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AMENDED IN SENATE JULY 12, 1999

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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1197

**Introduced by Assembly Member Firebaugh
(Coauthors: Assembly Members Honda, Kuehl, and
Romero)**

(Coauthor: Senator Vasconcellos)

February 26, 1999

An act to amend ~~Sections 76140 and 89706~~ of *Section 89706* of, and to add *Section 76140.1* to, the Education Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1197, as amended, Firebaugh. Public postsecondary education: residency.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and

authorizes these districts to provide instruction at community college campuses throughout the state. Existing law authorizes community college districts to admit, and charge a tuition fee for, nonresident students in accordance with specified criteria.

Existing law establishes the California State University and authorizes the operation of its various campuses under the administration of the Trustees of the California State University. Existing law authorizes the trustees, on the basis of demonstrated financial need and scholastic achievement, to waive entirely, or reduce below the minimum rate, the tuition fee of a nonresident student, as defined.

Existing law prescribes residency requirements for students at public institutions of postsecondary education, including, among others, the campuses of the California Community Colleges and the California State University. With respect to alien students, existing law specifies that an alien, including an unmarried minor alien, may establish his or her residence unless precluded by the federal Immigration and Nationality Act from establishing domicile in the United States.

This bill would require that a person, including an alien precluded from establishing California residency because of federal law, who has attended high school in California for 3 or more years, who has graduated from a California high school, who continues his or her education at a California institution of higher education within one year of high school graduation or on or before January 1, 2001, and who files, or on whose behalf has been filed, a petition or application for lawful immigration status, be exempted, under specified circumstances, from paying nonresident tuition at the California Community Colleges or the California State University. The bill would request the Regents of the University of California to also exempt these persons from paying nonresident tuition. The bill would also make various technical, nonsubstantive changes to the provisions relating to residency with respect to attendance at campuses of the California Community Colleges and the California State University.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Section 76140 of the Education Code is
2 amended to read:

3 76140. (a) A community college district may admit
4 and shall charge a tuition fee to nonresident students. The
5 district may exempt from all or parts of the fee any person
6 described in paragraph (1) or (2):

7 (1) All nonresidents who enroll for six or fewer units.
8 Exemptions made pursuant to this paragraph shall not be
9 made on an individual basis.

10 (2) Any nonresident who is both a citizen and resident
11 of a foreign country, if the nonresident has demonstrated
12 a financial need for the exemption. Not more than 10
13 percent of the nonresident foreign students attending
14 any community college district may be so exempted.
15 Exemptions made pursuant to this paragraph may be
16 made on an individual basis.

17 (b) A community college district may contract with a
18 state, a county contiguous to California, the federal
19 government, or a foreign country, or an agency thereof,
20 for payment of all or a part of a nonresident student's
21 tuition fee.

22 (c) Nonresident students shall not be reported as
23 full-time equivalent students (FTES) for state
24 apportionment purposes, except as provided by
25 subdivision (k) or (l) or another statute, in which case a
26 nonresident tuition fee may not be charged.

27 (d) The nonresident tuition fee shall be set by the
28 governing board of each community college district not
29 later than February 1 of each year for the succeeding
30 fiscal year. The governing board of each community
31 college district shall provide nonresident students with
32 notice of nonresident tuition fee changes during the
33 spring term before the fall term in which the change will
34 take effect. Nonresident tuition fee increases shall be
35 gradual, moderate, and predictable. The fee may be paid
36 in installments, as determined by the governing board of
37 the district.



1 ~~(e) The fee established by the governing board of a~~
2 ~~community college district pursuant to subdivision (d)~~
3 ~~shall represent for nonresident students enrolled in 30~~
4 ~~semester units or 45 quarter units of credit per fiscal year~~
5 ~~(1) the amount that was expended by the district for the~~
6 ~~expense of education as defined by the California~~
7 ~~Community College Budget and Accounting Manual in~~
8 ~~the preceding fiscal year, increased by the projected~~
9 ~~percent increase in the United States Consumer Price~~
10 ~~Index as determined by the Department of Finance for~~
11 ~~the current fiscal year and succeeding fiscal year and~~
12 ~~divided by the FTES (including nonresident students)~~
13 ~~attending in the district in the preceding fiscal year, (2)~~
14 ~~the expense of education in the preceding fiscal year of~~
15 ~~all districts increased by the projected percent increase~~
16 ~~in the United States Consumer Price Index as determined~~
17 ~~by the Department of Finance for the fiscal year and~~
18 ~~succeeding fiscal year and divided by the FTES~~
19 ~~(including nonresident students) attending all districts~~
20 ~~during the preceding fiscal year, (3) an amount not to~~
21 ~~exceed the fee established by the governing board of any~~
22 ~~contiguous district, or (4) an amount not to exceed the~~
23 ~~amount that was expended by the district for the expense~~
24 ~~of education, but in no case less than the statewide~~
25 ~~average as set forth in paragraph (2). However, if for the~~
26 ~~district's preceding fiscal year FTES of all students~~
27 ~~attending in the district in noncredit courses is equal to,~~
28 ~~or greater than, 10 percent of the district's total FTES~~
29 ~~attending in the district, the district, in calculating the~~
30 ~~amount in paragraph (1), may substitute, instead, the~~
31 ~~data for expense of education in grades 13 and 14 and~~
32 ~~FTES in grades 13 and 14 attending in the district.~~

33 ~~(f) The governing board of each community college~~
34 ~~district also shall adopt a tuition fee per unit of credit for~~
35 ~~nonresident students enrolled in more or less than 15~~
36 ~~units of credit per term by dividing the fee determined~~
37 ~~in subdivision (e) by 30 for colleges operating on the~~
38 ~~semester system and 45 for colleges operating on the~~
39 ~~quarter system and rounding to the nearest whole dollar.~~
40 ~~The same rate shall be uniformly charged nonresident~~



1 ~~students attending any terms or sessions maintained by~~
2 ~~the community college. The rate charged shall be the rate~~
3 ~~established for the fiscal year in which the term or session~~
4 ~~ends.~~

5 ~~(g) In adopting a tuition fee for nonresident students,~~
6 ~~the governing board of each community college district~~
7 ~~shall consider nonresident tuition fees of public~~
8 ~~community colleges in other states.~~

9 ~~(h) Any loss in district revenue generated by the~~
10 ~~nonresident tuition fee shall not be offset by additional~~
11 ~~state funding.~~

12 ~~(i) Any community college district that has fewer than~~
13 ~~1,500 FTES and whose boundary is within 10 miles of~~
14 ~~another state that has a reciprocity agreement with~~
15 ~~California governing student attendance and fees may~~
16 ~~exempt students from that state from the mandatory fee~~
17 ~~requirement described in subdivision (a) for nonresident~~
18 ~~students.~~

19 ~~(j) Any community college district that has more than~~
20 ~~1,500, but less than 3,001, FTES and whose boundary is~~
21 ~~within 10 miles of another state that has a reciprocity~~
22 ~~agreement with California governing student attendance~~
23 ~~and fees may, in any one fiscal year, exempt up to 100~~
24 ~~FTES from that state from the mandatory fee~~
25 ~~requirement described in subdivision (a) for nonresident~~
26 ~~students.~~

27 ~~(k) The attendance of nonresident students who are~~
28 ~~exempt pursuant to subdivision (i) or (j) from the~~
29 ~~mandatory fee requirement described in subdivision (a)~~
30 ~~for nonresident students may be reported as resident~~
31 ~~FTES for state apportionment purposes. Any nonresident~~
32 ~~student reported as a resident FTES for state~~
33 ~~apportionment purposes pursuant to subdivision (i) or~~
34 ~~(j) shall pay a fee of forty-two dollars (\$42) per course~~
35 ~~unit. That fee is to be included in the FTES adjustments~~
36 ~~described in Section 76330 for purposes of computing~~
37 ~~apportionments.~~

38 ~~(l) (1) Notwithstanding any other provision of law,~~
39 ~~any 76140.1 is added to the Education Code, to read:~~

40 ~~76140.1. Notwithstanding any other provision of law:~~



1 (a) Any person, including an alien precluded from
 2 establishing California residency by reason of subdivision
 3 (h) of Section 68062, who meets all of the following
 4 requirements is exempt from nonresident tuition:
 5 ~~(A)–~~
 6 (1) High school attendance in California for three or
 7 more years.
 8 ~~(B)–~~
 9 (2) Graduation from a California high school.
 10 ~~(C)–~~
 11 (3) Continuation of his or her education at a California
 12 institution of higher education within one year of high
 13 school graduation or on or before January 1, 2001.
 14 ~~(D)–~~
 15 (4) Filing of a petition or application for lawful
 16 immigration status, either by the person seeking the
 17 exemption from nonresident tuition or by another person
 18 on behalf of the person seeking the exemption.
 19 ~~(2) For the purposes of this subdivision:~~
 20 ~~(A)–~~
 21 (b) For the purposes of this section:
 22 (1) “A petition or application for lawful immigration
 23 status” includes a petition or application in relation to
 24 which the person is a derivative beneficiary.
 25 ~~(B)–~~
 26 (2) Documentation that a petition or application for
 27 lawful immigration status has been initiated may include
 28 either or both of the following:
 29 ~~(i)–~~
 30 (A) A photocopy of the petition or application.
 31 ~~(ii)–~~
 32 (B) A letter or other document from the Immigration
 33 and Naturalization Service or from another appropriate
 34 government agency, or an affidavit from an attorney,
 35 indicating that the person is in the process of petitioning
 36 or applying for lawful immigration status.
 37 ~~(3)–~~
 38 (c) A student who is exempt from nonresident tuition
 39 pursuant to this ~~subdivision~~ section may be reported by



1 a community college district as a full-time equivalent
2 student for apportionment purposes.

3 SEC. 2. Section 89706 of the Education Code is
4 amended to read:

5 89706. (a) The trustees may, on the basis of
6 demonstrated financial need and scholastic achievement,
7 waive entirely, or reduce below the rate, or the minimum
8 rate, fixed by Section 89705, the tuition fee of a
9 nonresident student, as defined in Section 68018, who is
10 a citizen and resident of a foreign country, who is an
11 undergraduate student of exceptional scholastic ability
12 and prior scholastic achievement, and who is enrolled in
13 a course of study of no less than 10 semester units.

14 (b) The number of reductions and waivers granted by
15 the trustees under this section shall at no time exceed $7\frac{1}{2}$
16 percent of the nonresident undergraduate students who
17 are citizens and residents of a foreign country, then
18 enrolled in the California State University.

19 (c) (1) Notwithstanding any other provision of law,
20 any person, including an alien precluded from
21 establishing California residency by reason of subdivision
22 (h) of Section 68062, who meets all of the following
23 requirements is exempt from nonresident tuition:

24 (A) High school attendance in California for three or
25 more years.

26 (B) Graduation from a California high school.

27 (C) Continuation of his or her education at a California
28 institution of higher education within one year of high
29 school graduation or on or before January 1, 2001.

30 (D) Filing of a petition or application for lawful
31 immigration status, either by the person seeking the
32 exemption from nonresident tuition or by another person
33 on behalf of the person seeking the exemption.

34 (2) For the purposes of this subdivision:

35 (A) "A petition or application for lawful immigration
36 status" includes a petition or application in relation to
37 which the person is a derivative beneficiary.

38 (B) Documentation that a petition or application for
39 lawful immigration status has been initiated may include
40 either or both of the following:



- 1 (i) A photocopy of the petition or application.
- 2 (ii) A letter or other document from the Immigration
- 3 and Naturalization Service or from another appropriate
- 4 government agency, or an affidavit from an attorney,
- 5 indicating that the person is in the process of petitioning
- 6 or applying for lawful immigration status.

7 SEC. 3. (a) The Legislature hereby requests the
 8 Regents of the University of California to take action to
 9 exempt from nonresident tuition any person, including
 10 an alien precluded from establishing California residency
 11 by reason of subdivision (h) of Section 68062 of the
 12 Education Code, who has attended high school in
 13 California for three or more years, who has graduated
 14 from a California high school, who continues his or her
 15 education at a California institution of higher education
 16 within one year of high school graduation or on or before
 17 January 1, 2001, and who has filed a petition or application
 18 for lawful immigration status, or on whose behalf a
 19 petition or application for lawful immigration status has
 20 been filed.

- 21 (b) For the purposes of this section:
- 22 (1) "A petition or application for lawful immigration
- 23 status" includes a petition or application in relation to
- 24 which the person is a derivative beneficiary.
- 25 (2) Documentation that a petition or application for
- 26 lawful immigration status has been initiated may include
- 27 either or both of the following:
- 28 (A) A photocopy of the petition or application.
- 29 (B) A letter or other document from the Immigration
- 30 and Naturalization Service or from another appropriate
- 31 government agency, or an affidavit from an attorney,
- 32 indicating that the person is in the process of petitioning
- 33 or applying for lawful immigration status.

