

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 1141 (Limón) – As Introduced February 16, 2022

SENATE VOTE: 29-8

SUBJECT: Public postsecondary education: exemption from payment of nonresident tuition.

SUMMARY: Expands the eligibility for paying nonresident tuition exemption at a California public postsecondary institution established for long-term California residents, regardless of citizenship status, by reducing the number of years required to qualify for the exemption, from three to two, in full-time attendance or attainment of equivalent credits from specified California schools or a California Community College (CCC). Specifically, **this bill:**

- 1) Reduces, from three to two years, the minimum number of full-time attendance and attainment of credits a qualifying student must achieve at either of the following:
 - a) A California school and/or CCC; or,
 - b) A California elementary and/or secondary school.
- 2) Removes the two-year cap on full-time attendance achieved in credit courses at a CCC that may count towards the three-year total attendance requirement that applies in existing law.
- 3) Makes technical and conforming changes to existing law.

EXISTING LAW:

- 1) Establishes a variety of residency requirements for students attending the CCC or the California State University (CSU). The determination of such residency status is required in order to assess either resident or nonresident tuition and fees. The University of California (UC) Regents may, by resolution, make these provisions of law applicable to the UC (and historically have done so) (Education Code (EC) Section 68000, et seq.).
- 2) Exempts California nonresident students, via AB 540 (Firebaugh, Chapter 814, Statutes of 2001), regardless of citizenship status (also referred as AB 540 student), from paying nonresident tuition at California public colleges and universities who meet all of the following requirements who have graduated from a California high school (or the equivalent) and either:
 - a) Satisfaction of the requirements of either (i) or (ii):
 - i) A total attendance of, or attainment of credits earned while in California equivalent to, three or more years of full-time attendance or attainment of credits at any of the following:
 - (1) California high schools;

- (2) California high schools established by the State Board of Education;
- (3) California adult schools established by any of the following entities:
 - (a) A county office of education;
 - (b) A unified school district or high school district; and,
 - (c) The Department of Corrections and Rehabilitation.
- (4) Campuses of the CCC.
- (5) A combination of those schools set forth in (1) to (4), inclusive.
- ii) Three or more years of full-time high school coursework in California, and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of California elementary and secondary schools.
- b) Satisfaction of any of the following:
 - i) Graduation from a California high school or attainment of the equivalent;
 - ii) Attainment of an associate degree from a campus of the CCC; and/or,
 - iii) Fulfillment of the minimum transfer requirements established for UC or CSU for students transferring from a campus of the CCC (EC Section 68130.5).
- 2) Provides that a student who meets nonresident tuition exemption requirements under EC Section 68130.5 or who meets equivalent requirements adopted by the UC is eligible to apply for any financial aid program administered by the state to the full extent permitted by federal law (EC Section 69508.5).
- 3) Provides that a student attending a CSU, CCC, or UC who is exempt from paying nonresident tuition under EC Section 68130.5 is eligible to receive a scholarship derived from non-state funds received, for the purpose of scholarships, by the segment (i.e. CCC, CSU, or UC) at which the student is enrolled (EC Section 66021.7).

FISCAL EFFECT: According to the Senate Committee on Appropriations:

- 1) The UC estimates that this bill could result in a loss of nonresident supplemental tuition of approximately \$11 million each year. This estimate assumes that UC enrolls about 500 domestic nonresident students systemwide who transferred from a California community college who traditionally would be charged nonresident supplemental tuition.
- 2) The CSU estimates systemwide revenue losses of between \$4.2 million and \$5.1 million each year as a result of this measure.

COMMENTS: *Purpose of the measure.* According to the author, “Students attending a CCC can only count two years of full-time attendance in credit courses towards the 3-year threshold

necessary to qualify.” The author contends that, “As a result, students are forced to enroll in noncredit courses for one year even if those programs are not aligned to their educational goals.”

Further, the author states that, “SB 1141 corrects unintended consequences that have left out some undocumented students from accessing AB 540 benefits. To increase the accessibility of higher education for undocumented students, SB 1141 changes the threshold to qualify for AB 540 from [three] years to [two years].”

According to the CCC Chancellor’s Office (CCCCO), sponsors of this measure, by changing the eligibility from three to two years, it saves an AB 540 student “time and an average of \$8,700 in tuition per academic year at the CCC; \$11,880 at a CSU; and, \$28,992 at a UC.”

Tuition rates. The difference between paying resident tuition at UC, CSU or CCC, versus paying nonresident tuition is vast; nonresidents of California are charged a significantly higher tuition rate than the amount charged for resident tuition.

Residents of California currently pay \$46/unit at the CCC, while nonresidents pay \$346/unit. At the CSU, undergraduate resident students pay \$5,742/year in mandatory systemwide tuition and fees, while nonresident students pay \$15,246/year in mandatory systemwide tuition and fees. At the UC, undergraduate resident students pay \$13,104/year, while nonresident students pay \$44,130/year.

How did we get here? With AB 540 (Firebaugh), Chapter 814, Statutes of 2001, California first provided an exemption from nonresident tuition at its public colleges and universities for undocumented persons. In order to qualify for this benefit, AB 540 required these students to have attended high school in California for three or more years and to have graduated from a California high school or attained the equivalent thereof.

According to the author of AB 540, many of the students that would benefit were the children of parents who had been granted amnesty by the federal government and were waiting for their own applications for citizenship to be accepted by the Immigration and Naturalization Service. The majority of these students considered California their home and expected to become citizens. Supporters argue that the bill would help talented California high school students, who cannot afford to pay nonresident tuition, to attend college.

While AB 540 provided considerable financial relief to undocumented students, as of its enactment, these students could not avail themselves to state financial aid programs. This was subsequently addressed in 2011, when, after several years of failed attempts, the Legislature enacted AB 130 (Cedillo) and AB 131 (Cedillo), which allowed AB 540 students to be able to receive institutional scholarships derived from nonstate funds (AB 130) and to participate in state and institutional financial aid programs (AB 131). The legislation is known as the California DREAM Act.

In 2014, eligibility under AB 540 was expanded, through enactment of AB 2000 (Gomez), to include attainment of credits earned in California from a California high school equivalent to three or more years of full-time coursework and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of those schools. According to the author, the bill was intended to provide eligibility for high school students that accelerate their learning (e.g. through concurrent or dual community college enrollment to obtain

high school credits) and graduate ahead of completing the existing three-year high school attendance requirement of AB 540.

In 2017, AB 540 eligibility was expanded considerably. SB 68 (Lara) (as described in the *Prior Legislation section of this analysis*), provided eligibility to students who have completed three or more years of full-time high school coursework, and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of California elementary and secondary schools; and, required that the students graduate from a California high school or attain the equivalent, attain an associate degree from a campus of the CCC, or fulfill minimum transfer requirements established for the UC or CSU for students transferring from CCC campuses.

The author of SB 68 contended that many undocumented students often cannot complete high school in time to qualify under AB 540, as it existed at that time, and instead may take a path through adult school and community college to access higher education. As noted in the Senate Education Committee analysis of SB 68, the bill was in part expanding eligibility to students that are likely to be older than traditional students.

Does this measure conflict with recent court rulings of Martinez v. Regents of University of California? In 2005, a lawsuit was filed, *Martinez v. Regents of UC*, seeking to invalidate EC Section 68130.5. The plaintiffs argued that out-of-state students were being charged higher tuition rates relative to undocumented immigrants.

The law was originally upheld, but on September 15, 2008, the California Court of Appeal reversed that ruling. On November 15, 2010, the California Supreme Court reversed the California Court of Appeal, finding EC Section 68130.5 valid; thus ruling against the plaintiffs. The Court stated, “Because the exemption is given to all who have attended high school in California for at least three years (and meet the other requirements), and not all who have done so qualify as California residents for purposes of in-state tuition, and further because not all unlawful [immigrants] who would qualify as residents but for their unlawful status are eligible for the exemption, we conclude the exemption is not based on residence in California.”

This measure does not change the definition of residency, and all students, regardless of their residency, may qualify for the nonresident tuition exemption.

Who ultimately benefits? Many people have a misconceived notion regarding provisions in current law that exempt nonresident students from paying out-of-state tuition. People believe that the exemption only applies to eligible undocumented students. As it stands, a person determined to be a nonresident for purposes of assessing tuition at a California college or university *may* include U.S. citizens that reside in another state. Students who fit the aforementioned scenario could benefit from the changes as prescribed in this measure.

The Committee may wish to discuss if changing the eligibility from three- years, to two-years is the best policy approach to this unique situation.

How many? According to data provided by the CCCCCO, whose intent is to expand higher education access to CCC undocumented students—they estimate that there are between 75,000 and 156,000 undocumented students. The CCCCCO contends that. “As we know, these students

often do not have the financial resources to pay nonresident tuition fees and would essentially be locked out without AB 540.”

Further, the CCCCCO states, “It is also worth noting that the population of AB 540 CCC students has declined approximately 30% over the past 5 years, despite the passage of SB 68 in 2017. The COVID-19 pandemic has disproportionately impacted undocumented students and students of color, and we believe SB 1141 would help students reenroll.”

Related legislation. SB 1160 (Durazo), which was held on the Suspense File in the Senate Committee on Appropriations, would have extended the exemption from paying nonresident tuition at California’s public postsecondary institutions to nonresident international students.

Prior legislation. AB 1620 (Santiago) of 2019, which was held on the Suspense File in the Assembly Committee on Appropriations, was substantially similar in nature to this measure.

SB 68 (Lara), Chapter 496, Statutes of 2017, which, in part, made various changes to residency for in-state tuition purposes; including requiring three years of full-time attendance and attainment of credits at a California school or CCC or at a combination of such schools in order to gain resident tuition.

This measure modifies the three-year requirement to two years.

REGISTERED SUPPORT / OPPOSITION:

Support

Academic Senate for California Community Colleges
Cabrillo Community College District
Cal State Student Association
California Catholic Conference
California Charter Schools Association
California Community Colleges Chancellor's Office (Sponsor)
California Student Aid Commission
California Undocumented Higher Education Coalition
Cerritos College
Citrus Community College District
College of San Mateo
Community College League of California
Compton Community College District
Contra Costa Community College District
El Camino College
Faculty Association of California Community Colleges
Foothill-de Anza Community College District
John Burton Advocates for Youth
Lake Tahoe Community College
League of Women Voters of California
Long Beach Community College District
Los Angeles Community College District
Los Angeles Unified School District

Los Rios Community College District
MiraCosta Community College District
Monterey Peninsula College
Napa Valley College
Norcal Resist
North Orange County Community College District
Office of Lieutenant Governor Eleni Kounalakis
Palo Verde Community College District
Pasadena City College
Porterville College
Rancho Santiago Community College District
Rio Hondo College
Riverside Community College District
San Bernardino Community College District
San Diego City College
San Diego College of Continuing Education
San Diego Community College District
San Jose-Evergreen Community College District
Santa Barbara City College
Santa Clarita Community College District - College of The Canyons
Shasta-Tehama-Trinity Joint Community College District
South Orange County Community College District
Southern California College Attainment Network
Southwestern Community College District
State Center Community College District
Ventura County Community College District
West Hills Community College District

Opposition

None on file.

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