

112TH CONGRESS
2D SESSION

S. 2032

To amend the Higher Education Act of 1965 regarding proprietary institutions of higher education in order to protect students and taxpayers.

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2012

Mr. DURBIN (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Higher Education Act of 1965 regarding proprietary institutions of higher education in order to protect students and taxpayers.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Our Stu-
5 dents and Taxpayers Act” or “POST Act”.

6 **SEC. 2. 85/15 RULE.**

7 (a) IN GENERAL.—Section 102(b) of the Higher
8 Education Act of 1965 (20 U.S.C. 1002(b)) is amended—

9 (1) in paragraph (1)—

1 (A) in subparagraph (D), by striking
2 “and” after the semicolon;

3 (B) in subparagraph (E), by striking the
4 period and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(F) meets the requirements of paragraph
7 (2).”;

8 (2) by redesignating paragraph (2) as para-
9 graph (3); and

10 (3) by inserting after paragraph (1) the fol-
11 lowing:

12 “(2) REVENUE SOURCES.—

13 “(A) IN GENERAL.—In order to qualify as
14 a proprietary institution of higher education
15 under this subsection, an institution shall derive
16 not less than 15 percent of the institution’s rev-
17 enues from sources other than Federal funds,
18 as calculated in accordance with subparagraphs
19 (B) and (C).

20 “(B) FEDERAL FUNDS.—In this para-
21 graph, the term ‘Federal funds’ means any
22 Federal financial assistance provided, under
23 this Act or any other Federal law, through a
24 grant, contract, subsidy, loan, guarantee, insur-
25 ance, or other means to a proprietary institu-

1 tion, including Federal financial assistance that
2 is disbursed or delivered to an institution or on
3 behalf of a student or to a student to be used
4 to attend the institution, except that such term
5 shall not include any monthly housing stipend
6 provided under the Post-9/11 Veterans Edu-
7 cational Assistance Program under chapter 33
8 of title 38, United States Code.

9 “(C) IMPLEMENTATION OF NON-FEDERAL
10 REVENUE REQUIREMENT.—In making calcula-
11 tions under subparagraph (A), an institution of
12 higher education shall—

13 “(i) use the cash basis of accounting;

14 “(ii) consider as revenue only those
15 funds generated by the institution from—

16 “(I) tuition, fees, and other insti-
17 tutional charges for students enrolled
18 in programs eligible for assistance
19 under title IV;

20 “(II) activities conducted by the
21 institution that are necessary for the
22 education and training of the institu-
23 tion’s students, if such activities are—

1 “(aa) conducted on campus
2 or at a facility under the control
3 of the institution;

4 “(bb) performed under the
5 supervision of a member of the
6 institution’s faculty; and

7 “(cc) required to be per-
8 formed by all students in a spe-
9 cific educational program at the
10 institution; and

11 “(III) a contractual arrangement
12 with a Federal agency for the purpose
13 of providing job training to low-in-
14 come individuals who are in need of
15 such training;

16 “(iii) presume that any Federal funds
17 that are disbursed or delivered to an insti-
18 tution on behalf of a student or directly to
19 a student will be used to pay the student’s
20 tuition, fees, or other institutional charges,
21 regardless of whether the institution cred-
22 its such funds to the student’s account or
23 pays such funds directly to the student, ex-
24 cept to the extent that the student’s tui-

1 tion, fees, or other institutional charges are
2 satisfied by—

3 “**(I)** grant funds provided by an
4 outside source that—

5 “**(aa)** has no affiliation with
6 the institution; and

7 “**(bb)** shares no employees
8 with the institution; and

9 “**(II)** institutional scholarships
10 described in clause (v);

11 “**(iv)** include no loans made by an in-
12 stitution of higher education as revenue to
13 the school, except for payments made by
14 students on such loans;

15 “**(v)** include a scholarship provided by
16 the institution—

17 “**(I)** only if the scholarship is in
18 the form of monetary aid based upon
19 the academic achievements or finan-
20 cial need of students, disbursed to
21 qualified student recipients during
22 each fiscal year from an established
23 restricted account; and

24 “**(II)** only to the extent that
25 funds in that account represent des-

1 ignated funds, or income earned on
2 such funds, from an outside source
3 that—

4 “(aa) has no affiliation with
5 the institution; and

6 “(bb) shares no employees
7 with the institution; and

8 “(vi) exclude from revenues—

9 “(I) the amount of funds the in-
10 stitution received under part C of title
11 IV, unless the institution used those
12 funds to pay a student’s institutional
13 charges;

14 “(II) the amount of funds the in-
15 stitution received under subpart 4 of
16 part A of title IV;

17 “(III) the amount of funds pro-
18 vided by the institution as matching
19 funds for any Federal program;

20 “(IV) the amount of Federal
21 funds provided to the institution to
22 pay institutional charges for a student
23 that were refunded or returned; and

24 “(V) the amount charged for
25 books, supplies, and equipment, unless

1 the institution includes that amount
2 as tuition, fees, or other institutional
3 charges.

4 “(D) REPORT TO CONGRESS.—Not later
5 than July 1, 2012, and by July 1 of each suc-
6 ceeding year, the Secretary shall submit to the
7 authorizing committees a report that contains,
8 for each proprietary institution of higher edu-
9 cation that receives assistance under title IV
10 and as provided in the audited financial state-
11 ments submitted to the Secretary by each insti-
12 tution pursuant to the requirements of section
13 487(c)—

14 “(i) the amount and percentage of
15 such institution’s revenues received from
16 Federal funds; and

17 “(ii) the amount and percentage of
18 such institution’s revenues received from
19 other sources.”.

20 (b) REPEAL OF EXISTING REQUIREMENTS.—Section
21 487 of the Higher Education Act of 1965 (20 U.S.C.
22 1094) is amended—

23 (1) in subsection (a)—

24 (A) by striking paragraph (24);

1 (B) by redesignating paragraphs (25)
2 through (29) as paragraphs (24) through (28),
3 respectively;

4 (C) in paragraph (24)(A)(ii) (as redesign-
5 ated by subparagraph (B)), by striking “sub-
6 section (e)” and inserting “subsection (d)”;

7 (D) in paragraph (26) (as redesignated by
8 subparagraph (B)), by striking “subsection (h)”
9 and inserting “subsection (g)”;

10 (2) by striking subsection (d);

11 (3) by redesignating subsections (e) through (j)
12 as subsections (d) through (i), respectively;

13 (4) in subsection (f)(1) (as redesignated by
14 paragraph (3)), by striking “subsection (e)(2)” and
15 inserting “subsection (d)(2)”;

16 (5) in subsection (g)(1) (as redesignated by
17 paragraph (3)), by striking “subsection (a)(27)” in
18 the matter preceding subparagraph (A) and insert-
19 ing “subsection (a)(26)”.

20 (c) CONFORMING AMENDMENTS.—The Higher Edu-
21 cation Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

22 (1) in section 152 (20 U.S.C. 1019a)—

23 (A) in subsection (a)(1)(A), by striking
24 “subsections (a)(27) and (h) of section 487”

1 and inserting “subsections (a)(26) and (g) of
2 section 487”; and

3 (B) in subsection (b)(1)(B)(i)(I), by strik-
4 ing “section 487(e)” and inserting “section
5 487(d)”;

6 (2) in section 153(c)(3) (20 U.S.C.
7 1019b(c)(3)), by striking “section 487(a)(25)” each
8 place the term appears and inserting “section
9 487(a)(24)”;

10 (3) in section 496(c)(3)(A) (20 U.S.C.
11 1099b(c)(3)(A)), by striking “section 487(f)” and
12 inserting “section 487(e)”;

13 (4) in section 498(k)(1) (20 U.S.C.
14 1099c(k)(1)), by striking “section 487(f)” and in-
15 serting “section 487(e)”.

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