

**CALIFORNIA COMMUNITY COLLEGE CHANCELLOR'S OFFICE**

**REVISED GUIDELINES AND INFORMATION ON AB540  
EXEMPTION FROM NONRESIDENT TUITION**

**MAY 2002**

**THESE GUIDELINES SUPERCEDE GUIDELINES ISSUED IN NOVEMBER 2001**

**The Law**

On October 12, 2001, Governor Davis signed into law Assembly Bill 540 (Stats. 2001, ch.814) which adds a new section 68130.5 to the California Education Code. Section 68130.5 creates a new exemption from payment of nonresident tuition for certain nonresident students who have attended high school in California and received a high school diploma or its equivalent. The law is contained in Attachment One.

**The Regulations**

This law does not affect current Title 5 regulations concerning residency. Those regulations remain in effect; changes are not anticipated. The law does not grant or amend current residency rules but rather provides for an exemption from nonresident tuition for certain nonresident students. AB 540 required the Board of Governors to adopt regulations detailing the requirements for the new exemption. The regulations are contained in Attachment Two. These regulations are legally effective on June 2, 2002.

**Follow-up Legislation**

At the request of the University of California an additional provision was added to the Education Code to limit remedies under the law. That law (AB1543) is contained in Attachment Three.

**Mandated and Optional Forms**

The newly adopted regulations require the community college districts to use a "questionnaire form prescribed by the Chancellor". The Chancellor's Office, in cooperation with UC and CSU has developed such a form. Additional information is provided in the guidelines below. See Attachment Four.

In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. The use of this informational piece is optional. See Attachment Five.

## **Implementation Notes and Clarification of Provisions**

### ***General Eligibility and Residency***

1. The new law does not grant residency, it requires that certain nonresident students be exempted from paying nonresident tuition.
2. Students exempted from paying nonresident tuition pursuant to section 68130.5 do not become residents for eligibility purposes for any state-funded program (e.g., EOPS, BOG Fee Waiver, Cal Grant and/or the Governor's Merit Scholar Program).
3. This benefit is available to all US citizens, permanent residents of the US, and aliens who are not nonimmigrants (including those who are undocumented), who meet all other eligibility criteria.
4. Students must meet all requirements to be eligible for the exemption.
5. Students are eligible for this exemption even if they enrolled in higher education prior to the 2001-2002 academic year. References to prior academic years in the legislation prohibit retroactive application of the exemption but do not preclude previous attendance.
6. Students do not have to demonstrate intent to become a California resident to qualify for this exemption. For example, those who live in neighboring states and cross the border to attend classes are entitled to this exemption (assuming they are otherwise eligible) despite the fact that they may have no intention of returning to live in California.

### ***Fiscal***

7. The exemption from nonresident tuition is mandatory. If a district finds that a student meets all requirements in the law, nonresident tuition may not be charged.
8. If a student is determined eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student.
9. Districts may claim apportionment for credit courses for these nonresident students who are exempted from the payment of nonresident tuition pursuant to section 68130.5.
10. Students exempted from nonresident tuition under these provisions may still have to pay a capital outlay fee under certain circumstances. There is no exemption from that fee in the law.
11. Some districts conduct pre-registration for high school seniors prior to their graduation. Such students could not sign a valid exemption request (because they have not yet graduated from high school). If district policies permit, the student payment of nonresident tuition can be deferred until the district can legally consider the student for an exemption.

### **Forms and Verification**

12. The regulations require the community college districts to use a "questionnaire form prescribed by the Chancellor". An intersegmental form has been developed to meet this purpose.
13. Districts are asked to use the prescribed form immediately wherever possible and to ensure that the prescribed form is contained in any publications printed after June 1, 2002. The common form as prescribed by the Chancellor must be used for all exemptions granted for terms subsequent to Fall 2002.
14. In recognition that districts may have included their own form (as previously allowed) as an enclosure in printed materials for Summer 2002 or Fall 2002, and in order not to unduly inconvenience students or waste materials, campuses are permitted to use that form for Summer 2002 and/or Fall 2002, *providing the form includes all elements prescribed by law and providing the form is part of a major preprinted document such as a Schedule of Classes*. Individually printed old forms must be discarded and replaced with the newly prescribed form.
15. In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. Districts are encouraged to print this one-page document on the reverse of the mandated form and to include it in a convenient manner in other media. The use of this informational piece is optional.
16. The law does not specify the manner or type of verification required except in reference to an affidavit from those without lawful immigration status. Therefore it is the view of the Chancellor's Office that a district may rely on the student's self-certification of status.
17. If the district is in possession of conflicting information regarding any aspect of student eligibility, the district should pursue additional verification (e.g. high school transcript, diploma, etc.) to resolve discrepancies prior to granting this exemption.
18. Districts are free, at their discretion, to develop and implement additional documentation requirements relating to high school graduation or high school attendance in California, as long as such requirements are uniformly applied to all applicants. However, districts may not require additional documentation related to immigration status (see #31) unless the district has conflicting information which must be resolved (see #17).
19. In the view of the Chancellor's Office the district is not required to obtain a new affidavit for terms subsequent to the original exemption, however districts are free to do so if they so desire.

20. The original certified affidavit and other materials utilized by a district in meeting the certification requirements, shall be considered Class 1 - Permanent Records, under the provisions of Title 5 Section 59023. The Class 1 records shall be retained indefinitely, unless copied or reproduced by photograph, microphotograph or reproduced on film or electronically. It is suggested, for audit purposes, that the original documents should be maintained for at least five years.

***Eligibility Issues Related to High School Attendance and Graduation***

21. The student must have attended a California high school for three or more years. There are no provisions for partial attendance (e.g. two years and 7 months).
22. Attendance in the 9<sup>th</sup> grade in a California school is acceptable for one of the three years, even if that school was designated as a "middle" school.
23. The law does not require consecutive attendance nor require that the student attended the *last* three years in California (in the case of four-year high schools).
24. Attendance could be at multiple California high schools.
25. Attendance at continuation high schools, charter high schools, independent study at the 9<sup>th</sup>-12<sup>th</sup> grade level while enrolled in a California public school, including a charter school, and private tutoring provided by a person holding a valid California teaching credential (and meeting other state requirements) are recognized under state law as acceptable manners in which to attend high school.
26. Home schooling --- instruction by a tutor or other person (including the student's parent) who did not have a valid California teaching credential --- is not acceptable. (See #25 for acceptable alternatives.)
27. Adult schools (regardless of curriculum or administrative control) are not equivalent to high schools in the Education Code. Therefore, attendance at adult school is not acceptable for eligibility purposes.
28. The law does not distinguish between public and private high schools.
29. There is no time limit on how far in the past the student might have attended a California high school.
30. The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED or a high school proficiency exam). The GED or high school proficiency exam must be from California. There is no time limit on how far in the past the student might have attained this status.

### ***Eligibility Issues Related to Immigration***

31. All districts must use the affidavit contained on the form prescribed by the Chancellor that affirms that those students without lawful immigration status have applied for legalization or will do so as soon as they are eligible to do so. A student who files the affidavit shall not be asked to provide additional evidence of immigration status unless the district is in possession of evidence that casts doubt on the validity of the affidavit. The law does not require the district to monitor future changes in such eligibility.
32. If the student has filed an application with the INS to change his or her status to a classification which permits establishing residency, the student may already be eligible for resident fee status if the student has resided in California for more than one year since the time of the INS application. (See Title 5 Section 54045.)
33. Students who are nonimmigrant aliens (the most common being the F series student visas and B series visitor visas), are not eligible for this exemption. (A full description of nonimmigrant alien classifications may be found in paragraph 15 of subsection (a) of Section 1101 of Title 8 of the U.S. Code.)
34. People who previously held valid nonimmigrant visas but who are out of status at the time of execution of the affidavit are eligible for the exemption.

### ***Financial Aid, Outreach and Transfer***

35. The laws and regulations regarding federal and state financial aid are not affected by this new exemption from nonresident tuition. Nonresidents are ineligible for EOPS, BOG Fee Waiver and Cal Grant. Nonresidents who are US Citizens or permanent residents are eligible for federal student aid. Nonresidents who are undocumented aliens are ineligible for all federal and state financial aid. The Chancellor's Office encourages efforts to obtain private scholarship funds to help undocumented students reach their educational goals.
36. Some students may be reluctant to come forward in order to obtain this exemption. Districts may wish to research enrollment and fee records to ascertain which students graduated from California high schools but have paid nonresident tuition. Discreet inquiries would be appropriate to inform students who are potentially eligible about the availability of this exemption.
37. Both UC and CSU are implementing this exemption from nonresident tuition. Students should be advised to complete the common intersegmental form and submit it to all UC or CSU campuses under consideration. Transfer students will be required to execute a new form with the UC or CSU campus (even if a current form is on file with the community college) and will be required to submit proof of high school attendance and high school graduation.

### **Student Liability**

38. If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student shall be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may be subject to disciplinary proceedings per district policy. The student self-certification contains a student acknowledgement of this potential liability.

### **Confidentiality**

39. The law requires that all information obtained in the implementation of this program be held confidential. Districts should be vigilant in protecting this confidentiality. Districts must ensure that all information relating to this tuition exemption remains strictly confidential and is shared only on an absolute "need to know" basis unless disclosure is required by law. Districts are urged to be cautious in outreach, exemption notifications, business transactions, scholarship announcements and other activities to ensure confidentiality and to prevent inadvertent revelation of a student's immigration status.

### **Research**

40. There will be no MIS data element specifically developed to identify students receiving an exemption from nonresident tuition under these rules. There will be surveys regarding these policies from time to time and districts are asked to participate in such research when requested.

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Questions regarding these guidelines should be directed to the following staff at the California Community College Chancellor's Office:

*Student Services:*     *Mary Gill, Dean of Enrollment Management*  
[mgill@cccco.edu](mailto:mgill@cccco.edu)   916.323.5951

*Fiscal:*                 *Elias Regalado, Program Assistant II*  
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*Legal:*                    *Virginia Riegel, Staff Counsel*  
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**ATTACHMENT ONE**  
**AB540**

CHAPTER 814  
FILED WITH SECRETARY OF STATE OCTOBER 13, 2001  
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PASSED THE ASSEMBLY SEPTEMBER 14, 2001  
PASSED THE SENATE SEPTEMBER 12, 2001  
AMENDED IN SENATE SEPTEMBER 7, 2001  
AMENDED IN SENATE JULY 3, 2001  
AMENDED IN SENATE JUNE 20, 2001  
AMENDED IN ASSEMBLY MAY 1, 2001

INTRODUCED BY Assembly Members Firebaugh and Maldonado  
(Principal coauthor: Assembly Member Alquist)  
(Coauthors: Assembly Members Aroner, Calderon, Cedillo, Chan,  
Chavez, Chu, Diaz, Frommer, Keeley, Koretz, Oropeza, Reyes,  
Steinberg, Strom-Martin, Vargas, and Wiggins)  
(Coauthors: Senators Chesbro, Escutia, Kuehl, McPherson, Perata,  
Romero Vasconcellos, and Vincent)

FEBRUARY 21, 2001

An act to add Section 68130.5 to the Education Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 540, Firebaugh. Public postsecondary education: exemption from nonresident tuition.

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. These provisions are applicable to the University of California only if the Regents of the University of California act to make them applicable.

This bill would require that a person, other than a nonimmigrant alien as defined, who has attended high school in California for 3 or more years, who has graduated from a California high school or attained the equivalent thereof, who has registered at or attends an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year, and who, if he or she is an alien without lawful immigration status, has filed an affidavit as specified, be exempted from paying nonresident tuition at the California Community Colleges and the California State University.

The bill would authorize a student exempt from nonresident tuition under the bill to be reported by a community college district as a full-time student for apportionment purposes. The bill would require student information obtained in the implementation of the bill to be confidential.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

(5) This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

(b) It is the intent of the Legislature that:

(1) A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit interpreting Section 68130.5 of the Education Code, as added by this act during the 2001-02 Regular Session, or any lawsuit interpreting similar requirements adopted by the Regents of the University of California pursuant to Section 68134 of the Education Code.

(2) This act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act.

SEC. 2. Section 68130.5 is added to the Education Code, to read:

68130.5. Notwithstanding any other provision of law:

(a) 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, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) 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.

(4) 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.

(b) A student exempt from nonresident tuition under this section may be reported by a community college district as a full-time equivalent student for apportionment purposes.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall prescribe rules and regulations for the implementation of this section.

(d) Student information obtained in the implementation of this section is confidential.

## ATTACHMENT TWO

### Regulations Implementing Assembly Bill 540, As Amended

1. Section 54045.5 of Subchapter 1 of Chapter 5 of Division 6 of the California Code of Regulations is added to read:

#### **54045.5. Nonresident Tuition Exemption**

(a) In accordance with Education Code section 68130.5, any student, other than a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15), shall be exempt from paying nonresident tuition at any community college district if he or she:

(1) Attended high school in California for three or more years;

(2) Graduated from a California high school or attained the equivalent of such graduation; and

(3) Registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

(b) Any student seeking an exemption under subdivision (a) shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic student information so provided shall be confidential and shall not be disclosed unless required by law.

(c) Any student without lawful immigration status who is seeking an exemption under subdivision (a), shall, in the questionnaire described in (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

(d) A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.

(e) Nothing herein modifies eligibility standards for any form of student financial aid, including but not limited to, those contained in Subchapter 7 of Chapter 9 of this Division.

(f) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2002.

NOTE: Authority cited: Section 66700, 70901 and 68130.5, Education Code.  
Reference: Section 68130.5, Education Code.

2. Section 58003.6 of Article 2 of Subchapter 1 of Chapter 9 of Division 6 of Title 5 of the California Code of Regulations is added to read:

#### **58003.6. Apportionment for Certain Nonresidents Attending High School in California**

In accordance with section 68130.5 of the Education Code, students who are exempt from nonresident tuition pursuant to section 54045.5 may be included in calculating credit full-time equivalent student (FTES) for apportionment purposes.

NOTE: Authority cited: Section 66700, 70901 and 68130.5, Education Code.  
Reference: Section 68130.5, Education Code.

**ATTACHMENT THREE**  
**AB 1543**

CHAPTER 19  
FILED WITH SECRETARY OF STATE APRIL 8, 2002  
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PASSED THE ASSEMBLY MARCH 21, 2002  
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AMENDED IN SENATE JANUARY 16, 2002  
AMENDED IN ASSEMBLY MAY 1, 2001

INTRODUCED BY Assembly Member Firebaugh

FEBRUARY 23, 2001

An act to add Section 68130.7 to the Education Code, and to amend Section 1 of Chapter 814 of the Statutes of 2001, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1543, Firebaugh. Public postsecondary education: exemption from nonresident tuition.

Existing law requires that a person, other than a nonimmigrant alien as defined, who has attended high school in California for 3 or more years, who has graduated from a California high school or attained the equivalent thereof, who has registered at or attends an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year, and who, if he or she is an alien without lawful immigration status, has filed an affidavit with respect to legalizing his or her immigration status, be exempted from paying nonresident tuition at the California Community Colleges and the California State University.

This bill would authorize a state court, if it finds that the above provision, or any similar provision adopted by the Regents of the University of California, is unlawful, to order that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or action, as equitable relief, and would prohibit the award of money damages, tuition refund or waiver, or other retroactive relief. The bill would provide that the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief in a lawsuit.

This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1 of Chapter 814 of the Statutes of 2001 is amended to read:

Sec. 1. (a) The Legislature hereby finds and declares all of the following:

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001-02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

(5) This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

(b) It is the intent of the Legislature that this act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act.

SEC. 2. Section 68130.7 is added to the Education Code, to read:

68130.7. If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to take effect in time for the commencement of the 2002-03 academic year, it is necessary for it to take effect immediately.

**ATTACHMENT FOUR**  
**Questionnaire Form as Prescribed by the Chancellor**

Please see the prescribed questionnaire sent in a separate electronic file (to maintain formatting) or the hard copy immediately attached.

**ATTACHMENT FIVE**  
**Optional Informational Flyer**

Please see the informational flyer sent in a separate electronic file (to maintain formatting) or the hard copy immediately attached.