married person, irrespective of sex,
8 the fact of marriage and the place of domicile of his or her spouse shall
9 be deemed relevant evidence to be considered in ascertaining
10 domiciliary intent.

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

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

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

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

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

43 Any person who immediately prior to his or her eighteenth birthday would have
44 been deemed under this subsection a North Carolina legal resident but who achieves

1 majority before enrolling at an institution of higher education shall not lose the benefit
2 of this subsection if that person:

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

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

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

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

24 (l) Any person who ceases to be enrolled at or graduates from an institution of
25 higher education while classified as a resident for tuition purposes and subsequently
26 abandons North Carolina domicile shall be permitted to reenroll at an institution of
27 higher education as a resident for tuition purposes without necessity of meeting the
28 12-month durational requirement of this section if the person reestablishes North
29 Carolina domicile within 12 months of abandonment of North Carolina domicile and
30 continuously maintains the reestablished North Carolina domicile at least through the
31 beginning of the academic term(s) for which in-State tuition status is sought. The
32 benefit of this subsection shall be accorded not more than once to any one person."

33 **SECTION 3.** G.S. 127A-202.1 is amended by adding a new subsection to
34 read:

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

38 **SECTION 4.** This act becomes effective August 1, 2004.