

118TH CONGRESS
2D SESSION

S. 4701

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

JULY 11 (legislative day, JULY 10), 2024

Mr. DURBIN 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 2024” or “POST Act of
6 2024”.

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—

10 (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 at the end 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) DEFINITIONS.—In this paragraph:

14 “(i) ALTERNATIVE FINANCING AR-
15 RANGEMENT.—The term ‘alternative fi-
16 nancing agreement’ means a financing
17 agreement between—

18 “(I) a student of an institution;

19 and

20 “(II)(aa) the institution;

21 “(bb) any entity or individual—

22 “(AA) in the institution’s
23 ownership tree; or

1 “(BB) with any common
2 ownership of the institution and
3 the entity providing the funds; or

4 “(cc)(AA) an entity that has any
5 other relationship or agreement with
6 the institution; or

7 “(BB) an entity with common
8 ownership with an entity described in
9 subitem (AA).

10 “(ii) FEDERAL EDUCATION ASSIST-
11 ANCE FUNDS.—The term ‘Federal edu-
12 cation assistance funds’ means Federal
13 funds that are disbursed or delivered to or
14 on behalf of a student to be used to attend
15 such institution, as calculated under sub-
16 paragraph (C).

17 “(B) 85/15 RULE.—In order to qualify as
18 a proprietary institution of higher education
19 under this subsection, an institution shall derive
20 not less than 15 percent of the institution’s rev-
21 enues from sources other than Federal edu-
22 cation assistance funds, as calculated in accord-
23 ance with subparagraphs (A) and (C).

24 “(C) IMPLEMENTATION OF NON-FEDERAL
25 REVENUE REQUIREMENT.—In making calcula-

1 tions under subparagraph (B), an institution of
2 higher education shall—

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

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

6 “(I) tuition, fees, and other insti-
7 tutional charges for students enrolled
8 in programs eligible for assistance
9 under title IV;

10 “(II) activities conducted by the
11 institution that are necessary for the
12 education and training of the institu-
13 tion’s students, if such activities are—

14 “(aa) conducted on campus
15 or at a facility under the control
16 of the institution;

17 “(bb) performed under the
18 supervision of a member of the
19 institution’s faculty;

20 “(cc) required to be per-
21 formed by all students in a spe-
22 cific educational program at the
23 institution; and

24 “(dd) related directly to
25 services performed by students;

1 “(III) a contractual arrangement
2 with a Federal agency for the purpose
3 of providing job training to low-in-
4 come individuals who are in need of
5 such training; and

6 “(IV) funds paid by a student, or
7 on behalf of a student by a party un-
8 related to the institution, its owners,
9 or affiliates, for an education or train-
10 ing program that is not eligible for as-
11 sistance under title IV, as long as—

12 “(aa) such noneligible pro-
13 gram does not include any
14 courses offered in an eligible pro-
15 gram of the proprietary institu-
16 tion;

17 “(bb) such noneligible pro-
18 gram is provided by the institu-
19 tion, and taught by an instructor
20 of the institution, at—

21 “(AA) its main campus
22 or one of its additional loca-
23 tions, as approved by the ap-
24 propriate accrediting agency
25 or association;

1 “(BB) another school
2 facility approved by the ap-
3 propriate State agency or
4 accrediting agency or asso-
5 ciation; or

6 “(CC) an employer fa-
7 cility; and

8 “(cc) such noneligible pro-
9 gram is not a program where the
10 institution is merely providing fa-
11 cilities for test preparation
12 courses, acting as a proctor, or
13 overseeing a course of self-study;

14 “(iii) presume that any Federal edu-
15 cation assistance funds that are disbursed
16 or delivered to an institution on behalf of
17 a student or directly to a student will be
18 used to pay the student’s tuition, fees, or
19 other institutional charges, regardless of
20 whether the institution credits such funds
21 to the student’s account or pays such
22 funds directly to the student, except to the
23 extent that the student’s tuition, fees, or
24 other institutional charges are satisfied
25 by—

1 “(I) grant funds provided by an
2 outside source that—

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

5 “(bb) shares no employees,
6 executives, or board members
7 with the institution; and

8 “(II) institutional scholarships
9 described in clause (vi);

10 “(iv) include no loans made by an in-
11 stitution of higher education as revenue to
12 the school, except for payments made by
13 current or former students to the institu-
14 tion during the fiscal year for which the
15 determination is being made on such loans
16 that are—

17 “(I) used to satisfy tuition, fees,
18 and other institutional charges;

19 “(II) bona fide, as evidenced by
20 standalone repayment agreements be-
21 tween the students and the institution
22 that are enforceable promissory notes;

23 “(III) issued at intervals related
24 to the institution’s enrollment periods;

1 “(IV) subject to regular loan re-
2 payments and collections by the insti-
3 tution; and

4 “(V) separate from the enroll-
5 ment contracts signed by the stu-
6 dents;

7 “(v) include funds from an income
8 share agreement, or any other alternative
9 financing agreement, with a student only
10 if—

11 “(I) the institution clearly identi-
12 fies the student’s institutional
13 charges, and such charges are the
14 same or less than the stated rate for
15 institutional charges;

16 “(II) the agreement clearly iden-
17 tifies the maximum time and max-
18 imum amount a student would be re-
19 quired to pay, including the implied or
20 imputed interest rate and any fees
21 and revenue generated for a related
22 third party, the institution, or an enti-
23 ty described in subparagraph
24 (A)(i)(II), for that maximum time pe-
25 riod; and

1 “(III) all payments under the
2 agreement are applied with a portion
3 allocated to the return of capital and
4 a portion allocated to profit, with rev-
5 enue, interest, and fees not included
6 in the calculation;

7 “(vi) include a scholarship provided by
8 the institution—

9 “(I) only if the scholarship is in
10 the form of monetary aid based upon
11 the academic achievements or finan-
12 cial need of students, disbursed to
13 qualified student recipients during
14 each fiscal year from an established
15 restricted account; and

16 “(II) only to the extent that
17 funds in that account represent des-
18 ignated funds, or income earned on
19 such funds, from an outside source
20 that—

21 “(aa) has no affiliation with
22 the institution; and

23 “(bb) shares no employees,
24 executives, or board members
25 with the institution; and

1 “(vii) exclude from revenues—

2 “(I) the amount of funds the in-
3 stitution received under part C of title
4 IV, unless the institution used those
5 funds to pay a student’s institutional
6 charges;

7 “(II) the amount of funds the in-
8 stitution received under subpart 4 of
9 part A of title IV;

10 “(III) the amount of funds pro-
11 vided by the institution as matching
12 funds for any Federal program;

13 “(IV) the amount of Federal edu-
14 cation assistance funds provided to
15 the institution to pay institutional
16 charges for a student that were re-
17 funded or returned; and

18 “(V) the amount charged for
19 books, supplies, and equipment, unless
20 the institution includes that amount
21 as tuition, fees, or other institutional
22 charges.

23 “(D) REGAINING ELIGIBILITY.—Notwith-
24 standing subparagraph (B), a proprietary insti-
25 tution of higher education that fails to meet the

1 requirements of such subparagraph for a fiscal
2 year shall be ineligible for purposes of this
3 paragraph for a period of not less than 2 insti-
4 tutional fiscal years. To regain eligibility under
5 this paragraph, the proprietary institution shall
6 demonstrate compliance with all eligibility and
7 certification requirements under section 498 for
8 a minimum of 2 institutional fiscal years after
9 the institutional fiscal year in which the institu-
10 tion became ineligible.

11 “(E) REPORT TO CONGRESS.—Not later
12 than July 1, 2026, and by July 1 of each suc-
13 ceeding year, the Secretary shall submit to the
14 authorizing committees a report that contains,
15 for each proprietary institution of higher edu-
16 cation that receives assistance under title IV
17 and as provided in the audited financial state-
18 ments submitted to the Secretary by each insti-
19 tution pursuant to the requirements of section
20 487(c)—

21 “(i) the amount and percentage of
22 such institution’s revenues received from
23 Federal education assistance funds; and

1 “(ii) the amount and percentage of
2 such institution’s revenues received from
3 other sources.”.

4 (b) REPEAL OF EXISTING REQUIREMENTS.—Section
5 487 of the Higher Education Act of 1965 (20 U.S.C.
6 1094) is amended—

7 (1) in subsection (a)—

8 (A) by striking paragraph (24);

9 (B) by redesignating paragraphs (25)
10 through (29) as paragraphs (24) through (28),
11 respectively;

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

15 (D) in paragraph (26) (as redesignated by
16 subparagraph (B)), by striking “subsection (h)”
17 and inserting “subsection (g)”;

18 (2) by striking subsection (d);

19 (3) by redesignating subsections (e) through (j)
20 as subsections (d) through (i), respectively;

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

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

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

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

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

11 (A) in subsection (a)(1)(A), by striking
12 “subsections (a)(27) and (h) of section 487”
13 and inserting “subsections (a)(26) and (g) of
14 section 487”; and

15 (B) in subsection (b)(1)(B)(i)(I), by strik-
16 ing “section 487(e)” and inserting “section
17 487(d)”;

18 (2) in section 153(c)(3) (20 U.S.C.
19 1019b(c)(3)), by striking “section 487(a)(25)” each
20 place the term appears and inserting “section
21 487(a)(24)”;

22 (3) in section 496(c)(3)(A) (20 U.S.C.
23 1099b(c)(3)(A)), by striking “section 487(f)” and
24 inserting “section 487(e)”; and

1 (4) in section 498(k)(1) (20 U.S.C.
2 1099e(k)(1)), by striking “section 487(f)” and in-
3 serting “section 487(e)”.

4 **SEC. 3. EFFECTIVE DATE.**

5 The amendments made by this Act shall take effect
6 on July 1, 2025.

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