SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2586 (Alvarez)
Version: June 10, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Public postsecondary education: student employment

DIGEST

This bill prohibits California public universities, beginning January 6, 2025, from disqualifying a student for employment due to their failure to provide proof of federal employment authorization.

EXECUTIVE SUMMARY

There are about 82,933 undocumented university students in California. Undocumented students are important members of their academic communities and California communities at large. Most of the state's undocumented students have been living in the United States for many years and arrived when they were children. However, without immigration status from the federal government, California's undocumented students are denied access to federal public benefits and federal school loan and grant programs. They also do not have authorization from the federal government to work in the United States. While many undocumented students have Deferred Action for Childhood Arrivals (DACA), and thus employment authorization, fewer and fewer of the state's undocumented students have DACA because of pending litigation that paused new applications and because fewer and fewer students meet the program's requirements. In 2022, the UC proposed to allow undocumented students employment on campus, on the theory that the federal law that prohibited "a person or other entity" from hiring an individual without employment authorization does not apply to state governments. However, the proposal stalled earlier this year. This bill carries on the work of that proposal, prohibiting the UC, CSU, and Community Colleges from disqualifying a student applicant for a job solely on the fact that they cannot provide proof of their federal employment authorization. AB 2586 is sponsored by the Undocumented Student-Led Network and CFT – a Union of Educators & Classified Professionals, Aft, AFL-CIO, and is supported by the ACLU, school employee and faculty associations, labor unions, and student and other organizations that support

immigrant and civil rights. The Committee has received no timely opposition to this bill. Should this bill pass this Committee, it will next be heard in the Senate Education Committee.

PROPOSED CHANGES TO THE LAW

Existing federal law:

1) Makes it unlawful for a person or other entity to:
    a) Hire, recruit, or refer for a fee for employment in the United States an individual without authorization to work in the United States when the person or other entity knows the individual is not authorized to work in the United States;
    b) Hire for employment in the United States an individual without complying with specified employment authorization verification processes, or if the person or other entity is an agricultural association or employer or farm labor contractor, to hire, or recruit or refer for a fee an individual for employment without complying with specified employment authorization verification processes. (8 U.S.C. § 1324a(a).)

2) Establishes the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and specifies that certain immigrants shall not be eligible for any state or local public benefit, except as provided.
    a) Defines "state or local public benefit" to mean the following:
        i. any grant, contract, loan, professional license, or commercial license provided by an agency or state of local government or by appropriated funds of a State or local government; and
        ii. any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State of local government.
    b) Provides specified state or local public benefits that are exempt from the prohibition in (1). (8 U.S.C. § 1621.)
    c) Specifies that a state may provide that undocumented immigrants who are not lawfully present in the United States are eligible for a state or local public benefit for which the individual would otherwise be ineligible under this Act only through the enactment of a state law after August 22, 1996, that affirmatively provides for that eligibility. (8 U.S.C. § 1621(d).)

Existing 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. (Art. IX, Sec. (9)(a), 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. (Edu. Code §§ 66606, 89500, et seq.)

3) Establishes the California Community Colleges under the administration of the Board of Governors of the California Community College, as one of the segments of public postsecondary education in this state, and specifies that the California Community College is comprised of community college districts. (Edu. Code § 70900.)

This bill:

1) Prohibits the University of California (UC), the California State University (CSU), and the California Community Colleges (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:
    a) proof is required by federal law;
    b) proof is required as a condition of a grant that funds the particular employment position for which the student applied.

2) Specifies that, for the purposes of its provisions, the UC, CSU, and CCC must treat the prohibition on hiring undocumented noncitizens in the Immigration Reform and Control Act of 1986 (IRCA) as inapplicable because that provision does not apply to any branch of state government.

3) Specifies that, to the extent that any employment is considered a "benefit" for the purposes of federal law, the bill constitutes authorization by the state to provide that benefit to undocumented individuals pursuant to the exception in the PRWORA, as described above.

4) Requires that the UC, CSU, and CCC must implement its provisions by January 6, 2025.

5) Specifies that this bill applies to the UC, unless it is found to be inapplicable to the UC, in which case the bill shall apply only to the extent that the UC Regents make it applicable by an appropriate resolution.

COMMENTS

1. Author's statement

According to the author:

> America and California has always promised that if you work hard, you will have the opportunity to succeed. Undocumented students have fulfilled their obligation by entering our higher education institutions but struggle to financially sustain themselves through their academic journey. This bill will provide undocumented students 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.

2. California's undocumented students

There are an estimated 408,000 undocumented students enrolled in colleges and universities across the United States.[1] 182,000 of these students are students with DACA or who are DACA-eligible.[2] Of these students, 77% attend public universities. It is

[1] American Immigration Council and Presidents' Alliance on Higher Education and Immigration, "Fact Sheet: Undocumented Students in Higher Education: How Many Students Are in U.S. Colleges and Universities, and Who Are They?" (Aug. 2023) (*hereafter* American Immigration Council).
[2] *Id.*

estimated that there are about 82,933 undocumented university students in California.[3] Undocumented students are important members of their academic communities and California communities at large. Many are studying to enter fields greatly impacted by worker shortages, or conduct vital research in important fields of academic study and research.

Many undocumented students arrived to the United States when they were young, and have long attended California schools. About 76% of undocumented students arrived in the United States when they were children or adolescents, and those who arrived to the United States as adults on average have lived in the United States for eight years.[4] Many came to the United States with family, and were too young to remember the journey. The term undocumented generally refers to people who are in the United States without immigration status from the federal government. Lacking immigration status can be incredibly limiting; without immigration status, individuals are usually ineligible for federal public benefits and federal student loans, and may become subject to a deportation proceeding by federal immigration authorities at any time. In addition, undocumented persons are generally not authorized to work in the United States. (8 U.S.C. § 274a.)

An undocumented person may have entered the United States without any visa or immigration status, or they may have entered with an immigration status that has since expired. A person with a visa that is expiring is generally expected to renew or apply to adjust their status to a new category of immigration status, or depart the United States. However, many visas do not allow for renewals or are only designed to be temporary, and eligibility for and availability of permanent immigration status – called lawful permanent residency, or a green card – is incredibly limited. Even those who qualify for a green card may have to wait a decade or even two decades due to backlogs and administrative delays to actually be able to receive it. Without immigration reform from Congress, the United States' immigration system continues to be broken and fails to provide meaningful opportunities for undocumented students and those who wish to stay in the United States to do so with immigration status.

Recognizing this and Congress's failure to provide opportunities for undocumented students to obtain legal status, then-President Obama created the Deferred Action for Childhood Arrivals (DACA) program in 2012. Although not all DACA recipients are currently in school, there are about 150,230 DACA recipients in California.[5] DACA provides a guarantee of protection from deportation, as an exercise of the Executive Branch's prosecutorial discretion authority, and employment authorization to students

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[3] Higher Ed Immigration Portal, "California" (accessed Jun 13, 2024), available at https://www.higheredimmigrationportal.org/state/california/.
[4] American Immigration Council, *supra* note 1.
[5] Migration Policy Institute, "Deferred Action for Childhood Arrivals (DACA) Data Tools," (Dec. 2023), available at https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles/.

who arrived to the United States when they were children. The requirements for DACA are that an applicant: was under 31 years old as of the date when President Obama announced DACA in 2012; arrived to the United States before their sixteenth birthday; has continuously resided in the United States since June 15, 2007; is currently in school or received their high school diploma or GED; has not been convicted of certain crimes; and was physically present in the United States without immigration status on the date of DACA's announcement in 2012.[6] Due to a slew of late lawsuits against the DACA program, the federal government has not been able to approve new applications for DACA since July 16, 2021.[7] Many of California's undocumented students have DACA, though the numbers of DACA recipients in California universities has been decreasing in recent years, as the time-based requirements for DACA means that fewer and fewer of incoming undocumented university students are eligible for DACA. Given the ongoing lawsuits around DACA and the fact that future Presidential administrations may decide to change course, the future of DACA remains uncertain.

3. California's legislation to support undocumented students

California has long been committed to and has provided resources and programs to support undocumented students. In 2001, the Legislature passed AB 540 (Firebaugh, Ch. 814, Stats. 2001) to provide undocumented students entering California public universities with in-state tuition when they have attended a California high school for at least three years, have graduated from a California high school or equivalent, and met other requirements. In 2011, the Legislature passed AB 131 (Cedillo, Ch. 604, Stats. 2011) to provide students with AB 540 status eligibility for state financial aid like the Cal Grant, and in 2014 the Legislature enacted SB 1210 (Lara, Ch. 754, Stats. 2014) to establish the California DREAM Loan Program to assist undocumented students at UC and CSU campuses in financing their education. And just last year, the Legislature enacted SB 633 (Gonzalez, Ch. 622, Stats. 2023) to create the California DREAM Grant Program to provide grants to certain undocumented students attending a UC or CSU.

4. The University of California's initiative to hire undocumented students

In 2022, a student-led organization on UC campuses, the Undocumented Student-Led Network, and the UCLA Center for Immigration Law and Policy (Center) started the Opportunity for All Campaign to advocate for the UC's to open campus jobs to undocumented students.[8] In a September 2022 memorandum, the Center proposed that

[6] U.S. Citizenship & Immigr. Svcs., "Consideration of Deferred Action for Childhood Arrivals (DACA)," U.S. Dept. of Homeland Sec. (Apr. 8, 2024), available at https://www.uscis.gov/DACA.
[7] *See* U.S. Citizenship & Immigr. Svcs., "DACA Litigation Information and Frequently Asked Questions," U.S. Dept. of Homeland Sec. (Sept. 18, 2023), available at https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/daca-litigation-information-and-frequently-asked-questions.
[8] Adulfo Guzman-Lopez, "UC Pledged to Let Undocumented Students Get Jobs, Then Changed Course. What Happened, and What's Next," LAist (Apr. 24, 2024), available at

the UC's could hire undocumented students for positions within the UC even if they lack employment authorization under federal immigration law.[9] The memorandum explained the Center and various immigration law experts' legal analysis that the federal law prohibiting employers from hiring undocumented persons did not apply to the state. Following that letter, the UC Regents agreed and unanimously approved the proposal on May 18, 2023. The Regents also created the Working Group on Equitable Student Employment Opportunities, which then worked in the ensuing months to design the processes necessary to implement the proposal. However, in January 2024, the UC Regents reversed course, and suspended implementation of the proposal for a year for further review.[10] The explanation from UC President Michael Drake for this change was that the proposal presented too much risk for students, employees of the university that implement the program, and for the university.

5. AB 2586 requires the UC, CSU, and CCC to consider undocumented students for employment

AB 2586 proposes to prohibit the UC, CSU, and CCC systems from disqualifying a student from a university employment position due to their lack of proof of federal work authorization. AB 2586 provides two exceptions for when the proof of employment authorization is required by federal law, and where the proof is required as a condition of a grant that funds the particular employment position sought. AB 2586 further directs the UC, CSU, and the CCC to treat the federal law prohibiting the hiring of individuals without immigration status as inapplicable because it does not apply to any state government. The requirements of the bill must be implemented by January 6, 2025, the first Monday of 2025.

AB 2586 has two other provisions of note. First, it specifies that, to the degree that student employment is considered a "benefit" for federal law, the bill's provisions constitute authorization by the state for the state to provide that benefit to undocumented persons. This provision relates to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which prohibits states from providing individuals without lawful immigration status public benefits, unless the state enacts a law after August 22, 1996 that affirmatively provides for eligibility for the public benefit for undocumented individuals. (8 U.S.C. § 1621.) In *Martinez v. Regents of University of California*, out-of-state students of the University of California challenged AB 540 on the grounds that it violated the prohibition in Section 1621 against a state providing an undocumented individual with public benefits; however, the California Supreme Court

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https://laist.com/news/education/uc-pledged-to-let-undocumented-students-get-jobs-then-changed-course-whats-next.

[9] Ahilan Arulanantham et al, Memorandum Analyzing IRCA Applies to States, UCLA Center for Immigration Law and Policy (Oct. 2022).

[10] UC Office of the President, "UC President Michael V. Drake, M.D. Remarks at January 25 Regents Meeting," (Jan. 25, 2024), available at https://www.universityofcalifornia.edu/press-room/uc-president-michael-v-drake-md-remarks-january-25-regents-meeting.

determined that the law complied with PRWORA's exception because it was enacted after PRWORA, and stated in numerous provisions that it applies to persons without lawful immigration status. (*Martinez v. Regents of University of California*, (2010)50 Cal. 4th 1277.) In referring to PRWORA, AB 2586 is stating that its provisions providing for employment benefits to undocumented university students and fit within the exception in PRWORA.

AB 2586 also specifies that its provisions shall apply to the University of California, unless it is found to be inapplicable, in which case it shall apply if the UC Regents make it applicable by appropriate resolution. This provision recognizes the possibility that the provision may not bind the UC, as the UC enjoys autonomy from most acts of the Legislature under Section 9 of Article IX of the California Constitution. (Cal. Const. Art. IX, Sec. 9.) In such case, AB 2586's provisions would apply if ratifies its provisions by resolution.

6. <u>The legal arguments underlying the proposal for UC, CSU, and CCC to be able to hire undocumented students</u>

AB 2586, like the proposal considered by the UC Regents, rests on a sound legal theory that the federal immigration law that generally prohibits employers from hiring undocumented persons does not apply to the state government. The theory, as described in the Center for Immigration Law and Policy's 2022 memorandum, first applies traditional rules of statutory construction to the text of the law, asserting that, because the plain text of Section 1324a of Title 8 of the United States Code (created by IRCA) does not mention state governments, the law does not apply to state governments. The statute states that it is unlawful "for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States" an unauthorized individual. (8 U.S.C. § 1324a(a)(a).) This section notably does not mention state governments. The definition provided in the statute for "a person" also does not mention a state government. While the statute does not define "entity," amendments subsequent to the original enactment of Section 1324a specified that an entity "includes any entity in any branch of the Federal Government." (8 U.S.C. § 1324a(a)(7). The legal concept relied upon by the 2022 memorandum here is the *expression unius est exclusion alterius* canon of statutory interpretation, in that the inclusion of the Federal Government and the exclusion of state governments reinforces the inference that state governments are to be treated differently. (*Ford v. United States*, (1927) 273 U.S. 593, 611.) The 2022 memorandum also points to the fact that the law that amended Section 1324a to include the Federal Government added an explicit mention of state or local governments in a different section of the Immigration and Nationality Act (INA), thereby evidencing that Congress at that time knew to specify state governments if it intended to include them in a particular provision.

The memorandum makes a number of other observations to support this reasoning. The first is that various other federal statutes that apply to state governments include

explicit references to state governments in their text; for example, Title VII of the Civil Rights Act of 1964 explicitly includes states in its definition of employer covered by its requirements, an inclusion specifically amended into the Act after its initial enactment. In another example cited by the memorandum, the Family Medical Leave Act (FMLA) applies to state governments because it explicitly lists state governments or any political subdivision thereof in its definition of employer for the purposes of the Act. (*See,* 29 U.S.C. § 2611(4)(A).) Even in the text of IRCA that does mention states, those provisions, the memorandum concludes, do not provide any clear statement or inference that the Act as a whole and its prohibition on the employment of undocumented workers in Section 1324a applies to state governments. For example, the provisions of IRCA regarding the employment verification system (e-verify) suggest that a state is not required to comply with the employment verification system, which regulations also reiterate. (*See* 8 U.S.C. § 1324a(a)(5); 8 C.F.R. § 274a(6)(a).)

The memorandum also argues that there are other legal reasons to believe that IRCA needed to clearly apply its provisions to state governments in order for them to actually apply. The first reason is because, if IRCA's limitations on employment of undocumented persons applied to states, it would be dictating the criteria under which state governments may hire individuals into their own governments. This would implicate federalism and the balance of power between states and the federal government. The second reason is because IRCA regulates employment, which is an area traditionally of state control. While the federal government traditionally has primary authority over immigration law, IRCA and the proposal considered in the 2022 memorandum (and thus likewise AB 2586) deal with the regulation of employment, not immigration, because it involves the state government's qualifications for and hiring of students already in the United States. Thus, due to the facts that Section 1324a deals with an area of traditional state control and implicates the balance of power between the state and the federal government, the plain-statement rule applies. This rule states that, "when Congress intends to alter the usual constitutional balance between the states and the federal government, it must make its intention to do so 'unmistakably clear in the language of the statute.'" (*Gregory v. Ashcroft*, (1991) 501 U.S. 452, 460 (quoting *Atascadero State Hospital v. Scanlon* (1985) 473 U.S. 234, 242).) Because IRCA did not include an unmistakably clear, plain statement that it applies to state governments' hiring of undocumented workers, it cannot be read to do so. The memorandum argues that the concepts of federalism and states' traditional areas of control, as supported by precedent, require the conclusion that IRCA does not reach the state government's decision to hire individuals regardless of immigration status.

7. <u>The concerns raised by the UC</u>

The UC, while not opposed to AB 2586, has expressed similar concerns to it as UC President Michael Drake expressed regarding the UC's 2022 proposal. These concerns are that the bill would risk: the exposure of undocumented UC students and their families to criminal prosecution or deportation; the possibility of UC employees being

prosecuted for participating in the hiring of undocumented students; the imposition of civil fines and other financial consequences for the universities; and the potential loss of federal contracts and grants. However, it is unclear from the UC's letter what specific contracts or federal funds AB 2586 would threaten, and any enforcement or punitive action taken on by the federal government likely would challenge the validity of AB 2586 first. Considering the above-described legal arguments, successfully showing that the state violated IRCA may be a tall order. Additionally, as the power to dictate the qualifications of their employees is traditionally a power of the state, a suit or enforcement action by the federal government would raise serious questions of federalism and the states' rights in relation to a limited federal government.

Moreover, regarding the UC's concern about risks of prosecution against its own employees, legal precedent limits the degree to which a state employee can be liable in a lawsuit. Specifically, when a plaintiff sues a state official for a violation of federal law, the Eleventh Amendment of the United States Constitution requires that a court may only award injunctive relief against the official's future conduct, but may not award retroactive monetary relief. (*Pennhurst State School & Hospital v. Halderman*, (1984) 465 U.S. 89, 102.) Furthermore, whatever action a state employee takes in implementing AB 2586's program for hiring undocumented students, they would be doing so at the direction of the state. Thus, while it is possible that the state or a state employee in their official capacity would be sued, such a suit could only possibly request injunctive relief to enjoin the implementation of the law itself.

The last argument that the UC makes is that AB 2586 presents a risk to undocumented students and their families. This concern warrants consideration, but should be assuaged with thorough reflection. Firstly, undocumented individuals already face risks related to immigration enforcement actions by the federal government: any individual residing in the United States without permission from the federal government is at risk of being provided a Notice to Appear and placed into deportation proceedings by the Department of Homeland Security (DHS). AB 2586 does not change that risk. Moreover, while this risk exists, DHS's capacity for enforcement is limited, and many undocumented individuals live in the United States for years and decades without ever being placed into deportation proceedings. AB 2586 does not change this or the fact that DHS's ability to enforce immigration laws is limited.

Part of the concern regarding this risk may stem from concerns about the federal government's access to undocumented students' information should those students become employees at the UC. It should first be noted that states are not required to comply with employment authorization verification, such that they do not need to provide the federal government with the Form I-9's they have for their employees if they wish not to. (8 C.F.R. § 274a(6)(a).) Moreover, if the federal government were to request state employee data for the purposes of immigration enforcement, they would arguably be barred from requiring the state to provide that information under the "anti-commandeering" doctrine, in which Congress cannot conscript state officers to enforce

federal laws. Recently, California's SB 54 (De Leon, Ch. 495, Stats. 2017), which limits local law enforcement agencies' sharing of inmate information with federal immigration agencies, was upheld by the Ninth Circuit under the anti-commandeering doctrine, and the United States Supreme Court refused to disturb that decision. (*United states v. California* (2019) 921 F.3d 865; *United States v. California* (2020) 141 S. Ct. 124.) Thus, under the anti-commandeering doctrine, the state's universities are not required to assist the federal government in any immigration enforcement, and the state may also adopt laws, like SB 54, to ensure certain levels of protection for undocumented employee information.

Undocumented students must regularly consider the risks of providing their information to government entities. This is not something new to many undocumented students or to the universities; whether it be applying for DACA, in which a student must submit their information directly to DHS, or applying for an AB 60 drivers' license or for the California Dream Act. And while the risks may vary some by Presidential Administrations, that risk exists regardless of the Administration.

Lastly, there may be a concern that a student's future immigration status may be at risk if they choose to work under the provisions of this bill. It is true that unauthorized employment can affect an individual's eligibility for some immigration statuses. For example, a requirement for some green cards through the process of adjustment of status – where a green card applicant completes the process from within the United States because they previously had or currently have some form of immigration status, and now qualify for a green card and meet various other requirements for adjustment of status – requires that the applicant never have worked without authorization. (8 U.S.C. 1255(c).) However, for many types of green cards, such as for a green card through marriage to a United States citizen, this prohibition to adjustment of status for unauthorized employment does not apply. With appropriate advice and notice from the universities and an immigration attorney, such as one of the immigration attorneys at the UC Immigrant Legal Services Center and other organizations that serve most of California's UC, CSU, and Community College campuses, undocumented students can make an informed decision about accepting employment from a state university and the potential impacts doing so may have on their future eligibility for immigration status.

While the UC raises concerns about the consequences of AB 2586's program, there are strong arguments for why those concerns should not pose the significant threat to the state or the state's undocumented students that the UC asserts that they do. Moreover, many of the concerns rest on the presumption that undocumented students on state campuses cannot make the best, informed choices about assuming any risk that may exist for themselves. Many of the state's undocumented university students have been at the forefront of organizing and pushing for AB 2586 and similar proposals, and they have the agency to make individual choices for themselves about employment, if the state and its universities will allow them the opportunity.

8. Arguments in support

According to the Undocumented Student-Led Network, which is the sponsor of AB 2586:

> All students in California deserve the opportunity to obtain an affordable college education in pursuit of the California Dream, regardless of immigration status. In the past decade, California has supported undocumented students and individuals by expanding Medi-Cal and allowing California IDs for all. These are just a few of the State's efforts in ensuring undocumented individuals are supported. California must continue to support them.
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> Currently, California colleges and universities enroll over 82,000 undocumented students, many of whom do not qualify for Deferred Action for Childhood Arrivals (DACA) status, and thus have been unjustly barred from opportunities on campus. This widens an existing equity gap between them and their peers and prevents many undocumented students from being able to continue to pursue higher education. Additionally, many undocumented students are left unemployed during their college years and following graduation, forcing them to miss out on critical career development opportunities. Therefore, as the nation waits for the federal government to develop a pathway to citizenship, and thus employment opportunities, it is vital that California lead the way in protecting and supporting undocumented students in reaching
> their college and career dreams.
>
> Though California universities have taken steps towards providing other forms of financial and career support for undocumented students, none of these alternatives– namely fellowships– are sufficient or impactful like providing on-campus employment. Fellowships affect the financial aid package of undocumented students and students often face significant issues with the disbursement of these funds. The resources, funding, and staffing capacity on each campus also affects the quality and quantity of fellowship programs for undocumented students, thus not all fellowships are equitable across universities. Moreover, at their core, these alternatives represent an embrace of inequity and difference for California's undocumented students, despite the fact that they pay and contribute to their universities and communities as much as their peers with legal status. No California university has yet to develop any meaningful alternative that is equitable to the experience of full employment. As such, it is critical that California heed its call to embrace and provide equal opportunities for all California residents to thrive. It is that mission and charge we believe is at the center of Assembly Bill 2586.
>
> Notable 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 University of California, California State University, and the California Community Colleges can authorize the hiring of all their undocumented students. See 8 U.S.C. 1324a(a)(1), (a)(7). Under governing U.S. Supreme Court precedent, if Congress seeks to legislate in an area of traditional state control, it must mention the states explicitly if it wishes to bind them. The rules governing whom states can hire as their own employees are an area of traditional state control. Because nothing in 8 U.S.C. 1324a expressly binds or even mentions state governments or their branches, it does not bind them.

AB 2586 has the potential to set a precedent across the nation as we navigate an ever-increasingly uncertain federal landscape in 2024 and beyond. This bill will allow states across the nation to follow our lead in combating racist, anti-immigrant policies that threaten the livelihood of millions of undocumented individuals across the nation each day.

9. Arguments in opposition

According to the University of California, which expresses the following concerns but has not taken a position on AB 2586:

While the University supports the author's aim to provide equitable student employment opportunities, there are outstanding concerns about AB 2586 and how to implement such a policy. Those concerns include:

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

Unfortunately, AB 2586 does not protect our undocumented students or employees from prosecution, nor does it protect the University from the risk of potentially losing billions in federal dollars.

While the University is not opposed to AB 2586, or the goal to provide employment opportunities to undocumented students, we share the concerns

above because we would welcome working with the author and Legislature on other legal options to support these students.

SUPPORT

Undocumented Student-led Network (sponsor)
CFT- a Union of Educators & Classified Professionals, Aft, AFL-CIO (co-sponsor)
ACLU California Action
Alliance for A Better Community
Cal State Student Association
California Faculty Association
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California School Employees Association
California State Student Association
California State University Employees Union (CSUEU)
California Teachers Association
California Undocumented Higher Education Coalition
Campaign for College Opportunity
Coalition for Humane Immigrant Rights (CHIRLA)
Friends Committee on Legislation of California
Grace Institute - End Child Poverty in Ca
Immigrants Rising
Los Angeles United Methodist Urban Foundation
Southern California College Attainment Network
Student Senate for California Community Colleges
uAspire
UC Merced Young Democratic Socialists of America
UC Student Association
University of California Student Association
Eight individuals

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 278 (Reyes, Ch. 424, Stats. 2023) established the Dream Resource Center Grant Program to provide students, including undocumented students, in California high schools with specified resources.

SB 633 (Gonzalez, Ch. 622, Stats. 2023) created the California DREAM Grant Program to provide grants to certain students attending a UC or CSU campus, and allowed the UC and CSU to fund the program using unspent California DREAM Loan Program funds.

SB 354 (Durazo, Ch. 526, Stats. 2019) expanded the provisions of the DREAM Loan Program to include eligible graduate students seeking a graduate or professional degree.

SB 1210 (Lara, Ch. 754, Stats. 2014) established the California DREAM Loan Program to assist undocumented students at UC and CSU campuses in financing their education. The California DREAM Loan Program is an affordable loan option that is offered to AB 540 students to assist in financing their education.

AB 131 (Cedillo, Ch. 604, Stats. 2011) provided students with AB 540 status eligibility for state financial aid such as the Cal Grant, and charged the California Student Aid Commission (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.

AB 540 (Firebaugh, Ch. 814, Stats. 2001) provided undocumented students entering California public universities with in-state tuition when they have attended a California high school for at least three years, have graduated from a California high school or equivalent, and met other requirements.

PRIOR VOTES:

Assembly Floor (Ayes 59, Noes 4)
Assembly Appropriations Committee (Ayes 11, Noes 4)
Assembly Higher Education Committee (Ayes 8, Noes 2)
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