

1 POLICY: FEDERAL PREEMPTION OF STATE POSTSECONDARY
2 TUITION

3 COMMITTEE: EDUCATION

4 TYPE: NCSL POLICY DIRECTIVE DRAFT

5 [National Conference of State Legislatures opposes federal statutes that seek to block](#)
6 [state laws concerning the determination of eligibility for in-state tuition or repealed by](#)
7 [federal action.](#)

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9 Under the 1982 Supreme Court decision Plyler v. Doe, states are required to provide
10 resident immigrants, regardless of legal status, with a free primary and secondary
11 education. ~~States agree that denial of an education to these children would stamp them~~
12 ~~with an enduring disability and would harm the state's economic viability by creating a~~
13 ~~permanent underclass drawing on state resources rather than contributing to them. It is~~
14 ~~in the state's interests to see all children become productive members of society by~~
15 ~~maximizing their educational opportunities.~~

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17 In conflict with this position is a 1996 provision of the federal Illegal Immigration Reform
18 and Immigrant Responsibility Act (P.L. 104-208) that ~~preempts~~ **attempted to preempt**
19 state laws regarding postsecondary education benefits ("in-state tuition") for immigrant
20 students, even when the child has successfully graduated from the state's K-12 system.
21 The federal law prohibits states from providing in-state tuition benefits to those not
22 lawfully present unless all students, regardless of state residence, are eligible for such

23 benefit—effectively preempting state law determining who is and who is not eligible for
24 in-state tuition, **seeking to block state laws regarding who is eligible for in-state**
25 **tuition**. Before the 1996 preemption, states routinely determined these issues without
26 help or interference from the federal government. The National Conference of State

27 Legislatures asserts that attempted preemption should be repealed.

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29 It is the position of the National Conference of State Legislatures that this underlying
30 federal preemption of state authority should be amended or repealed by federal action
31 on this issue with authority for the determination of eligibility for post-secondary
32 education benefits restored to the states.