

117TH CONGRESS
1ST SESSION

S. 383

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

FEBRUARY 23, 2021

Mr. DURBIN (for himself, Mr. REED, Mr. BLUMENTHAL, Mr. BROWN, Ms. HASSAN, Ms. WARREN, Mr. SCHATZ, Mr. CARPER, Ms. SMITH, and Mr. SANDERS) 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 of 2021” or “POST Act of
6 2021”.

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

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

1 (1) in paragraph (1)—

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

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

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

7 “(F) meets the requirements of paragraph
8 (2).”;

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

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

13 “(2) REVENUE SOURCES.—

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

21 “(B) FEDERAL EDUCATION ASSISTANCE
22 FUNDS.—In this paragraph, the term ‘Federal
23 education assistance funds’ means any Federal
24 financial assistance provided, under this Act or
25 any other Federal law, through a grant, con-

tract, subsidy, loan, guarantee, insurance, or other means to a proprietary institution, including Federal financial assistance that is disbursed or delivered to an institution or on behalf of a student or to a student to be used to attend the institution, except that such term shall not include any monthly housing stipend provided under the Post-9/11 Veterans Educational Assistance Program under chapter 33 of title 38, United States Code.

“(C) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—In making calculations under subparagraph (A), an institution of higher education shall—

“(i) use the cash basis of accounting;

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

“(I) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under title IV;

“(II) activities conducted by the institution that are necessary for the education and training of the institution’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 edu-
17 cation assistance funds that are disbursed
18 or delivered to an institution on behalf of
19 a student or directly to a student will be
20 used to pay the student’s tuition, fees, or
21 other institutional charges, regardless of
22 whether the institution credits such funds
23 to the student’s account or pays such
24 funds directly to the student, except to the
25 extent that the student’s tuition, fees, or

1 other institutional charges are satisfied
2 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 executives, or board members
9 with the institution; and

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

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

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

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

1 “(II) only to the extent that
 2 funds in that account represent des-
 3 ignated funds, or income earned on
 4 such funds, from an outside source
 5 that—

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

8 “(bb) shares no employees,
 9 executives, or board members
 10 with the institution; and

11 “(vi) exclude from revenues—

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

17 “(II) the amount of funds the in-
 18 stitution received under subpart 4 of
 19 part A of title IV;

20 “(III) the amount of funds pro-
 21 vided by the institution as matching
 22 funds for any Federal program;

23 “(IV) the amount of Federal edu-
 24 cation assistance funds provided to
 25 the institution to pay institutional

1 charges for a student that were re-
2 funded or returned; and

3 “(V) the amount charged for
4 books, supplies, and equipment, unless
5 the institution includes that amount
6 as tuition, fees, or other institutional
7 charges.

8 “(D) REPORT TO CONGRESS.—Not later
9 than July 1, 2021, and by July 1 of each suc-
10 ceeding year, the Secretary shall submit to the
11 authorizing committees a report that contains,
12 for each proprietary institution of higher edu-
13 cation that receives assistance under title IV
14 and as provided in the audited financial state-
15 ments submitted to the Secretary by each insti-
16 tution pursuant to the requirements of section
17 487(c)—

18 “(i) the amount and percentage of
19 such institution’s revenues received from
20 Federal education assistance funds; and

21 “(ii) the amount and percentage of
22 such institution’s revenues received from
23 other sources.”.

1 (b) REPEAL OF EXISTING REQUIREMENTS.—Section
 2 487 of the Higher Education Act of 1965 (20 U.S.C.
 3 1094) is amended—

4 (1) in subsection (a)—

5 (A) by striking paragraph (24);

6 (B) by redesignating paragraphs (25)
 7 through (29) as paragraphs (24) through (28),
 8 respectively;

9 (C) in paragraph (24)(A)(ii) (as redesign-
 10 nated by subparagraph (B)), by striking “sub-
 11 section (e)” and inserting “subsection (d)”; and

12 (D) in paragraph (26) (as redesignated by
 13 subparagraph (B)), by striking “subsection (h)”
 14 and inserting “subsection (g)”;

15 (2) by striking subsection (d);

16 (3) by redesignating subsections (e) through (j)
 17 as subsections (d) through (i), respectively;

18 (4) in the matter preceding paragraph (1) of
 19 subsection (d) (as redesignated by paragraph (3)),
 20 by striking “(a)(25)” and inserting “(a)(24)”;

21 (5) in subsection (f)(1) (as redesignated by
 22 paragraph (3)), by striking “subsection (e)(2)” and
 23 inserting “subsection (d)(2)”; and

24 (6) in subsection (g)(1) (as redesignated by
 25 paragraph (3)), by striking “subsection (a)(27)” in

1 the matter preceding subparagraph (A) and insert-
 2 ing “subsection (a)(26)”.

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

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

6 (A) in subsection (a)(1)(A), by striking
 7 “subsections (a)(27) and (h) of section 487”
 8 and inserting “subsections (a)(26) and (g) of
 9 section 487”; and

10 (B) in subsection (b)(1)(B)(i)(I), by strik-
 11 ing “section 487(e)” and inserting “section
 12 487(d)”;

13 (2) in section 153(c)(3) (20 U.S.C.
 14 1019b(c)(3)), by striking “section 487(a)(25)” each
 15 place the term appears and inserting “section
 16 487(a)(24)”;

17 (3) in section 496(c)(3)(A) (20 U.S.C.
 18 1099b(c)(3)(A)), by striking “section 487(f)” and
 19 inserting “section 487(e)”;

20 (4) in section 498(k)(1) (20 U.S.C.
 21 1099c(k)(1)), by striking “section 487(f)” and in-
 22 serting “section 487(e)”.

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