

## Basic Facts about In-State Tuition for Undocumented Immigrant Students

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### ■ Background

Since 2001, ten states have passed laws permitting certain undocumented students who have attended and graduated from their primary and secondary schools to pay the same tuition as their classmates at public institutions of higher education. The states are Texas, California, Utah, Washington, New York, Oklahoma, Illinois, Kansas, New Mexico, and Nebraska.

A majority of America's undocumented immigrants live in these states, and several other states are considering a similar change. In many of the states that have already done so, support has been strongly bipartisan and the vote lopsided in favor of the bill. For example, in the Illinois General Assembly, the vote in the House was 112 to 4 and, in the Senate, 55 to 1.

### ■ Requirements of These Laws

To qualify, all 10 states that already have such laws require the students to have:

1. attended a school in the state for a certain number of years;
2. graduated from high school in the state; and
3. signed an affidavit stating that they have either applied to legalize their status or will do so as soon as eligible.

These laws also provide that U.S. citizens or permanent residents who meet these requirements but no longer live in the state are able to qualify for the same tuition rate.

### ■ Intent and Impact of These Laws

These bills are primarily intended to help children of immigrants who were brought to the U.S. by their parents and work hard in school with the hope of going to college but then discover that they face insurmountable obstacles. Currently, public colleges and universities are inconsistent in their treatment of such students. A few schools deny them admission. If they are admitted, students in most states are charged out-of-state tuition, which is several times the in-state tuition rate. They are not eligible for federal financial aid, and the average income of parents of such children is low. Even those who are eligible for in-state tuition almost always have to work at full-time jobs throughout their college careers.

In the current context, very few of these students attend college. Experience in the states that have passed in-state tuition bills suggests that such legislation does not deprive the states of the revenue from large numbers of students who would otherwise pay out-of-state tuition. Rather, it raises the percentage of high school graduates who pursue a college degree.



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### ■ Fairness to the Young People Involved

As has been true of immigrants in the past, these students tend to be hard-working and goal-oriented, with high academic standing. Many of them do not realize until they are in the process of applying to college that they will not be able to attend. High school counselors have testified about the terrible task of breaking the news to the students that the dreams for which they have worked so hard cannot come true. Many parents are concerned that if their hard-working, earnest sons and daughters are unable to go forward, their discouragement might lead to problems.

### ■ Benefits to the State

According to experts in the states that have already passed this legislation, the cost of implementation has been negligible. In-state tuition is not the same as free tuition. It is a discount, but in fact the money paid by these students actually tends to increase school revenues because it represents income that would not otherwise be there.

The bottom line is that our economic future depends on educating these young people.

These young immigrants are key to our ability to counteract the serious demographic challenges we face. As baby boomers age, the number of retirees in the U.S. will swell. We are all aware that we can no longer compete with the rest of the world for low-wage jobs. We must raise the caliber of our workforce through higher education to have a chance to maintain a strong economy. Each person who attends college and obtains a professional job means one less drain on the social service (and possibly criminal justice) budgets of the state and an asset in terms of payment of taxes and the attraction to the state of high-wage employers seeking well-educated workers.

Currently, only about 5 to 10 percent of undocumented young people who graduate from high school go on to college, compared with about 75 percent of their classmates.

### ■ Why These Students Are Undocumented

Some people have asked why the students involved do not apply for a “green card” to legalize their status. The answer is that most of them would love to apply but that in the overwhelming majority of cases they cannot. The legal grounds for such petitions have narrowed to the point where it is almost impossible. The most likely outcome for a student who tries to apply is deportation of his entire family — sometimes to a “home” nation the student cannot remember.

### ■ Fully Complies with Federal Law

Contrary to the claims of immigration restrictionists, federal law does *not* prohibit states from providing in-state tuition to undocumented immigrants. Such a prohibition would have been simple to write, but Congress declined to do so.

Rather, section 505 of the Illegal Immigrant Reform and Immigrant Reconciliation Act of 1996 (IIRIRA) prohibits states from providing any higher education benefit based on residency to undocumented immigrants unless they provide the same benefit to U.S. citizens in the same circumstances, regardless of their residence.

As discussed above, the 10 states that have provided in-state tuition to most of their undocumented immigrant residents have fully complied with this provision.

### ■ **Not a Loophole**

It is often stated that these states are “getting around” the federal law, or that they are taking advantage of a “loophole” in the federal law. This is slanted language. The law is very specific. It does not preclude states from providing in-state tuition to undocumented residents of the state so long as nonresidents in similar circumstances also qualify. The states that have passed in-state tuition laws are complying with this law, not getting around it.

Despite many threats and claims, immigration restrictionists have managed to file only two lawsuits challenging any of these laws. The first was in Kansas in late 2004, and the lawyer who filed the lawsuit did so in the context of his unsuccessful campaign for Congress. In that case, the federal district court upheld Kansas’s law on every claim and the plaintiffs filed an appeal. The second case was filed in California—by the same attorney who lost the Kansas lawsuit—and it has not yet gone to trial. In California, as in Kansas, one of the main protagonists happens to be running for Congress. This time the candidate is a parent of one of the plaintiffs.

### ■ **What about U.S. Citizens Who Want to Go to College?**

Where state proposals have been defeated, anti-immigrant forces have scored rhetorical points by highlighting the competition between immigrants and other applicants for scarce higher education dollars. It should be remembered that the numerical impact of in-state tuition is minimal: Less than 2 percent of this year’s graduating class are undocumented immigrants, and only a fraction of these will attend college even if they are able to pay the in-state rate. In most states, we are talking about only a few dozen or a few hundred particularly talented students.

The shortage of education dollars is real, but it is patently unfair to burden motivated and high-achieving immigrant youth with this responsibility. Education quickly pays for itself. It is a benefit to society, not just to those who go to school. And it strongly behooves us to fund education sufficiently so that all who are qualified may complete their education.

Holding back immigrant students is the wrong way to boost the ambitions of others.

### ■ **Won’t the Federal DREAM Act Solve This Problem?**

Broadly supported legislation known as the DREAM Act (S. 2075, H.R. 5131) is currently pending in the U.S. Congress and stands a reasonable chance of passage in the next year or so. The DREAM Act would provide a path to legal status for individuals who are undocumented, even though they were brought to the U.S. years ago as children and have lived most of their lives here. It would also repeal the provision of law discussed above that penalizes states that provide in-state tuition to undocumented immigrant residents by requiring them to provide the same benefits to students who do not reside in the state.

But although the DREAM Act eliminates the federal penalty, it does not require states to provide in-state tuition to any undocumented immigrants. Therefore, even after the DREAM Act passes, each state will have to determine for itself whether to do so.

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#### ***FOR MORE INFORMATION, CONTACT***

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