



# OVERVIEW

## Residency and In-State Tuition

### Who pays in-state tuition?

Persons classified as residents for higher education purposes under Texas law may pay in-state tuition. Although the State of Texas does not have any programs specifically for undocumented students, some undocumented persons are among those who are eligible for in-state tuition under current residency statutes. The residency statutes for higher education purposes have evolved somewhat over the past 7 years.

### What is House Bill 1403 (passed by the 77th Texas Legislature in 2001)?

House Bill 1403 granted certain non-immigrant students, including undocumented students, access to in-state tuition rates at Texas public institutions of higher education and state financial aid. To qualify, the bill required students to have:

- o resided in Texas with a parent or guardian while attending high school in Texas,
- o graduated from a public or private high school or received a GED in Texas,
- o resided in Texas for the three years leading to graduation or receipt of a GED, and
- o provided their institutions a signed affidavit indicating an intent to apply for permanent resident status as soon as able to do so.

The bill passed and was codified as Texas Education Code (TEC) 54.052(j).

### What were the implications of HB 1403?

This law allowed individuals who were not permanent residents or citizens of the United States to be classified as residents for higher education purposes if they met the requirements outlined above and provided their institutions an affidavit indicating they would apply for permanent residence as soon as they were eligible to do so.

Numerous visas issued by the federal government allow *documented* individuals to reside in the United States. If these individuals met the requirements outlined above, they were residents of Texas by state law. Undocumented students also could be classified as residents if they met those requirements.

### Were there any legal problems with HB 1403?

During the years when TEC 54.052(j) was in effect, there were claims made that it was unconstitutional and could be the basis of a lawsuit since it allowed certain individuals to be treated differently than others. This situation changed with the passage of SB 1528, 79th Texas Legislature, Regular Session, effective September 1, 2005. This bill repealed the old residency statutes, including TEC 54.052(j), applicable to students beginning in spring 2006.

### What is Senate Bill 1528 (passed by the 79th Texas Legislature, Regular Session, in 2005)?

Senate Bill 1528 amended the provisions of House Bill 1403 so that they applied to all individuals who had lived in Texas a significant part of their lives. Citizens, Permanent Residents and certain non-immigrant students could establish a claim to residency following its provisions. To qualify, the individual must have:

- o lived in Texas the 3 years leading up to high school graduation or the receipt of a GED; and

- o resided in Texas the year prior to enrollment in an institution of higher education (which could overlap the 3-year period).

In addition, if the student was not a U.S. Citizen or Permanent Resident, he/she had to file an affidavit with his/her institution, indicating an intent to apply for Permanent Resident status as soon as able to do so. The bill passed and was codified as TEC 54.052 through 54.056.

### **What are the implications of SB 1528?**

As with House Bill 1403, the new statute, passed in 2005, allows certain international students to establish a claim to residency for higher education purposes. In addition, it allows US Citizens or Permanent Residents to establish an independent claim to residency based on graduation from high school or the completion of its equivalent after residing in the state for at least 36 months. The fact that this provision applies to all high school graduates relieves the state of any threat of a law suit based on preferential treatment. More importantly, it allows high school graduates to establish their own basis of residency by having lived here for the three years leading up to graduation.

In the past, students born and raised in Texas but whose parents moved out of state before they had enrolled in college were statutorily classified as nonresidents, whether they had ever lived outside the state or not. Students raised by grandparents or other family members who had never gone to court to acquire legal custody were considered residents of the state in which their biological parents lived, whether or not those parents were in any way involved in their upbringing. The new provisions of TEC 54.052(a)(3) enable these students, and all other students who graduate from high school in Texas under the prescribed conditions, to be classified as residents and allow them to enroll while paying the resident tuition rate. It is important to note that the statute indicates these students are not nonresidents who are getting to pay the resident rate due to a waiver of nonresident tuition. They are classified as *bone fide* residents under current statutes.

### **How many students has this affected?**

The number of students qualifying under these provisions is relatively small. The full population of students reported as residents under the residency provisions of TEC 54.052(a)(3) totaled 9,062 students in fall 2007. The state's public institution total enrollment that term was 1,102,572. Therefore, the TEC 54.052(a)(3) students represented slightly more than eight tenths of one percent of the public institution enrollment.

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