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DEPARTMENT OF LEGISLATIVE SERVICES 2011

Higher Education

Legislation Allowing In-state Tuition Rates for Undocumented Immigrants Petitioned to Referendum

Senate Bill 167 passed the General Assembly and was signed into law by the Governor as Chapter 191 of 2011. However, the Act was petitioned to referendum and will be on the November 2012 ballot. If approved by the voters, qualifying students will be allowed to pay resident tuition rates based on attending and graduating from a Maryland high school, rather than on residency. Students must first enroll at a community college and, upon completion of at least 60 credits or an associate's degree, may transfer to a public four-year university. The bill was to take effect for the fall 2011 semester, but the referendum has delayed implementation until at least the spring 2012 semester.

Federal Law Regarding Education for Undocumented Immigrants

Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept undocumented immigrants. In its decision, the court contended that denying an education to the children of undocumented immigrants would “foreclose any realistic possibility that they will contribute ... to the progress of our Nation.” However, since 1996, federal immigration law has prohibited undocumented immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain.

Federal legislation called the Development, Relief and Education for Alien Minors Act of 2009 – or the DREAM Act – would have created a path to citizenship for certain immigrants who entered the United States illegally when they were younger than 16 and would have allowed those students to receive in-state tuition. In December 2010, the U.S. House of Representatives passed the DREAM Act; however, in the U.S. Senate it failed to get the necessary supermajority of 60 required to force a final vote on the legislation.

Immigrant Tuition Laws in Other States

To get around the federal law, states that have passed in-state tuition benefits for undocumented immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status. Currently, 12 other states allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education: California, Connecticut, Illinois, Kansas, Nebraska, New Mexico, New York, North Carolina (community colleges only), Rhode Island, Texas, Utah, and Washington. Two states have repealed their programs: Oklahoma in 2008, although the Board of Regents has some authority to grant in-state tuition; and Wisconsin, which recently repealed its program in the 2011-2013 state budget. Bills with similar intentions have been introduced in several other states. Four states

have enacted legislation that specifically prohibits providing in-state tuition to undocumented immigrants, with South Carolina going even farther, prohibiting students from enrolling at all.

Maryland's 2011 Legislation

Chapter 191 of 2011 would allow undocumented immigrants to attend public institutions of higher education in Maryland at the same rates that resident students pay, beginning with the 2011-2012 academic year. However, as discussed further below, the legislation was petitioned to referendum following the 2011 session and has not taken effect. The legislation creates a two-tier path for undocumented students, who must begin at a Maryland community college no earlier than fall 2011, subject to several requirements and conditions. After completing at least 60 credits at a community college, qualifying students may enroll at a public four-year university and pay the equivalent of in-state tuition.

Community Colleges

To qualify for the exemption from paying out-of-state tuition at a community college in the State, and out-of-county tuition if the college is supported by the county in which the student last attended or graduated from high school, a student must:

- beginning with the 2005-2006 school year, have attended a secondary (high) school in the State for at least three years;
- beginning with the 2007-2008 school year, have graduated from a high school in the State or received the equivalent of a high school diploma (*e.g.*, a general education degree) in the State;
- register as an entering student at a community college in the State no earlier than fall 2011;
- provide documentation that the student or the student's parent or legal guardian has filed a Maryland income tax return annually for the three years while the student attended high school in the State, during any period between high school graduation and registration at the community college, and during the period of attendance at the community college; and
- register at a community college within four years of high school graduation.

The bill also requires a student who qualifies for an exemption and is not a permanent resident to provide an affidavit stating that the student will file an application to become a permanent resident within 30 days after becoming eligible to do so. In addition, a student who qualifies for an exemption and is required to register with the Selective Service System must provide documentation of the required registration.

Four-year Institutions

To be eligible to pay a rate equivalent to the *resident* tuition rate at a public four-year institution in the State, a student must meet all of the requirements to qualify for the community college tuition rate and:

- have attained an associate's degree or achieved 60 credits at a community college in Maryland;
- provide documentation that the student or the student's parent or legal guardian has filed a Maryland income tax return annually while the student attended a community college, during any period between graduation from or achieving 60 credits at a community college and registration at a public four-year institution, and during the period of attendance at an institution; and
- register at a public four-year institution within four years of graduating from or achieving 60 credits at a community college.

Students qualifying under the bill for tuition rates equivalent to the resident tuition rates at four-year institutions may not be counted as in-state students for the purposes of determining the number of Maryland undergraduate students enrolled at the institutions.

Honorably Discharged Veterans

The bill also extends the time period after discharge from one to four years in which an honorably discharged veteran of the U.S. armed forces may qualify for an exemption from paying out-of-state tuition at a community college or public four-year institution by submitting (1) evidence that the veteran attended a high school in Maryland for at least three years; and (2) documentation that the veteran graduated from a Maryland high school or received the equivalent of a high school diploma in Maryland.

2011 Legislation Petitioned to Referendum

Article XVI, Section 3 of the Maryland Constitution provides for an Act of the General Assembly to be placed on the ballot by the submission of a petition signed by 3% of the qualified voters of the State. The submission of petitions containing at least 55,736 signatures of registered voters was required in order to place an Act on the 2012 General Election ballot. Petitioners gathered a total of 156,211 valid signatures, well exceeding the number required under the Maryland Constitution to have Chapter 191 of 2011 (Senate Bill 167, Public Institutions of Higher Education – Tuition Rates – Exemption) placed on the November 2012 ballot. Therefore, implementation of its provisions is delayed until Maryland voters decide whether or not the Act will become law. If voters approve the Act, it will take effect 30 days after the election.