

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 2586 (Alvarez) – As Amended April 1, 2024

SUBJECT: Public postsecondary education: student employment

SUMMARY: Prohibits the University of California (UC), California State University (CSU), or California Community College (CCC) from disqualifying a student from being hired for an employment position due to their failure to provide proof of federal work authorization, except where that proof is required by federal law or where that proof is required as a condition of a grant that funds the particular employment position for which the student has applied.

Specifically, **this bill:**

- 1) Specifies that the UC, CSU, or CCC must not disqualify a student from being hired for an employment position due to their failure to provide proof of federal work authorization, except in either of the following cases:
 - a) Where that proof is required by federal law; and,
 - b) Where that proof is required as a condition of a grant that funds the particular employment position for which the student has applied.
- 2) Establishes that, for purposes of this bill, the UC, the CSU, and the CCC will treat the federal prohibition on hiring undocumented noncitizens, as specified, as inapplicable because that provision does not apply to any branch of state government.
- 3) Specifies that, to the extent student employment is considered a “benefit” for purposes of federal law, these provisions will constitute authorization to provide that benefit, as specified.
- 4) Requires the UC, CSU, and the CCC to implement the provisions of this legislation by January 6, 2025.
- 5) Specifies that the provisions of this legislation will apply to the UC, unless it is found to be inapplicable to the UC, then, consistent with existing law, this article will apply to the UC only to the extent that the Regents of the UC, by appropriate resolution, make it applicable.
- 6) Establishes 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 will be made, as specified.

EXISTING LAW:

State law

- 1) Establishes the UC as a public trust to be administered by the Regents of the UC; and, grants the Regents full powers of organization and government, subject only to such legislative control as may be necessary to insure security of its funds, compliance with the terms of its endowments, statutory requirements around competitive bidding and contracts, sales of

property and the purchase of materials, goods and services. (Article IX, Section (9)(a) of the California Constitution)

- 2) Confers upon the CSU Trustees the powers, duties, and functions with respect to the management, administration, control of the CSU system and provides that the Trustees are responsible for the rule of government of their appointees and employees. (Education Code (EDC) Sections 66606 and 89500, et seq.)
- 3) Establishes the CCC under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in this state, and specifies that the CCC is comprised of community college districts. (EDC Section 70900)
- 4) Establishes the California Student Aid Commission (CSAC) for the purpose of administering specified student financial aid programs (EDC Section 69510, et seq.).
- 5) Authorizes, beginning January 1, 2013, AB 540 students to be eligible to apply for, and participate in, any student financial aid program administered by the State of California to the full extent permitted by federal law (EDC Section 66021.6).
- 6) Authorizes, AB 540 students attending UC, CSU, or the CCC to be eligible to receive a scholarship derived from nonstate funds, as received by the respective segment for the purpose of scholarships (EDC Section 66021.7).
- 7) Establishes the DREAM Loan Program at UC and CSU campuses that elect to participate in the program. Under the program, an AB 540 student meeting specified requirements, including demonstrating financial need, may obtain a loan of up to \$4,000 per academic year, up to a maximum of \$20,000 as an undergraduate student. No more than \$20,000 as a graduate students. The repayment term for the loan is 10 years, and repayment commences following a six-month grace period beginning when the student graduates or ceases to maintain at least half-time enrollment. Eligibility for deferment or forbearance of loan repayments is consistent with the federal direct student loan program (EDC Section 70033).
- 8) Requires, by January 1, 2020, a UC and the CSU campuses participating in the state DREAM Loan Program to adopt procedures allowing a borrower to select an income-based repayment plan for the repayment of a DREAM Loan (EDC Section 70034 (d)).
- 9) Requires the annual Budget Act to allocate funding to participating institutions based on the number of AB 540 students who applied for state financial aid in the prior academic year. Participating institutions must at least match the state allocation using the institution's discretionary funds. Both the state and local funding is deposited into a DREAM revolving fund. Loan repayments are also deposited into the revolving fund and are intended to reduce the annual state and campus contributions equally (EDC Section 70035).

Federal law

- 10) Requires, under federal law, an employer to verify, through examination of specified documents, whether an individual may work in the United States. (8 U.S.C. Section 1324a.)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* According to the author, “America has always promised that if you work hard, you will have the opportunity to succeed. Undocumented students have fulfilled their obligation and are ready to be our future teachers, scientists, doctors, and public servants. This bill will provide them with the opportunity to be employed by their campus to earn the financial means as they work towards completing their degrees.”

“California’s higher education systems now have an opportunity to remove barriers to employment for all students, regardless of immigration status. Legal scholars have identified that the federal prohibition on hiring undocumented people (the Immigration Reform and Control Act of 1986 (IRCA)) does not apply to state governments when they act as employers, like California’s higher education systems. This means that the [UC], [CSU], [CCC] can authorize the hiring of all their undocumented students.”

“California has the opportunity to continue to serve as a model for the rest of the Nation. By allowing undocumented students to be eligible for work opportunities, California will ensure all students have equal access to the opportunities they need to provide financially for themselves and work to obtain their degrees. Only then can our state truly maintain its status as an economic powerhouse and the place where the nation’s future is invented.”

Background. The state has demonstrated a commitment to undocumented students by qualifying them for state aid programs that help make college more attainable. AB 540 (Firebaugh), Chapter 814, Statutes of 2001, and successor legislation has created a nonresident tuition exemption for certain students, including undocumented students, from paying nonresident tuition (higher than resident tuition) and/or allows them to apply and receive state aid at certain California public and private colleges. Since the enactment of AB 540, several legislative measures have modified or expanded eligibility for the exemption from nonresident tuition in order to better accommodate the diverse student population.

In 2011, AB 131 (Cedillo), Chapter 604, Statutes of 2011, allowed students with AB 540 status to apply and be eligible for state financial aid such as the Cal Grant. AB 131 also charged CSAC with establishing and administering procedures and forms to enable eligible undocumented students' access to state aid. As a result, CSAC developed the California Dream Act Application (CADAA) and made it available to students in fall 2012.

In 2014 the Legislature enacted SB 1210 (Lara), Chapter 754, Statutes of 2014, which established the California DREAM Loan Program, an affordable loan option that is offered at UC and CSU for undergraduate AB 540 students to assist in financing their education. The loan was designed to mirror federal student loan programs with including provisions that placed a cap on loan amounts and low interest rates. This Program serves undocumented AB 540 students at the UC and CSU who, under the terms of the California Dream Act, became eligible for State and institutional grant programs but are ineligible for federal student loan programs. A student can borrow up to \$4,000 annually not to exceed \$40,000 in the aggregate.

In 2019, the Legislature enacted SB 354 (Durazo), Chapter 526, Statutes of 2019, which expanded the provisions of the DREAM Loan Program to include eligible graduate students seeking a graduate or professional degree program.

In 2023, the Legislature enacted SB 633 (Gonzalez), Chapter 622, Statutes of 2023, creating the California DREAM Grant Program to provide grants to certain students attending a UC or CSU campus and allows UC and CSU to fund the program using unspent California DREAM Loan Program funds.

Existing employment challenges. On June 15, 2012, the U.S. Department of Homeland Security (DHS) announced that it would not deport certain undocumented youth who came to the United States as children. Under a directive from the DHS secretary, these youth may be granted a type of temporary permission to stay in the U.S. called “deferred action.” This program became called Deferred Action for Childhood Arrivals (DACA).

In September of 2017 DACA was rescinded, a decision that placed millions of Californians at risk of losing their protection from deportation and work authorization that allowed them to be employed. Since the rescinding of the program several federal courts have provided rulings that have allowed current DACA recipients to continue to enroll in the program, however one of the federal court cases is currently pending at the Fifth Circuit Court of Appeals.

These rulings have impacted current students, where multiple incoming classes have entered that are ineligible to receive DACA and work authorization. These students have limited access to career-relevant and sustainable work opportunities during college and after graduation. Additionally, many of these students do not qualify for critical safety net programs like CalFresh.

Arguments in support. According to the California State Student Association, “California has been a leader in the nation in providing education to students, with grants, loans, and scholarships available to undocumented students pursuing their higher education dreams. According to an estimate from the American Communities Survey, California boasts the highest count of undocumented college students, with approximately 83,000 individuals across systems. While the [CSU] does not officially track the number of enrolled undocumented students or DACA recipients, a press release put out from the [CSU] Chancellor’s Office in March 2024 estimated that there were more than 8,500 undocumented students across the system. In most cases, undocumented students are unable to work unless they possess DACA status, with exceptions being rare. AB 2586 would open doors for students, regardless of immigration status, to continue to pursue their higher education dreams while being eligible for work opportunities on campus.”

The California Labor Federation also wrote in support, noting that “The restriction on the unemployment of undocumented immigrant youth by our state higher education systems is due to an incorrect interpretation of the Immigration Reform and Control Act (IRCA) of 1986. To the contrary, legal scholars have identified that the federal prohibition on hiring undocumented people does not apply to state governments when they act as employers, like California’s higher education systems. This means that the [UC], [CSU], and [CCC] can authorize the hiring of all their undocumented students.”

“We believe that AB 2586 is consistent with the state’s commitment to provide equitable access to advancement, affordability, equity, and success for all students. However, despite that commitment, undocumented students continue to be blocked from essential opportunities. Currently, thousands of students in California are unjustly barred from obtaining paying jobs on campus—including experiential jobs and jobs needed to complete their degrees. California has

the opportunity to serve as a model for the rest of the nation to show our ability to truly provide support to our undocumented students.”

Segmental concerns. The UC does not have a position on AB 2586, but did send a letter of concern. In their letter they identified numerous potential issues that could come with hiring undocumented students. These include:

- 1) The exposure of UC’s undocumented students and their families to the possibility of criminal prosecution or deportation;
- 2) The possibility of employees involved in the hiring process like faculty, human resources, and legal professionals being subject to criminal or civil prosecution if they knowingly participate in practices deemed impermissible under federal law;
- 3) Civil fines, criminal penalties, or debarment from federal contracting if the UC is in violation of the Immigration Reform and Control Act (IRCA); and
- 4) The potential loss of billions of dollars in existing federal contracts and grants that are conditional on IRCA compliance.

Committee Staff also understands from communications with the CCC Chancellor’s Office (CCCCO) that it is unclear to the CCCCCO if local community college districts can be considered state entities. They note that there are specific requirements in existing law stipulating how community college districts are formed, which are determined by local county committees on school district organization.

The CCCCCO also wrote that it would be exceptionally difficult for the CCC Board of Governors to adopt regulations implementing the provisions of AB 2586 (Alvarez) by January 6, 2025, given the extensive consultative and public comments process that is required by state law.

UCLA legal analysis and UC Regents’ actions. The UC has been considering taking action on student employment for several years. As part of these efforts the UCLA Center for Immigration Law and Policy published a memorandum in September of 2022 analyzing whether the federal IRCA applies to states. In their memorandum it is asserted that “Nothing in 8 U.S.C. [Section] 1324a or anywhere else in IRCA comes close to meeting the U.S. Supreme Court’s requirement of a clear statement that binds states. In stark contrast to IRCA, other federal statutes that do bind states mention them explicitly. These statutes include, among others, the Fair Labor Standards Act, the Family and Medical Leave Act, and the Age Discrimination in Employment Act.”

“In short, when Congress passed IRCA, Congress did not curtail states’ historic power to determine the employment qualifications of state employees. As a result, IRCA’s prohibition on hiring undocumented persons does not bind state government entities. State entities can lawfully hire undocumented students irrespective of employment authorization status under federal law. And as the U.S. Supreme Court recognized long ago, California law provides definitively that the UC system is part of the State of California.”

On May 18, 2023, the UC Regents adopted Regents Policy 4407, which stated that, in order to pursue the goal that all persons who are enrolled as UC students should have equal access to UC employment opportunities, the Chair of the Board of Regents would convene a Regents working group to work with the President of the UC to determine next steps.

On January 25, 2024, the UC Regents passed a motion on a 10-6 vote to suspend implementation of Regents Policy 4407 for one year, delaying the internal effort to create employment opportunities for students. In their letter of concern to the Committee, the UC wrote that “last year, a working group of the Regents of the [UC] studied this issue and sought a legal path forward. However, after receiving advice from both inside and outside legal counsel, we concluded that there were considerable risks for the University and the students we aim to support. This led the Regents to postpone further action until next year while we continue to examine ways to expand undocumented students’ access to equitable educational experiences.”

Committee Staff notes that the core question of this bill centers on the interpretation of federal law on employment that is inherently outside of the jurisdiction and expertise of this of this Committee. The author makes a compelling argument based on the expert assessment of scholars in their field – yet the UC’s lack of action on this issue following their own legal review calls into question the potential ramifications to students and staff.

While the legal question is one that is outside of this Committee’s jurisdiction, well within the Committee’s purview is a long-established history of taking meaningful action to alleviate the financial burdens facing undocumented students. It is clear that, according to CSAC’s 2023 report *Renewing the Dream – Improving Financial Aid & College Affordability for California's Undocumented Students*, there are over 75,000 AB 540 students in the UC, CSU, and CCC and virtually none of them can rely on DACA for employment eligibility – a major change from the experience of similar students only a few years prior.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
 Alliance San Diego
 California Federation of Teachers Afl-cio
 California Immigrant Policy Center
 California Labor Federation, Afl-cio
 California State Student Association
 Central American Resource Center – Carecen – of California
 Coalition for Humane Immigrant Rights (CHIRLA)
 Grantmakers Concerned With Immigrants and Refugees
 Immigrants Rising
 Individuals - (105)
 Latino Democratic Club of Sacramento County
 University of California Student Association

Opposition

None on file.

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