



## States Grapple With In-State Tuition for Illegal Immigrants

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WASHINGTON — For most teenagers, going to college is part of the American dream. But the cost of fulfilling that dream has become a source of controversy, as illegal immigrants sometimes pay less than U.S. citizens to attend the same college.

Illegal immigrants living in nine states can now attend public college at in-state tuition costs. But legal U.S. citizens still have to pay out-of-state tuition at schools outside of their home state. That price difference can be tens of thousands of dollars.

Many say it's discrimination if states offer a cheaper public college education to illegal immigrants, and some out-of-state American students are suing in federal and state courts. Others argue it's the best way to make sure immigrant students reach their potential.

"We'll be arguing it doesn't really matter if the U.S. citizens end up paying more or paying less but that they're being treated unequally," said Kris Kobach, co-counsel in lawsuits against tuition laws in Kansas and California. Kobach added that a 1996 federal law guiding this issue is "remarkably clear language for Congress — it makes it very clear you can't do this."

The federal [Illegal Immigration Reform and Immigrant Responsibility Act of 1996](#) prohibits public colleges from favoring undocumented students by offering them in-state tuition rates and not extending that offer to U.S. citizens.

"There's no discrimination against U.S. citizens in this, and that's what the law requires, that there be no discrimination against U.S. citizens," said Josh Bernstein, federal policy director of the [National Immigration Law Center](#).

Critics of educational price breaks for illegal immigrants argue that many Americans can't afford to go to college and that these state laws will create an onslaught of illegal aliens trying to take advantage of the lower cost. They also point out that states would bear the brunt of educating these students.

A [2003 study](#) by the University of Illinois at Chicago's Center for Urban Economic Development noted that if every one of Illinois' 2,226 eligible undocumented students that year graduated from Chicago high schools and attended a public university, the annual cost to the state for each graduating class of that size would be between \$3.3 million and \$11.6 million.

Those advocating the laws argue that the cost of not educating undocumented students is even higher, and that it's not about giving illegals a free pass but to help integrate them into a society to which they can't fully contribute without a post-secondary education.

Republican state Sen. Emmett Hanger has proposed legislation that would make Virginia the 10th state in the union to give aliens cheaper tuition.

"I'm very much opposed to [illegal immigration](#)," Hanger said. "What this does is says you are not entitled to in-state tuition rates if you are an undocumented immigrant unless you meet certain criteria."

Hanger said the fragmented federal immigration system has been ineffective at curbing and dealing with illegal immigration and that his bill will actually provide incentive for illegal students who have lived here for years to seek legal citizenship.

"It's a two-sided issue," he continued. "I would take exception to the fact we're providing incentive for them to come here ... many have been shuffling papers for 10 to 12 years."

Meanwhile, the Development, Relief and Education for Alien Minors (DREAM) Act pending before Congress could not only make it easier for undocumented students to get a higher education, but also to use that education in the workforce in places other than the neighborhood grocery store or construction site.

"For several years now, people have been doing patchwork laws across the country. As people come into this country, a lot of young immigrants are going to school until they're realizing they're unable to ... they have a lot of ambitions to go to school but it's been a huge barrier," said Son Ah Yun, director of immigration at the [Fair Immigration Reform Movement](#).

"For us, the DREAM Act is critical in being able to address this issue of a broken system and to particularly address a young population of immigrants who have been living here and are really American and don't really know anything about the country [where] their parents [were] born."

### **'Illegal' is the Key Word**

Any child, regardless of immigration status, is eligible for free primary and secondary education under a 1982 Supreme Court decision entitled [Plyler v. Doe](#).

Beginning in 2002, California, Illinois, Kansas, New Mexico, New York, Oklahoma Texas, Utah, and Washington enacted legislation allowing alien students who graduate from state high schools and have two to three years of residency apply and receive in-state tuition at one of their public colleges or universities, according to the [National Conference of State Legislatures](#).

The students must assign an affidavit promising to seek legal immigration status. The requirements are more stringent than the residency requirements for out-of-state students trying to gain in-state tuition, according to backers.

Still, lawsuits are pending in California and Kansas against their statutes and legal challenges have been made against the New York and Texas laws. Legislative challenges have also been made to Utah's law.

"It is the key word here, 'illegal,' and it's also about not only the principle behind that, but the priorities — in funding what the Kansas taxpayers want to fund," Kansas state Rep. Becky Hutchins, who introduced a bill to overturn that state's 2004 law, recently told FOX News, adding that in 2005, 221 students were able to qualify for the price break, up from 37 in 2004.

The [Washington Legal Foundation](#) filed formal complaints with the Department of Homeland Security's Office for Civil Rights Division against the New York and Texas law; DHS is responsible for probing possible federal immigration law violations.

"The [1996 federal] law doesn't say you can't give in-state tuition to illegal aliens. In fact, you can. What the law says is, you can't do that and at the same time, deny citizens who live outside of the state in-state tuition if what you are doing is discriminating on the base of residency," said the foundation's chief counsel, Richard Samp.

States are getting around the 1996 federal law, Samp said, by saying they are not discriminating based on residency but on where the students attended high school. They argue that it's technically legal for an illegal immigrant to get in-state tuition if he or she graduated from a high school in the state, among other things.

"Our argument in response to that is ... to grant in-state tuition based on where you went to high school is simply an illegal proxy to grant in-state tuition based on residency," Samp continued.

In the Kansas case, a judge last July said individuals don't have the right to sue in violation of the law; only DHS can; an appeal is pending before a federal court. This month is the first hearing in the California case, which is a class-

action suit seeking compensation for 60,000 U.S. students who claim they were illegally discriminated against because of the preferential system.

While Kobach said he's "cautiously optimistic" about the California suit, "we're pretty confident that once we get a judge to address that issue ... we'll win. The trick is, the attorneys on the other side are throwing up every roadblock they can."

But Bernstein said these legal challenges won't go far, saying, "I'm very confident that this complies with the federal law."

### **The Fear Factor as Repellent**

Even though some states have had the immigration tuition laws on the books for several years, undocumented students aren't banging down colleges' doors in droves.

"What I've most commonly heard from our campuses and other public universities and what I've seen is that there is not as much of a response to the program as some people would have expected and some people would have alleged or feared, depending on what side of the issue you're on," said Travis Reindl, director of state policy analysis at the [American Association of State Colleges and Universities](#), which is [keeping track](#) of state action on this issue.

"I think some of the proponents were thinking this would be a real gateway of opportunity for this group of students, many of them are top of the class, straight-A type of students, then the opponents are saying, 'this is just going to draw more people across the border ... we're making it more attractive for people to break the law and these people are going to overrun these programs ... they're both wrong in some respect,'" he added.

Many undocumented students aren't applying to college, even at these cheaper rates, for several reasons.

Some would be the first in their family to go to college and often don't have the reinforcement at home encouraging them to apply. Others often feel the complicated admissions process and the language barrier is too overwhelming. But even if students get over all these hurdles and get into college, one huge fear that remains is deportation.

"Anytime you flag yourself, anytime you draw attention to yourself in any way, shape, or form or get into the 'system,' there's a real fear ... among the immigrant communities that they're going to be discovered and shipped off," Reindl explained. And "\$3,000 a year for some of these families is a lot — capital L-O-T — for these immigrant families. They're living on bare subsistence just so they can send money home ... and there's not a whole lot left for college."

The [DREAM Act](#) aims to remedy many of these problems.

Co-sponsored by a bipartisan group of senators, the bill may be taken up by the Senate Judiciary Committee this month. It had 47 cosponsors in 2003 before Congress adjourned. It was re-introduced last November.

The DREAM Act would provide conditional legal status to illegal immigrants who: were under 16 when they entered the United States; have been physically present in the United States for at least five years before the law was passed; have earned a high school diploma or GED; and are people of "good moral character." These students would be able to obtain permanent resident status if they graduate from college or a trade school within six years or if they join the military.

"These are young people who have been part of their community, part of their churches, their high schools," said Yun. "Their immigration status is a huge barrier but when you talk about residency and being part of a community ... immigration shouldn't always define a person's whole identity."

DREAM Act proponents want to keep the legislation separate from the toxic broader issue of illegal immigration, because it only deals with 50,000 to 65,000 students who have been living in this country for years and who have graduated from U.S. schools. Some students need an incentive to even finish high school, they argue.

"We can't afford to not let them live up their potential," Bernstein said.

But some say the immigration issue is so politically charged right now — among the border security debate, the

[Minutemen Project](#) and President Bush's proposed guest worker program, — that the DREAM Act may get bogged down. That means it will be up to states to decide on their own how to handle it, and some may be reluctant to take it up at all.

"My reading of the tea leaves is, this is going in the other direction — the backlash against this is really starting ... immigration issues, they're borderline radioactive in the political world," said Reindl. "This has brought a lot of the emotional and really raw debate of this to the front and center and I don't think that's a really conducive climate to push legislation at the state level."

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