

DREAM ACT SUMMARY (S.3827/H.R.1751)

November 12, 2010

On September 22, 2010, Senator Dick Durbin (D-Ill.) once again introduced the Development, Relief, and Education for Alien Minors Act of 2010, otherwise known as the DREAM Act (S.3827). The DREAM Act was incorporated into the 2006 amnesty bill (S.2611), the 2007 amnesty bill (S.1639), and virtually every version of “comprehensive” immigration reform introduced since. Companion legislation entitled the “American Dream Act” (H.R. 1751) was also introduced in the House of Representatives by Rep. Howard Berman (D-Calif.) on March 26, 2009.

The DREAM Act has two major components:

- (1) it gives an **amnesty** to illegal aliens who entered the country as children and have met certain educational requirements and
- (2) it reverses current law to allow states to provide **in-state tuition** to illegal aliens.

The following is a summary of S.3827 with footnotes indicating where the House bill materially differs.

I. AMNESTY

The DREAM Act creates a tiered system to grant amnesty to illegal aliens who have lived in the U.S. for five years and arrived in the U.S. before the age of 16.

- ▶ Illegal aliens who are over 12 and are enrolled in primary or secondary school are eligible for a **stay of removal**.
- ▶ Illegal aliens who have obtained a high school diploma or a GED, or have simply been admitted to an institution of higher education, are eligible for **conditional lawful permanent resident status** (conditional LPR status). There is **NO CAP ON THE NUMBER OF ALIENS** who may receive conditional LPR status, and such status **MAY BE EXTENDED INDEFINITELY**.
- ▶ Although the bill initially provides an age limit of 35 to obtain conditional lawful permanent resident status, the bill also provides **RETROACTIVE BENEFITS FOR ALIENS OF ANY AGE**.
- ▶ Illegal aliens who have become conditional LPRs under the act and subsequently complete at least 2 years of college or 2 years of military service are eligible for **legal permanent**

resident status (LPR status). However, Homeland Security may **WAIVE THE EDUCATIONAL OR MILITARY REQUIREMENTS UPON A SHOWING OF HARDSHIP.**

Stay of Removal

- ▶ Under the DREAM Act, the Attorney General shall stay the removal of any alien who:
 - Was continuously present in the U.S. for at least 5 years prior to enactment of the DREAM Act. (§§7(b)(1) & 4(a)(1))
 - Continuous presence is not terminated by the initiation of removal proceedings (§4(b)); and
 - The alien is permitted to leave the country for up to 90 days at a time for a maximum of 180 days during the 5 years. (§4(c)(1)) DHS can extend these periods for exceptional circumstances, such as illness or death of the alien or a relative. (§4(c)(2)) *(Note: the House bill provides that continuous physical presence will not fail for “brief, casual, and innocent absences” from the U.S.; DHS may waive any breaks in presence beyond that.)*
 - Was under 16 at the time of initial entry into the U.S. (§§7(b)(1) & 4(a)(1));
 - Has good moral character since the date of enactment (§§7(b)(1) & 4(a)(1)(B)) *(Note: the House bill provides that the alien must have good moral character only since “the time of application.” (§4(a)(1)(B));*
 - Is neither inadmissible or deportable because the alien:
 - Engaged in criminal or terrorist activity under INA § 212(a)(2) or (3) and §237(a)(2) and (4);
 - Practiced polygamy under INA § 212(a)(10)(A) *(Note: the House bill does not bar eligibility based on polygamy.);*
 - Engaged in child abduction or is a relative of a child abductor under INA § 212(a)(10)(C) *(Note: the House bill does not bar eligibility based on child abduction);* or
 - Participated in alien smuggling, as set forth in INA § 212(a)(6)(E) and §237(a)(1)(E), although DHS can waive this on humanitarian grounds. (§§7(b)(1)&4(a)(1)(C) & 4(a)(2))
 - Has never been subject to a final order of removal entered after the alien turned 16, unless the alien has remained in the U.S. under color of law (§§7(b)(1) & 4(a)(1)(E)) *(Note: the House bill does not bar eligibility based on orders of removal);*
 - Is at least 12 years of age (§7(b)(2)); and
 - **“Is enrolled full time in a primary or secondary school.”** (§7(b)(3)) *Note: “primary or secondary school” is not defined.*

- ▶ An illegal alien whose removal is stayed under this section “may be engaged in employment.” (§7(c))
- ▶ The AG shall lift the alien’s stay if the alien is no longer enrolled in primary or secondary school or otherwise ceases to meet the above requirements. *However, under § 4 of the bill, an alien who has a high school degree or GED or is admitted to an institution of higher education may apply for conditional LPR status.* (§7(d))

Conditional LPR Status

- ▶ DHS may grant LPR status on a conditional basis to any illegal alien who:
 - Was continuously present in the U.S. for at least 5 years prior to enactment of the DREAM Act. (§4(a)(1)(A))
 - Continuous presence is not terminated by the initiation of removal proceedings. (§4(b))
 - The alien is permitted to have left the country for up to 90 days at a time for a maximum of 180 days during the 5-year period. (§4(c)(1)) DHS can extend these periods for exceptional circumstances, such as illness or death of the alien or a relative. (§4(c)(2)) *(Note: the House bill provides that continuous physical presence will not fail for “brief, casual, and innocent absences” from the U.S.; DHS may waive any breaks in presence beyond that.)*
 - Was under 16 at the time of initial entry into the U.S. (§4(a)(1)(A));
 - Has been a person of good moral character “since the date of enactment of this Act” (but not necessarily before). (§4(a)(1)(B)) *(Note: the House bill provides that the alien must have good moral character only since “the time of application.”* (§4(a)(1)(B));
 - Is neither inadmissible nor deportable because the alien:
 - Engaged in criminal or terrorist activity under INA § 212(a)(2) and (3) and §237(a)(2) and (4) *(Note: the House bill allows DHS to waive ineligibility for any crime committed, but not on national security grounds.* (§4(a)(2));
 - Practiced polygamy under INA § 212(a)(10)(A) *(Note: the House bill does not bar eligibility based on polygamy.);*
 - Engaged in child abduction or is a relative of a child abductor under INA § 212(a)(10)(C) *(Note: the House bill does not bar eligibility based on child abduction.);* or
 - Participated in alien smuggling, as set forth in INA § 212(a)(6)(E) and §237(a)(1)(E), although DHS can waive this on humanitarian grounds. (§4(a)(1)(C) & 4(a)(2))
 - Has either,
 - Earned a high school diploma or obtained a GED in the U.S.; or

- Been admitted to an institution of higher education in the U.S. (§4(a)(1)(D))
 - Has never been subject to a final order of removal entered after the alien turned 16, unless the alien stayed in the U.S. under color of law (§ 4(a)(1)(E)) (*Note: the House bill does not bar eligibility based on orders for removal.*);
 - Was, at the time of enactment, under the age of 35. (§4(a)(1)(F)) (*Note: the House bill does not have an age limit.*)
- ▶ DHS must promulgate interim regulations for the receipt of applications (and petitions for removal of the condition on LPR status) within 180 of enactment and final regulations within a reasonable time afterwards. (§4(e)) (*Note: the House bill provides that final regulations shall be published 90 days after publication of the interim regulations.*) (§4(e))
- ▶ **There is no cap on the number of illegal aliens who may qualify for conditional LPR status.** (§4(d))
- ▶ **DHS may not remove any alien who has a pending application for conditional status under this Act for any reason.** (§ 4(f))
- ▶ Conditional LPR status is valid for a period of 6 years, **but DHS may extend it in perpetuity.** (§5(a)(1) & §5(c)(3))
- ▶ DHS shall terminate the conditional LPR status if an alien:
 - Ceases to be of good moral character (§§4(a)(1)(B) & 5(b)(1)(A));
 - Becomes inadmissible or deportable under the provisions set forth for receiving conditional LPR status (see above).
 - Becomes a public charge (§5(b)(1)(B)); or
 - Leaves the military on anything less than an honorable discharge. (§5(b)(1)(C))

Note: Upon termination of conditional LPR status, the alien automatically returns to prior immigration status. (§5(b)(2))

Adjustment to LPR Status

- ▶ An alien may file a petition with DHS for removal of the condition (receiving LPR status) beginning 6 months before and ending 2 years after conditional LPR status expires.
- ▶ To adjust status, the conditional LPR must demonstrate that he or she:
 - Maintained good moral character while a conditional LPR;
 - Is neither inadmissible nor deportable under the provisions set forth for receiving conditional LPR status (see above).
 - Has not abandoned his or her U.S. residence by remaining outside of the U.S. for an aggregate of 365 days (§5(d)(1)(C)), except as required through uniformed service;
 - Provided a list of each secondary school in the U.S. the alien has attended (§5(d)(1)(E)); and

- Has either:
 - Earned a degree from an institution of higher education in the U.S.;
 - Has completed at least 2 years of a bachelor’s (or higher) degree program in the U.S.; or
 - Served 2 years in the uniformed services (with an honorable discharge, if applicable). (§5(d)(1)(D))
- ▶ Despite these requirements **DHS MAY WAIVE THE EDUCATIONAL OR MILITARY REQUIREMENTS** if the alien:
 - Meets the first three requirements (good moral character, is not inadmissible/removable, has not abandoned residence);
 - **Demonstrates “compelling circumstances for the inability to complete” the educational or service requirement; and**
 - **Demonstrates that the alien’s removal would result in “exceptional and extremely unusual hardship” to the alien or a relative.** (§5(d)(2)(A))
- ▶ **DHS may also extend the time period (indefinitely) within which an alien may complete the educational and military services requirements for good cause.** (§5(d)(2)(B))
- ▶ If DHS does not approve the petition, the conditional LPR status of the alien will be terminated. (§5(c)(2))
- ▶ An alien who adjusts to LPR status may apply time spent as a conditional LPR toward the 5-year residence requirements for naturalization. A conditional LPR may not apply for naturalization until the condition is removed. (§5(e)) *(Note: Unlike the Senate bill, which limits this provision to purposes of naturalization, the House bill provides that an LPR on conditional basis should be treated as a regular LPR in all other circumstances. This suggests that the alien will be immediately available for all benefits available to LPRs, such as health care, welfare, etc. The House bill, however, also requires that the condition be removed before becoming a citizen. (See §4(e))*

Retroactive Benefits

- ▶ DHS may adjust an alien’s status to that of a “conditional resident” if, on the day of enactment, the alien:
 - Was continuously present in the U.S. for at least 5 years prior to enactment of the DREAM Act. (§§6 and 4(a)(1)(A))
 - Was under 16 at the time of initial entry into the U.S. (§§6 and 4(a)(1)(A));
 - Has been a person of good moral character “since the date of enactment of this Act” (unclear how this applies here). (§§6 and 4(a)(1)(B)) *(Note: the House bill only requires “since the date of application.”)*;
 - Is neither inadmissible nor deportable under the provisions set forth for receiving conditional LPR status (see above).

- Has completed one of the following:
 - Received a degree from an institution of higher education in the U.S. or completed at least 2 years in good standing; or
 - Has served at least 2 years in the military (with an honorable discharge, if discharged). (§§6 and 5(d)(1)(D))
- Has never been subject to a final order of exclusion, deportation or removal entered after the alien turned 16, unless the alien stayed in the U.S. under color of law (§§6 & 4(a)(1)(E)) (*Note: H.R. 1751 does not bar eligibility for retroactive benefits based on orders for removal.*);
- ▶ **There is NO AGE REQUIREMENT for these retroactive benefits** (unlike the 2007 bill, S.2205).

Penalty for False Statements (*Note: This provision is not in the House bill.*)

- ▶ An alien who “willfully and knowingly” files a fraudulent application or conceals a material fact shall be fined pursuant to the Criminal Code (Title 18) and imprisoned up to 5 years. (§8)

Confidentiality of Application Information¹

- ▶ With respect to all applications for status under this Act , DHS may not:
 - Use the information to initiate removal proceedings;
 - Publish application information in a way that would enable identification of the applicant; or
 - Disclose the contents of an application to anyone other than a government official, with certain exceptions.
 - DHS shall disclose application information to law enforcement, upon written request, for purposes of an investigation or prosecution of a criminal or terrorist offense; or
 - DHS shall disclose application information to an official coroner for the purpose of identifying a decedent. (§9)
- ▶ *Note: the House bill also provides for expedited processing of DREAM Act applications without any cost to the illegal alien.*

II. IN-STATE TUITION AND FINANCIAL AID

- ▶ The DREAM act allows universities to grant in-state tuition to illegal aliens by:

¹ H.R.1751 also provides for expedited processing of DREAM Act applications without any cost to the illegal alien.

- Repealing the law that provides a state may not provide a benefit to an illegal alien that it does not provide to any citizen or national, regardless of residency under IIRIRA §505 (§3(a)); and
- Retroactively mooted any lawsuits against universities for violating this federal law by giving in-state tuition to illegal aliens. (§3(b))
- ▶ The DREAM Act also provides that any alien who is adjusts status to an LPR pursuant to the DREAM Act is limited the following forms of financial aid:
 - Most student loans, including need-based Perkins loans, under title IV of the Higher Education Act of 1965;
 - Work-study assistance under title IV; and
 - Student support services for additional instruction, counseling, and academic advice under title IV. (§11)
- ▶ *Note: the House bill contains slightly different language, providing that a conditional LPR shall not be eligible for Pell Grants or federal supplemental educational opportunity grants under the Higher Education Act of 1965. (§10)*