

**In-State Tuition for Undocumented Students in Utah  
Policy Brief: February 13, 2007**

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Topic Area: Higher Education

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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;
- 3) Register as an entering student at an institution of higher education not earlier than the fall of the 2002-03 academic year; and
- 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 ten 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. Two cases have developed in recent years challenging such laws, including lawsuits in Kansas and California. Although both cases were unsuccessful challenges to tuition benefit laws for undocumented students, the debate continues in many state legislatures (Morse 2007).

There have been several attempts in recent legislative sessions 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 House Bill 224, introduced in the 2007 Legislature, would have essentially repealed Utah Code 53-8-106, which provides an exemption from nonresident tuition for undocumented immigrant students within the State System of Higher Education.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, if they meet the four criteria listed above. 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.

## 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 (see Table 1). In 2006, Arizona voters passed Proposition 300 which prohibits students who are not legal residents from receiving in-state tuition rates at public colleges and universities (Wingett 2007).

Table 1: Legislation concerning tuition for undocumented immigrants

State	Policy	Award	Restrict	Passed?
<b>Alaska</b>	H.B. 39 (2003)		X	No
<b>Arizona</b>	H.B. 2518 (2003)	X		No
	H.B. 2392 (2004)		X	No
	H.B. 2069 (2006)		X	Proposed
<b>Arkansas</b>	H.B. 1525 (2005)	X		No
<b>California</b>	A.B. 540 (2001)	X		Yes
<b>Colorado</b>	H.B. 1178 (2003)	X		No
	H.B. 1187 (2004)		X	No
<b>Connecticut</b>	H.B. 6793 (2005)	X		Proposed
<b>Delaware</b>	H.B. 222 (2003)	X		No
	H.R. 59 (2004)	X		Yes
<b>Florida</b>	H.B. 27 (2003)	X		No
	H.B. 119 (2003)	X		No
<b>Georgia</b>	H.B. 1810 (2001)	X		No
<b>Hawaii</b>	H.B. 873 (2003)	X		No
<b>Illinois</b>	H.B. 60 (2003)	X		Yes
<b>Kansas</b>	H.B. 2145 (2004)	X		Yes
<b>Maryland</b>	H.B. 253 (2003)	X		Vetoed
<b>Massachusetts</b>	S.B. 237 (2003)	X		Vetoed
	H.B. 3924 (2004)	X		No
<b>Minnesota</b>	S.B. 3027 (2002)	X		No
<b>Mississippi</b>	H.B. 101 (2005)	X		No
	H.B. 88 (2006)	X		No
<b>Missouri</b>	S.B. 296 (2005)	X		Proposed
<b>Nebraska</b>	L.B. 152 (2003)	X		No
	L.B. 239 (2006)	X		Yes
<b>New Jersey</b>	S.B. 78 (2004)	X		No
	S.B. 436 (2006)	X		Proposed
<b>New Mexico</b>	S.B. 582 (2005)	X		Yes
<b>New York</b>	S.B. 7784 (2002)	X		Yes

<b>North Carolina</b>	S.B. 982 (2003)		X	No
	H.B. 1183 (2005)	X		Proposed
<b>Oklahoma</b>	S.B. 596 (2003)	X		Yes
<b>Oregon</b>	S.B. 769 (2005)	X		Proposed
<b>Rhode Island</b>	H.B. 6184 (2005)	X		Proposed
<b>Texas</b>	H.B. 1403 (2001)	X		Yes
<b>Utah</b>	H.B. 331 (2002)	X		Yes
	H.B. 7 (2006)		X	Proposed
<b>Virginia</b>	H.B. 2339 (2003)		X	Vetoed
	H.B. 156 (2004)		X	No
	S.B. 677 (2006)	X		Proposed
	H.B. 262 (2006)		X	No
	H.B. 1050 (2006)		X	No
<b>Washington</b>	H.B. 1079 (2003)	X		Yes
<b>Wisconsin</b>	A.B. 95 (2003)	X		No

Sources: Krueger, Carl. 2006. "In-state Tuition for Undocumented Immigrants." Education Commission of the States. Accessed at <http://www.ecs.org/html/Document.asp?chouseid=6100>.

National Conference of State Legislatures. 2006. "In-State Tuition and Unauthorized Immigrant Students." Accessed at [http://www.ncsl.org/programs/immig/immig\\_InStateTuition0706.htm](http://www.ncsl.org/programs/immig/immig_InStateTuition0706.htm).

[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."

[3] The same applies to H.B. 262, which would have prohibited admission of undocumented students to Virginia institution of higher education.

### *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) registered no earlier than the fall of 2001 as a student in a postsecondary institution; 4) signed 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 reported that 182 students were granted resident tuition under HB 144 in 2005-2006.<sup>1</sup> Salt Lake Community College accounts for most of the students, followed by Utah Valley State College, University of Utah, Weber State University, and Southern Utah University (see Table 2).

Table 2: HB 144 Tuition Benefits

	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>
	<b># of Awards</b>	<b># of Awards</b>	<b># of Awards</b>
University of Utah	14	10	44
Utah State University	3	5	0
Weber State University	7	6	11
Southern Utah University	2	2	3
Snow College	0	0	0
Dixie State College	0	0	0
College of Eastern Utah	0	0	0
Utah Valley State College	30	40	54
Salt Lake Community College	31	53	70
<b>TOTAL</b>	<b>87</b>	<b>116</b>	<b>182</b>

Source: Utah System of Higher Education

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

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<sup>1</sup> According to the Utah System of Higher Education, there were approximately 100,206 student enrolled in Utah's public colleges and universities in 2005-2006 (excluding the University of Utah's School of Medicine). 89,566 students were classified as residents; 10,740 students were classified as non-residents. However, not all non-residents paid the full non-resident tuition rate because of scholarships, other types of tuition waivers, and/or financial aid.

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 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. For the 2006-2007 academic year resident tuition and fees for a freshman or sophomore at the University of Utah is \$2,331.09 (for 15 credit hours). Non-resident tuition and fees for a freshman or sophomore at the same institution is \$7,296.39 (see Table 3 for a comparison of resident and non-resident tuition for all nine public colleges and universities in Utah). The difference between resident tuition and non-resident tuition in other states is more extreme. Resident undergraduate students within the University of California system pay an average of \$6,769, verses the \$24,589 that non-resident undergraduates pay (Silverstein 2005).

Table 3: Tuition and Fees at Utah’s Public Colleges and Universities\*

<b>School</b>	<b>Resident</b>	<b>Non-resident</b>
University of Utah	\$ 4,663	\$ 14,593
Utah State University	\$ 3,949	\$ 11,449
Weber State University	\$ 3,432	\$ 10,415
Southern Utah University	\$ 3,565	\$ 10,603
Snow College	\$ 2,164	\$ 7,498
Dixie State College	\$ 2,492	\$ 9,056
College of Eastern Utah	\$ 2,091	\$ 7,670
Utah Valley State College	\$ 3,308	\$ 10,338
Salt Lake Community College	\$ 2,404	\$ 7,519

Source: Utah System of Higher Education

\*Tuition and fees based upon 15 credit hours per semester for two semesters.

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.

### **Opponents of Utah's Current Law**

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 a 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 national 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 have appealed to the 10<sup>th</sup> Circuit U.S. Court of Appeal. The California Superior Court recently upheld the state law that allows undocumented students to pay in-state tuition (*Martinez v. Regents* 2006).

Opponents of Utah's current law also argue that undocumented students cannot legally work in the United States, even after graduation from college. However, there are several ways that an undocumented student potentially could become a legal resident. First, they can marry a U.S. citizen and then petition for U.S. citizenship. Second, they can earn a degree in a high-demand/shortage field and have a U.S. employer sponsor the student's petition for legal residency or citizenship. Furthermore, there is the possibility that a change in federal law will give students an opportunity to remain in the U.S. legally (see the discussion below regarding the DREAM Act and the Student Adjustment Act).

### *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 107<sup>th</sup> 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 and 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). No action has been taken on this bill since last year.



The U.S. House of Representatives introduced similar legislation in 2001 titled the Student Adjustment Act (SAA). The bill was reintroduced in 108<sup>th</sup> 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 7<sup>th</sup> grade or actively pursuing admission to a college at the time of application; and 5) have no criminal history (Ruge and Iza 2005).

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. “U.S. Rep. Chris Cannon, R-Utah, who is co-sponsoring an agricultural jobs bill and has been a key advocate of Bush's guest-worker proposal, predicts Congress will act this year. ‘I'm quite sure there will be the essentials of the DREAM Act,’ said Cannon.” (Bulkeley and Stewart 2007). Those essentials likely will include “removing a federal provision that some interpret as prohibiting states from allowing undocumented students to attend college and allowing those who establish themselves as good students to apply for permanent residency” (Bulkeley and Stewart 2007).

## **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). Another bill, HB 437, a comprehensive immigration bill, includes the prohibition on residential tuition for undocumented students. The bill was introduced in early February, and as of February 8, was referred to agencies for fiscal input. On a final note, Governor Jon M. Huntsman Jr. has said that he would “very seriously consider vetoing” a bill that would repeal the current law (Sanchez 2007).

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