

1 **POLICY: FEDERAL PREEMPTION OF STATE POSTSECONDARY**
2 **TUITION**

3 **COMMITTEE: EDUCATION**

4 **TYPE: 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.

7 Under the 1982 Supreme Court decision Plyler v. Doe, states are required to provide
8 resident immigrants, regardless of legal status, with a free primary and secondary
9 education. In conflict with this position is a 1996 provision of the federal Illegal
10 Immigration Reform and Immigrant Responsibility Act (P.L. 104-208) that attempted to
11 preempt state laws regarding postsecondary education benefits (“in-state tuition”) for
12 immigrant students, even when the child has successfully graduated from the state’s K-
13 12 system. The federal law prohibits states from providing in-state tuition benefits to
14 those not lawfully present unless all students, regardless of state residence, are eligible
15 for such benefit, seeking to block state laws regarding who is eligible for in-state tuition.

16 The National Conference of State Legislatures asserts that this attempted preemption
17 should be repealed.