

104TH CONGRESS  
2D SESSION

# H. R. 4134

To amend the Immigration and Nationality Act to authorize States to deny public education benefits to aliens not lawfully present in the United States who are not enrolled in public schools during the period beginning September 1, 1996, and ending July 1, 1997.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1996

Mr. GALLEGLY introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Immigration and Nationality Act to authorize States to deny public education benefits to aliens not lawfully present in the United States who are not enrolled in public schools during the period beginning September 1, 1996, and ending July 1, 1997.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. AUTHORIZING STATES TO DENY PUBLIC EDU-**  
2 **CATION BENEFITS TO CERTAIN ALIENS NOT**  
3 **LAWFULLY PRESENT IN THE UNITED STATES.**

4 (a) IN GENERAL.—The Immigration and Nationality  
5 Act is amended by adding after title V the following new  
6 title:

7 “TITLE VI—AUTHORIZING STATES TO DIS-  
8 QUALIFY CERTAIN ALIENS NOT LAWFULLY  
9 PRESENT IN THE UNITED STATES FROM  
10 PUBLIC EDUCATION BENEFITS

11 “CONGRESSIONAL POLICY REGARDING INELIGIBILITY OF  
12 ALIENS NOT LAWFULLY PRESENT IN THE UNITED  
13 STATES FOR PUBLIC EDUCATION BENEFITS

14 “SEC. 601. (a) STATEMENT OF POLICY.—Because  
15 Congress views that the right to a free public education  
16 for aliens who are not lawfully present in the United  
17 States promotes violations of the immigration laws and be-  
18 cause such a free public education for such aliens creates  
19 a significant burden on States’ economies and depletes  
20 States’ limited educational resources, Congress declares it  
21 to be the policy of the United States that—

22 “(1) aliens who are not lawfully present in the  
23 United States are not entitled to public education  
24 benefits in the same manner as United States citi-  
25 zens, nationals, and lawful resident aliens; and

1           “(2) States should not be obligated to provide  
2           public education benefits to aliens who are not law-  
3           fully present in the United States.

4           “(b) CONSTRUCTION.—Nothing in this section shall  
5           be construed as expressing any statement of Federal pol-  
6           icy with regard to—

7           “(1) aliens who are lawfully present in the  
8           United States,

9           “(2) benefits other than public education bene-  
10          fits provided under State law, or

11          “(3) preventing the exclusion or deportation of  
12          aliens unlawfully present in the United States.

13                           “AUTHORITY OF STATES

14          “SEC. 602. (a) IN GENERAL.—In order to carry out  
15          the policies described in section 601, each State may pro-  
16          vide, subject to subsection (f), with respect to an alien who  
17          is not lawfully present in the United States that—

18                   “(1) the alien is not eligible for public education  
19                   benefits under State law; or

20                   “(2) the alien is required, as a condition of ob-  
21                   taining such benefits, to pay a fee in an amount con-  
22                   sistent with the following:

23                           “(A) In the case of a State that requires  
24                           payment of a fee of nonresidents as a condition  
25                           of obtaining such benefits, the amount of such  
26                           nonresident fee.

1           “(B) In the case of any other State, an  
2           amount specified by the State, not to exceed the  
3           average per pupil expenditures for such benefits  
4           (as determined by the State and selected by the  
5           State either for the State or for the local edu-  
6           cational agency involved).

7           “(b) INDIVIDUALS NOT LAWFULLY PRESENT IN THE  
8           UNITED STATES.—For purposes of subsection (a), an in-  
9           dividual shall be considered to be not lawfully present in  
10          the United States unless the individual (or, in the case  
11          of an individual who is a child, another on the child’s be-  
12          half)—

13           “(1) declares in writing under penalty of per-  
14          jury that the individual (or child) is a citizen or na-  
15          tional of the United States and (if required by a  
16          State) presents evidence of United States citizenship  
17          or nationality; or

18           “(2)(A) declares in writing under penalty of  
19          perjury that the individual (or child) is not a citizen  
20          or national of the United States but is an alien law-  
21          fully present in the United States, and

22           “(B) presents either—

23           “(i) documentation described in section  
24          1137(d)(2) of the Social Security Act, or

1           “(ii) such other documents as the State de-  
2           termines constitutes reasonable evidence indi-  
3           cating that the individual (or child) is an alien  
4           lawfully present in the United States.

5           “(c) PROCEDURES FOR SCREENING.—If a State pro-  
6           vides for immigration eligibility screening pursuant to this  
7           section for individuals who are seeking public education  
8           benefits, the State shall provide for such screening for all  
9           individuals seeking such benefits.

10          “(2) A State may (at its option) verify with the Serv-  
11          ice the alien’s immigration status through a system for  
12          alien verification of eligibility (SAVE) described in section  
13          1137(d)(3) of the Social Security Act (42 U.S.C. 1320b-  
14          7(d)(3)).

15          “(d) OPPORTUNITY FOR FAIR HEARING.—If a State  
16          denies public education benefits under this section with  
17          respect to an alien, the State shall provide the alien with  
18          an opportunity for a fair hearing to establish that the alien  
19          has been determined by the Service to be lawfully present  
20          in the United States, consistent with subsection (b) and  
21          Federal immigration law.

22          “(e) NO REQUIREMENT TO DENY FREE PUBLIC  
23          EDUCATION.—No State shall be required by this section  
24          to deny public education benefits to any alien not lawfully  
25          present in the United States.

1       “(f) NO AUTHORITY TO DENY FREE PUBLIC EDU-  
 2 CATION TO STUDENTS ENROLLED AT ANY TIME DURING  
 3 THE PERIOD BEGINNING SEPTEMBER 1, 1996, AND END-  
 4 ING JULY 1, 1997.—(1) A State may not deny, and may  
 5 not require payment of a fee as a condition for the receipt  
 6 of, public education benefits under this section with re-  
 7 spect to a protected alien.

8       “(2) For purposes of this subsection, the term ‘pro-  
 9 tected alien’ means an alien who is not lawfully present  
 10 in the United States and is enrolled as a student in a pub-  
 11 lic elementary or secondary school in the United States  
 12 at any time during the period beginning September 1,  
 13 1996, and ending July 1, 1997.

14       “(g) NO IMPACT ON IMMIGRATION STATUS.—Noth-  
 15 ing in this section or section 601 shall be construed as  
 16 affecting the immigration status of any alien, including  
 17 the conferring of any immigration benefit or change in any  
 18 proceedings under this Act with respect to the alien.”.

19       (b) CLERICAL AMENDMENT.—The table of contents  
 20 is amended by adding at the end the following new items:

“TITLE VI—AUTHORIZING STATES TO DISQUALIFY CERTAIN  
 ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES  
 FROM PUBLIC EDUCATION BENEFITS

“Sec. 601. Congressional policy regarding ineligibility of aliens not lawfully  
 present in the United States for public education benefits.

“Sec. 602. Authority of States.”.

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