

SENATE THIRD READING  
SB 1141 (Limón)  
As Amended August 15, 2022  
Majority vote

## SUMMARY

Modifies the eligibility for paying nonresident tuition exemption at a California public postsecondary institution established for long-term California residents, regardless of citizenship status, by removing the two-year cap on full-time attendance achieved in credit courses at a campus of the California Community Colleges (CCC) that may count towards the three-year total attendance requirement that applies in existing law. Makes technical and conforming changes to existing law.

### Major Provisions

See summary above.

## COMMENTS

*For existing law, please refer the policy committee analysis.*

*Tuition rates.* The difference between paying resident tuition at the University of California (UC), the California State University (CSU), or the 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), Chapter 93, Statutes of 2011, and AB 131 (Cedillo), Chapter 604, Statutes of 2011, 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), Chapter 675, Statutes of 2014, 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), Chapter 496, Statutes of 2017, (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.

*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."

*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.

### **According to the Author**

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."

### **Arguments in Support**

According to the CCC Chancellor's Office (CCCCO), sponsors of this measure, "It is 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."

Further, the CCCCCO states, "The COVID-19 pandemic has disproportionately impacted undocumented students and students of color, and we believe SB 1141 would help students reenroll."

### **Arguments in Opposition**

None on file.

## **FISCAL COMMENTS**

According to the Assembly Committee on Appropriations:

- 1) Unknown, ongoing General Fund (GF) costs to the UC to the extent students gain resident tuition in situations where they otherwise would not.
- 2) Unknown, ongoing GF costs to the CSU to the extent students gain resident tuition in situations where they otherwise would not.

- 3) Unknown, ongoing Proposition 98 GF costs to the CCC to the extent students gain resident tuition in situations where they otherwise would not.

The state would need to reimburse these costs to CCC, if the Commission on State Mandates determines the bill's requirement to be a reimbursable state mandate.

- 4) Unknown, ongoing GF costs to the California Student Aid Commission to provide Cal Grant financial aid to students, to the extent students newly eligible for resident tuition are low-income and qualify for a Cal Grant financial aid entitlement award.

## VOTES

### SENATE FLOOR: 29-8-3

**YES:** Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Wilk

**ABS, ABST OR NV:** Archuleta, Caballero, Hertzberg

### ASM HIGHER EDUCATION: 9-0-3

**YES:** Medina, Arambula, Bloom, Gabriel, Irwin, Levine, Low, Santiago, Valladares

**ABS, ABST OR NV:** Choi, Mathis, Akilah Weber

### ASM APPROPRIATIONS: 12-4-0

**YES:** Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

**NO:** Bigelow, Megan Dahle, Davies, Fong

## UPDATED

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