

Date of Hearing: April 19, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2136 (Mayes) – As Amended April 11, 2016

SUBJECT: Public postsecondary education: exemption from nonresident tuition

SUMMARY: Provides nonimmigrant alien students, as specified, who meet outlined criteria, as specified, and are enrolled at the California State University (CSU) or the California Community Colleges (CCC) exemptions from nonresident tuition. Specifically, **this bill:**

- 1) Provides that any student of the CSU or the CCC who meets all of the following requirements as a dependent of an individual with an E-2 nonimmigrant classification shall remain exempt from paying nonresident tuition as long as the student remains continuously enrolled, irrespective of any change in the student's visa or immigration status:
 - a) Satisfaction of either of the following:
 - i) High school attendance in California for three or more years; or,
 - ii) Attainment of credits earned in California from a California high school equivalent to 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 those schools.
 - b) Graduation from a California high school or attainment of the equivalent thereof;
 - c) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year; and,
 - d) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.
- 2) Provides that a student who is exempt from nonresident tuition under this section may be reported by a CCC district as a full-time equivalent student for apportionment purposes.
- 3) Requests the UC Regents to enact exemptions from requirements to pay nonresident tuition for its students that are equivalent to the aforementioned.
- 4) Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.

EXISTING LAW: Qualifies (established by AB 540, Chapter 814, Statutes of 2001) students that meet all of the following outlined requirements for lower "resident" fee/tuition payments at the CCC, CSU, and UC:

- 1) Is a student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code;
- 2) Attended high school in California for three or more years, or equivalency;
- 3) Graduated from a California high school, or attainment of equivalency;
- 4) Registered as an entering student at, or enrolled at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year; and,
- 5) In the case of a person without lawful immigration status, files an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so. (Education Code Section 68130)

FISCAL EFFECT: Unknown.

COMMENTS: *Background.* The federal E-2 nonimmigrant visa is authorized for a foreign national who is coming to the United States solely to direct and develop the operations of an enterprise in which the individual has invested or is actively involved in the process of investing a substantial amount of capital. The investment involved must place lawfully acquired, owned, and controlled capital at commercial risk with a profit objective, and it must be subject to loss if the investment fails. Spouses and unmarried children under the age of 21 of an E2 nonimmigrant may be granted the same status to accompany the E2. As long as the dependents are in E2 status, they can attend school without changing to another nonimmigrant status.

E-2 visa holders are allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. There is no maximum limit to the number of extensions an E-2 nonimmigrant may be granted. All E-2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.

Purpose of this bill. According to the author, "federal policy allows E-2 dependents to remain in the United States until age 21, at which time they can transition to a student visa. This transition removes their exemption from nonresident tuition under California policy. The end result is that an E-2 dependent pays in-state tuition until 21, but then pays nonresident tuition at age 21 or older, even if the student met the high school attendance and graduation requirements of AB 540." According to the author, "E-2 visa holders have often lived in the United States legally for decades, with their children identifying as Americans. Their investments in the American economy create jobs and contribute to California's tax base. There is no reason to allow undocumented immigrants to receive in-state tuition, but not legal, nonimmigrant aliens who meet the same criteria."

Is this bill consistent with the intent of AB 540? The author and supporters of AB 540, according to Legislative history, intended AB 540 to provide nonresident tuition waivers to undocumented students whom considered California their home and desired to someday become citizens. Supporters argued the law would provide talented California high school students, who could not afford to pay nonresident tuition, an opportunity to afford college. Alternatively, while there are immigrant visa pathways available for business owners seeking to immigrate permanently to this

country, federal law explicitly establishes the E-2 nonimmigrant visa for foreign entrepreneurs seeking a limited stay in the United States.

Prior legislation. The Legislature has enacted several bills to expand eligibility for, and benefits related to, AB 540. These include the following:

AB 2000 (Gomez, Chapter 675, Statutes of 2015) expanded eligibility to students who have attained credits equivalent to three or more years of full-time high school coursework, and earned these credits in California from a California high school.

SB 141 (Correa, Chapter 576, Statutes of 2013) required the CSU and CCC districts, and requested the UC, to exempt from non-resident tuition charges, under specified circumstances, a United States citizen who moved abroad as a result of his/her parent's deportation.

SB 150 (Lara, Chapter 575, Statutes of 2013) authorized a CCC district to exempt pupils attending CCCs as special part-time students from paying nonresident tuition as a means of extending in-state tuition benefits to high school students who would ultimately be eligible for AB 540 benefits upon graduation.

AB 1899 (Mitchell, Chapter 509, Statute of 2012) grants students who are noncitizen victims of trafficking, domestic violence and other serious crimes (T and U visa students) the same exemption from nonresident tuition and eligibility to apply for and participate in state and institutional financial aid programs as that extended to AB 540 students.

REGISTERED SUPPORT / OPPOSITION:

Support

E2VisaReform.org
Southwest California Legislative Council

Opposition

None on File

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