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.

II. GENERAL ELIGIBILITY AND RESIDENCY.

A. The new law does not grant residency, it requires that certain nonresident students be exempted from paying nonresident tuition.

B. 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).

C. This benefit is available to all US citizens, permanent residents of the US, and aliens who are not non-immigrants (including those who are undocumented), who meet all other eligibility criteria.

D. Students must meet all requirements to be eligible for the exemption.

E. 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.

F. 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. The exemption is not available for persons who are absent from California but are taking distance education classes from California community colleges.

G. The exemption from nonresident tuition is mandatory. If the college finds that a student meets all requirements in the law, nonresident tuition may not be charged.

H. 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.

I. 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 the college shall rely on the student’s self-certification of status.

J. If the college is in possession of conflicting information regarding any aspect of student eligibility, the college should pursue additional verification (e.g., high school transcript, diploma, etc.) to resolve discrepancies prior to granting this exemption.

K. The college is not required to obtain a new affidavit for terms subsequent to the original exemption.

L. 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.

III. STUDENT ELIGIBILITY.

A. 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).

B. Attendance in the 9th grade in a California school is acceptable for one of the three years, even if that school was designated as a “middle” school.

C. Students are not required to have consecutive attendance nor required to attended the last three years in California (in the case of four-year high schools).

D. Attendance may be at multiple California high schools.

E. Attendance at continuation high schools, charter high schools, independent study at the 9th-12th 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.

F. Home schooling is instruction by a tutor or other person (including the student’s parent) who does not have a valid California teaching credential. Local high schools are charged with determining whether to accept home schooling as valid attendance. To consider home schooling as high school attendance for purposes of granting the exemption, the college should consult with the public high school the student would have attended if he/she was not home schooled. If that high school accepts or would accept home schooling as valid high school attendance, the community college should also accept it for purposes of assessing whether the student can demonstrate three years of high school. The Chancellor will develop procedures for communicating with high schools and validation of acceptability of home schooling toward meeting this requirement.

G. In most cases, attendance in adult education classes does not qualify as high school attendance. However, attendance in adult education classes through a secondary adult school as an “evening high school” satisfies the requirement for high school attendance for purposes of Section 68130.5. School districts should be able to confirm whether their adult schools were established and designated as “evening high schools.” Additional assessments may need to be made as to other types of adult education attendance. For example, attendance at a secondary adult school for purposes of completing a high school diploma may be acceptable.

H. The law does not distinguish between public and private high schools.

I. There is no time limit on how far in the past the student might have attended a California high school.

J. The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED, high school proficiency exam, or certificate of completion issued pursuant to Education Code section 51412). 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.

K. Under some limited circumstances students may be eligible for the exemption from nonresident tuition even though they have not passed the high school exit exam and received a high school diploma. In particular, a student with a disability (other than a nonimmigrant) who has received a certificate of achievement issued by a high school pursuant to Education Code section 56390 should be considered to have satisfied the high school graduation requirement of AB 540 and would be entitled to the exemption from nonresident tuition if he/she meets all other requirements of the statute. A student who attends high school for three years in California and receives a certificate of completion from a California high school is eligible for the exemption from nonresident tuition, provided that the document from the high school either states that it is issued pursuant to Education Code
section 51412 or explicitly certifies that the student has completed the course of
study and met the proficiency standards prescribed by the governing board of the
high school district.

L. A student who files the affidavit shall not be asked to provide additional evidence
of immigration status unless the college is in possession of evidence that casts
doctor on the validity of the affidavit. The college is not required to monitor
future changes in such eligibility.

M. If the student has application with the United States Citizenship and Immigration
Service (USCIS) to change his/her status to a classification that 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 application to USCIS.

N. Students who hold visas as nonimmigrant aliens (the most common being the F
series student visas and B series visitor visas) are not eligible for this exemption.

O. Students 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. However,
federal law now bars a student who entered the United States on a B visa from
enrolling in a course of study until he/she has filed for a change of status.

IV. FINANCIAL AID AND FEE WAIVERS.

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.

V. STUDENT LIABILITY.

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.

VI. CONFIDENTIALITY.

All information obtained in the implementation of this program shall be held confidential.
The college should be vigilant in protecting this confidentiality. The college 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.
Complete and sign this form to request an exemption from Nonresident Tuition.

ELIGIBILITY:

I, the undersigned, am applying for a California Nonresident Tuition Exemption for eligible California high school graduates at (specify the college or university)____________________________________________ and I declare the following:

Check YES or NO boxes:

- Yes  ☐ No  I have graduated from a California high school or have attained the equivalent thereof, such as a High School Equivalency Certificate, issued by the California State GED Office or a Certificate of Proficiency, resulting from the California High School Proficiency Examination.

- Yes  ☐ No  I have attended high school in California for three or more years.

Provide information on all school(s) you attended in grades 9 - 12:

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Check the box that applies to you -- check only one box:

☐ I am a nonimmigrant alien as defined by federal law, [including, but not limited to, a foreign student (F visa) or exchange visitor (J visa)].  

NOTE: Persons who are “nonimmigrant aliens” are NOT eligible for this exemption

OR

☐ I am NOT a nonimmigrant alien (including, but not limited to, a U.S. citizen, permanent resident, or an alien without lawful immigration status).

AFFIDAVIT:

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the information I have provided on this form is true and accurate. I understand that this information will be used to determine my eligibility for the nonresident tuition exemption for eligible California high school graduates. I hereby declare that, if I am an alien without lawful immigration status, I have filed an application to legalize my immigration status or will file an application as soon as I am eligible to do so. I further understand that if any of the above information is untrue, I will be liable for payment of all nonresident charges from which I was exempted and may be subject to disciplinary action by the College or University.

Print Full Name (as it appears on your campus student records)  Campus/Student Identification Number

Print Full Mailing Address (Number, Street, City, State, Zip Code)  Email Address (Optional)

Phone Number (Optional)

Signature  Date