

Article from **Policy Perspectives**

(http://www.imakenews.com/cppa/e_article000537980.cfm?x=b6Gdd3k,b30DNQvw,w)

February 24, 2006

In-State Tuition for Undocumented Students in Utah

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Introduction

In 2002, the Utah Legislature passed House Bill 144, which allows undocumented students to qualify for resident tuition rates at Utah's public colleges and universities. Students must meet four basic requirements in order to qualify for in-state tuition under Utah's law:

- 1) Attended high school in this state for three or more years;
- 2) Graduated from a high school in this state or received the equivalent of a high school diploma in this state; and
- 3) Register as an entering student at an institution of higher education not earlier than the fall of the 2002-03 academic year.
- 4) A student without lawful immigration status shall file an affidavit with the institution of higher education stating that the student has filed an application to legalize his immigration status, or will file an application as soon as he is eligible to do so.

Utah is one of nine states that allows undocumented students to pay in-state tuition at state colleges and universities. However, there is significant disagreement over whether undocumented students can legally attend a public institution of higher education and pay in-state tuition. Several cases have developed in recent years challenging such laws, including lawsuits in Kansas, Texas, and California. Concerns over Utah's laws prompted a joint Education Interim Committee to recommend repealing the law in June 2005. House Bill 7, introduced in the 2006 Legislature, repeals Utah Code 53B-8-106, which provides an exemption from nonresident tuition for undocumented immigrant students within the State System of Higher Education. If passed, the bill would take effect on July 1, 2006.

Utah in Comparison

Utah is not the only state to pass legislation that allows undocumented students to pay in-state tuition at state colleges and universities. In 2001, Texas became the first state to pass legislation granting in-state tuition to undocumented students. California followed later that year. In total, nine states grant in-state tuition to undocumented students, they include: Texas, California, Utah, New York, Washington, Oklahoma, Illinois, Kansas, and New Mexico. Other states have considered similar legislation, but have failed to pass it.

Table 1: Legislation concerning tuition for undocumented immigrants

State	Policy	Award	Restrict	Passed?
Alaska	H.B. 39 (2003)		X	No
Arizona	H.B. 2518 (2003)	X		No
	H.B. 2392 (2004)		X	Proposed

Arkansas	H.B. 1525 (2005)	X		No
California	A.B. 540 (2001)	X		Yes
Colorado	H.B. 1178 (2003)	X		No
	H.B. 1187 (2004)		X	Proposed
Connecticut	H.B. 6793 (2005)	X		Proposed
Delaware [1]	H.B. 222 (2003)	X		No
	H.R. 59 (2004)	X		Yes
Florida	H.B. 27 (2003)	X		No
	H.B. 119 (2003)	X		No
Georgia	H.B. 1810 (2001)	X		No
Hawaii	H.B. 873 (2003)	X		No
Illinois	H.B. 60 (2003)	X		Yes
Kansas	H.B. 2145 (2004)	X		Yes
Maryland	H.B. 253 (2003)	X		Vetoed
Massachusetts	S.B. 237 (2003)	X		No
Minnesota	S.B. 3027 (2002)	X		No
Mississippi	H.B. 101 (2005)	X		No
Missouri	S.B. 296 (2005)	X		Proposed
Nebraska	L.B. 152 (2003)	X		No
New Jersey	S.B. 78 (2004)	X		Proposed
New Mexico	S.B. 582 (2005)	X		Yes
New York	S.B. 7784 (2002)	X		Yes
North Carolina	S.B. 982 (2003)		X	No
	H.B. 1183 (2005)	X		Proposed
Oklahoma	S.B. 596 (2003)	X		Yes
Oregon	S.B. 769 (2005)	X		Proposed
Rhode Island	H.B. 6184 (2005)	X		Proposed
Texas	H.B. 1403 (2001)	X		Yes
Utah	H.B. 331 (2002)	X		Yes
Virginia [2]	H.B. 2339 (2003)		X	Vetoed
	H.B. 156 (2004)		X	No
Washington	H.B. 1079 (2003)	X		Yes
Wisconsin	A.B. 95 (2003)	X		No

Source: Krueger, Carl. 2005. "In-state Tuition for Undocumented Immigrants." Education Commission of the States. Accessed at <http://www.ecs.org/clearinghouse/61/00/6100.htm> (2/13/2006).

[1] H.R. 59 encourages the Delaware congressional delegation "to support the Development, Relief and Education for Alien Minors ("DREAM") Act, but does not award in-state tuition to undocumented students.

[2] While not specifically about tuition, H.B. 156 stipulated, "Public institutions of higher education may not knowingly accept for enrollment any illegal alien, and directs each institution, upon discovering an enrollment of an illegal alien, to provide for the prompt dismissal of any such person from the institution."

The Two Models for Legislation

Legislation granting in-state tuition to undocumented students falls into two categories: the

Texas Model and the California Model (Salsbury 2003). Under the Texas model, the law classifies qualified undocumented students as residents for tuition purposes. For example, Texas law considers a student a resident for tuition purposes, if they meet the following criteria: 1) graduated or the equivalent from a Texas high school; 2) resident in the state for at least three years as of the date of high school graduation or receipt of the equivalent of a high school diploma; 3) registration no earlier than the fall of 2001 as a student in a postsecondary institution; 4) sign an affidavit stating the intent to file an application to become a permanent resident at the earliest possible opportunity. States that fall under this first category include Texas, Illinois, and Washington (Salsbury 2003).

Laws under the California model create exemptions from non-resident tuition for qualified undocumented students. To qualify for in-state tuition students must have attended and completed high school in the state. Again, students are not classified as residents; instead, these laws exempt students from paying nonresident tuition (Salsbury 2003). In addition to California, laws in Utah, New York, and Oklahoma fit into this category.

Undocumented Students benefiting from these laws

The Utah System for Higher Education estimated that 169 undocumented students were able to attend college and pay in-state tuition during the 2004-2005 school year under this legislation (Bulkeley 2006). The number of students that attend college in other states varies considerably, from as few as 41 students to as many as 8,000 students. The New Mexico system of higher education estimates that 41 undocumented students enrolled in its system in the fall of 2005 (Lewis 2005). The Kansas system of higher education estimated 221 undocumented students attended in fall 2005 (Lewis 2005). The Texas system had 1,500 students enroll in the fall of 2001, that figure increased to 8,000 in fall of 2005 (Lewis 2005).

Legislative Intent

The primary intent of these laws is to make higher education more affordable and accessible to these students. The Urban Institute estimated in 2000 that between 50,000 to 65,000 undocumented students graduate from American high schools each year (Ruge and Iza 2005). These children are guaranteed access to public schools (K-12) by a 1982 Supreme Court ruling. In *Plyler v. Doe* (1982), the court found that a state cannot deny undocumented children a free public K-12 education. In a 5-4 ruling, the Court found that a Texas statute withholding funds from local school districts for education of children not legally admitted into United States and authorizing districts to deny enrollment to such children violated the equal protection clause of the Fourteenth Amendment. The Court further determined that a "public education has a pivotal role in maintaining the fabric of our society and in sustaining our political and cultural heritage; the deprivation of education takes an inestimable toll on the social, economic, intellectual, and psychological well-being of the individual, and poses an obstacle to individual achievement." Although the decision does not provide the same protection for college-age students, many of these students, according to the American Association for State Colleges and Universities, desire to continue their education at colleges and universities to improve their personal and economic prospects (AASCU 2005).

Laws granting in-state tuition to undocumented students provides them with the opportunity to continue their educational goals. The cost of in-state tuition is considerably lower, making college more affordable for undocumented students. For the 2005-2006 academic year in-state tuition and fees for a freshman or sophomore at the University of Utah is \$2,149.08 (for 15 credit hours). Out-of-state tuition and fees for a freshman or sophomore at the same institution is \$6,685.66. The difference between in-state tuition and out-of-state tuition in other states is more extreme. In-state students within the University of California system pay an average of \$6,769, verses the \$24,589 that out-of-state undergraduates pay (Silverstein 2005).

A secondary argument in favor of providing in-state tuition to undocumented students concerns a state's economic interest. According to a recent report by the American Association for State Colleges and Universities, a "large portion of undocumented alien students are likely to remain in the United States, whether or not they have access to postsecondary education. Accordingly, it would seem to be in states' economic and fiscal interests to promote at least a basic level of education beyond high school to alien students, to increase their contribution to economic growth while reducing the prospect of dependence on public/community assistance" (AASCU 2005). Students with a degree are more productive, less likely to need government assistance, and help to maintain a strong state economy (National Immigration Law Center 2005a).

Opponents of Legislation

Several cases have emerged in recent years challenging laws that allow undocumented students to pay in state tuition. Plaintiffs claim that such laws violate the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA). The basis of the argument lies in the federal government's power over immigration and naturalization. Federal supremacy over immigration, rooted in the Constitution, vests in Congress the power "to establish an uniform Rule of Naturalization" (Article I, Section 8). However, much disagreement remains over whether a law that allows undocumented students to pay in-state rates violates the provisions of the IIRIRA and PRWORA.

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) states that "An alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State...for any postsecondary benefit unless a citizen or nation of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident." Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) states that an "alien who is not a qualified alien [i.e., not a lawful permanent resident, or lawfully admitted as a refugee or asylee or alien lawfully present in the U.S. under two other laws] is not eligible for any public benefit..." However, supporters of these laws argue that the IIRIRA and the PRWORA do not prevent or prohibit a state from granting in-state tuition to undocumented students.

Supporters claim that "a plain reading of these statutes shows no prohibition of granting lower tuition rates based on a uniformly applied residency or other requirement. The use of the word 'unless' in section 505 suggests that states have the power to determine residency for undocumented immigrant students. In plain language, the statute simply conveys that a state cannot give additional consideration to an undocumented student that it would not give to a U.S. citizen student who is not a resident of that state" (Ruge and Iza 2005).

Several cases have been filed in federal court to prevent states from granting in-state tuition status to undocumented students. In *Day v. Sebelius* (2005), the plaintiffs claimed that the Kansas law allowing undocumented students to pay in state tuition violated the IIRIRA and PRWORA. The U.S. District Court for Kansas found that the plaintiffs lacked standing because they failed to prove harm. Plaintiffs are appealing. Cases concerning a Texas law and a case concerning a California law are also before the courts (Fischer 2005; Sanders 2005).

Pending Federal Legislation

There is broad disagreement over the interpretation of the Illegal Immigration Reform and Immigration Responsibility Act (1996) and the Personal Responsibility and Work Opportunity Reconciliation Act (1996). Specifically, the effect of the IIRIRA and PRWORA on higher education for undocumented students is at debate. Federal legislation has been considered several times in recent years to clarify the issue of granting in-state tuition to undocumented

students.

In 2001, S. 1291, also known as the Development, Relief, and Education for Alien Minors Act (DREAM Act) was introduced by Senators Hatch (R-UT) and Durbin (D-IL). The DREAM Act failed to pass in the 107th Congress. It was re-introduced as S. 1545 in 2003, but again failed. In November 2005, S. 2075, the DREAM Act of 2005, was re-introduced. The sponsors of the 2005 legislation are Richard Durbin (D-IL), Chuck Hagel (R-NE), and Richard Lugar (R-IN). Co-sponsors are Norm Coleman (R-MN), Larry Craig (R-ID), Mike Crapo (R-ID), Mike DeWine (R-OH), Russ Feingold (D-WI), Edward Kennedy (D-MA), Patrick Leahy (D-VT), Joseph Lieberman (D-CT), John McCain (R-AZ), and Barack Obama (D-IL). The 2005 Act is nearly identical to the 2003 version. The Act would repeal section 505 of IIRIRA. In addition, the Act would create an avenue for undocumented immigrant students to secure lawful immigration status in the United States through a process called 'cancellation of removal' so that they can legally work and become eligible for educational benefits, such as state and federal financial aid. In order to qualify for relief under the DREAM Act, an immigrant student must be at least twelve years old on the date of enactment of the Act, and under twenty-one years old at the time he or she applies. Students must have lived in the United States continuously for at least five years on the date of enactment in order to be eligible. An individual must have earned a high school degree before applying for relief; however, some persons who would have qualified within the last four years will qualify if they are recent high school graduates and are now attending college or have graduated from college. Finally, an individual must not have a criminal record and be able to demonstrate good moral character in order to qualify" (Ruge and Iza 2005).

The House introduced similar legislation in 2001 titled the Student Adjustment Act (SAA). The bill was reintroduced in 108th Congress as the Student Adjustment Act of 2003. The SAA would repeal section 505 of the IIRIRA. It would also adjust the status of certain long-term resident students who: 1) have not reached the age of twenty-one at the time of application; 2) are physically present in the United States on the date of enactment and have been physically present for at least five years preceding application; 3) are of good moral character; 4) are enrolled at or above the 7th grade or actively pursuing admission to a college at the time of application; 5) have no criminal history (Ruge and Iza 2005).

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