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In-State Tuition for Undocumented Students in Utah

Executive Summary

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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.

In recent legislative sessions, there have been several attempts to repeal Utah's law granting in-state tuition for undocumented students. House Bill 224, introduced in the 2007 Legislature, would have essentially repealed Utah Code 53-8-106, which provides an exemption from non-resident tuition for undocumented immigrant students within the Utah System of Higher Education. The bill would have allowed undocumented students who enter a state higher education institution before May 1, 2007 to pay in-state tuition. However, all undocumented students who enter after that date would have been required to pay the non-resident rate. The bill failed in the House after receiving a tie vote (37-37-1) on January 30, 2007. The next day, a motion was made to reconsider the bill, however that motion failed. A similar bill, HB 437 is a comprehensive immigration bill and it includes the prohibition on residential tuition for undocumented students. HB 437 was favorably passed out of a House committee on February 20, 2007 and may be considered by the full House before the end of the General Session.

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, ten states grant in-state tuition to undocumented students; they include: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington (NCSL 2006). Other states have considered similar legislation, but have failed to pass it. Six states have tried to pass legislation that would restrict undocumented students from receiving in-state tuition: Alaska, Arizona, Colorado, North Carolina, Utah, and Virginia.

Purpose of In-State Tuition Laws

The primary intent of these laws is to make higher education more affordable and accessible to these students. Laws granting resident tuition to undocumented students provide 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.

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).

In addition to a state's economic interests, higher education has positive effects on individual earnings. For example, individuals with higher education degrees have much higher incomes.

The average earnings for a high school graduate in 2000 were \$25,900 annually. College graduates earned on average \$45,400 annually (Day and Newburger 2002). The comparison indicates an additional economic benefit to individuals and state economies.

Challenges to In-State Tuition Laws

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 Congress with the power "to establish an uniform Rule of Naturalization" (Article I, Section 8).

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. Although no action has been taken during this session of Congress, some have predicted passage of a bill that will allow undocumented students to attend college and pay resident tuition.

Conclusion

The debate over offering resident tuition to undocumented students is likely to continue in state legislatures throughout the nation, including Utah. During the 2007 session, Utah House Bill 224 failed to pass the Utah House of Representatives on January 30 (37-37-1). A motion to reconsider the bill the next day also failed (38-36-1). A similar bill, HB 437, is also being considered in the 2007 session. HB 437 is a comprehensive immigration bill, and it includes the prohibition on residential tuition for undocumented students. [Get the full report.](#)

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