

117TH CONGRESS
2D SESSION

S. 5188

To provide consumer protections for students.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2022

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

A BILL

To provide consumer protections for students.

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 Students
5 from Worthless Degrees Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **FEDERAL FINANCIAL ASSISTANCE PRO-**
9 GRAM.—The term “Federal financial assistance pro-
10 gram” means a program authorized and funded by

1 the Federal Government under any of the following
2 provisions of law:

3 (A) Title IV of the Higher Education Act
4 of 1965 (20 U.S.C. 1070 et seq.).

5 (B) Title I of the Workforce Innovation
6 and Opportunity Act (29 U.S.C. 3111 et seq.).

7 (C) The Adult Education and Family Lit-
8 eracy Act (29 U.S.C. 3271 et seq.).

9 (D) Chapter 30, 31, 32, 33, 34, or 35 of
10 title 38, United States Code.

11 (E) Chapter 101, 105, 106A, 1606, 1607,
12 or 1608 of title 10, United States Code.

13 (F) Section 1784a, 2005, or 2007 of title
14 10, United States Code.

15 (2) FREELY ASSOCIATED STATES.—The term
16 “freely associated States” means the Republic of the
17 Marshall Islands, the Federated States of Micro-
18 nesia, and the Republic of Palau.

19 (3) INSTITUTION OF HIGHER EDUCATION.—The
20 term “institution of higher education”—

21 (A) with respect to a program authorized
22 under paragraph (1)(A), has the meaning given
23 the term in section 102 of the Higher Edu-
24 cation Act of 1965 (20 U.S.C. 1002);

1 (B) with respect to a program authorized
2 under paragraph (1)(B), has the meaning given
3 the term in section 3 of the Workforce Innova-
4 tion and Opportunity Act (29 U.S.C. 3102);

5 (C) with respect to a program authorized
6 under paragraph (1)(C), has the meaning given
7 the term “postsecondary educational institu-
8 tion” under section 203 of the Adult Education
9 and Family Literacy Act (29 U.S.C. 3272);

10 (D) with respect to a program authorized
11 under paragraph (1)(D), has the meaning given
12 the term “educational institution” under section
13 3452 of title 38, United States Code;

14 (E) with respect to a program authorized
15 under paragraph (1)(E), means an educational
16 institution that awards a degree or certificate
17 and is located in any State; and

18 (F) with respect to a program authorized
19 under paragraph (1)(F), means an educational
20 institution that awards a degree or certificate
21 and is located in any State.

22 (4) STATE.—The term “State” includes, in ad-
23 dition to the several States of the United States, the
24 Commonwealth of Puerto Rico, the District of Co-
25 lumbia, Guam, American Samoa, the United States

1 Virgin Islands, the Commonwealth of the Northern
2 Mariana Islands, and the freely associated States.

3 **SEC. 3. PROTECTIONS IN OCCUPATIONS REQUIRING STATE**
4 **LICENSURE.**

5 Notwithstanding any other provision of law, an insti-
6 tution of higher education is not eligible to participate in
7 a Federal financial assistance program with respect to any
8 program of postsecondary education or training, including
9 a degree or certificate program and any program offered
10 by distance education or correspondence courses to stu-
11 dents located in a State other than where the institution
12 is physically located, that is designed to prepare students
13 for entry into a recognized occupation or profession that
14 requires licensing or other established requirements as a
15 pre-condition for entry into such occupation or profession,
16 unless, by not later than 1 year after the date of enact-
17 ment of this Act—

18 (1) the successful completion of the program
19 fully qualifies a student, in the metropolitan statis-
20 tical area in which the student resides, in the State
21 in which the student resides, and in any State in
22 which the institution indicates, through advertising
23 or marketing activities or direct contact with poten-
24 tial students, that a student will be prepared to work

1 in the occupation or profession after successfully
2 completing the program, to—

3 (A) take any examination required for
4 entry into the recognized occupation or profes-
5 sion in the metropolitan statistical area and any
6 State described in this paragraph, including
7 satisfying all Federal, State, or professionally
8 mandated programmatic and specialized accred-
9 itation requirements, if any; and

10 (B) be certified or licensed or meet any
11 other academically related pre-conditions that
12 are required for entry into the recognized occu-
13 pation or profession in any such State; and

14 (2) the institution offering the program pro-
15 vides timely placement for all of the academically re-
16 lated pre-licensure requirements for entry into the
17 recognized occupation or profession, such as clinical
18 placements, internships, or apprenticeships.

19 **SEC. 4. CERTIFICATION REQUIREMENTS FOR GAINFUL EM-**
20 **PLOYMENT PROGRAMS.**

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

23 (1) in subsection (a), by adding at the end the
24 following:

25 “(30) The institution will—

1 “(A) provide to the Secretary not later
2 than the first December 31 following the date
3 of enactment of the Protecting Students from
4 Worthless Degrees Act (or, for any institution
5 that does not have an active program participa-
6 tion agreement as of such date, the first De-
7 cember 31 after the institution enters into the
8 agreement), in accordance with procedures es-
9 tablished by the Secretary, a certification
10 signed by the most senior executive officer of
11 the institution that the institution and each of
12 the eligible gainful employment programs in-
13 cluded on the eligibility and certification ap-
14 proval report of the institution meet the re-
15 quirements of subsection (k);

16 “(B) include with its certification an expla-
17 nation of how each eligible gainful employment
18 program is not substantially similar to any in-
19 eligible or discontinued program described in
20 subsection (k)(2)(D); and

21 “(C) update the certification within 10
22 days if there are any changes in the approvals
23 for an eligible gainful employment program, or
24 other changes for an eligible gainful employ-

1 ment program that make the existing certifi-
 2 cation no longer accurate.”; and

3 (2) by adding at the end the following:

4 “(k) CERTIFICATION REQUIREMENTS FOR GAINFUL
 5 EMPLOYMENT PROGRAMS.—

6 “(1) DEFINITION OF GAINFUL EMPLOYMENT
 7 PROGRAM.—The term ‘gainful employment program’
 8 means a program of training that—

9 “(A) in order to qualify for assistance
 10 under this title, is required under subsection
 11 (b)(1)(A)(i) or (c)(1)(A) of section 102, or sec-
 12 tion 101(b)(1), to satisfy gainful employment
 13 requirements; and

14 “(B) is offered by an institution eligible to
 15 receive assistance under this title.

16 “(2) IN GENERAL.—Each eligible gainful em-
 17 ployment program included on the eligibility and cer-
 18 tification approval report of an institution of higher
 19 education shall comply with each of the following:

20 “(A) The gainful employment program is
 21 approved by a recognized accrediting agency or
 22 is otherwise included in the institution’s accred-
 23 itation by its recognized accrediting agency, or,
 24 if the institution is a public postsecondary voca-
 25 tional institution, the program is approved by a

1 recognized State agency for the approval of
2 public postsecondary vocational education in
3 lieu of accreditation.

4 “(B) The gainful employment program is
5 programmatically accredited, if such accredita-
6 tion is required by—

7 “(i) a Federal governmental entity;

8 “(ii) a governmental entity in the
9 State in which the institution is located; or

10 “(iii) a governmental entity in a State
11 in which the institution is not physically lo-
12 cated, if the institution—

13 “(I) offers postsecondary edu-
14 cation through distance education or
15 correspondence courses to students lo-
16 cated in that State; or

17 “(II) is otherwise subject to that
18 State’s jurisdiction, as determined by
19 that State.

20 “(C) The gainful employment program sat-
21 isfies the applicable educational prerequisites
22 for professional licensure or certification re-
23 quirements in the State in which the institution
24 is located or a State described in subparagraph
25 (B)(iii), so that a student who completes the

1 program and seeks employment in any such
 2 State qualifies to take any licensure or certifi-
 3 cation examination that is needed for the stu-
 4 dent to practice or find employment in an occu-
 5 pation that the program prepares students to
 6 enter.

7 “(D) The gainful employment program is
 8 not substantially similar to a program offered
 9 by the institution that, in any of the 3 years
 10 prior to the date of the eligibility and certifi-
 11 cation approval report—

12 “(i) became ineligible for funding
 13 under this title due to a debt to earning
 14 rates measure, or any subsequent outcome
 15 measure, that the Secretary determines
 16 serves the best interests of students and
 17 taxpayers; and

18 “(ii) was voluntarily discontinued by
 19 the institution.

20 “(3) REQUIREMENTS ENSURING STUDENT
 21 AWARENESS.—Before an institution offering a gain-
 22 ful employment program enrolls any student who in-
 23 tends to reside, practice, or seek employment in a
 24 State for which the program does not satisfy the ap-
 25 plicable educational prerequisites for professional li-

1 censure or certification requirements needed for that
2 occupation in that State, the institution shall—

3 “(A) notify the student that the gainful
4 employment program does not satisfy the pre-
5 requisites; and

6 “(B) obtain from the student a hand-
7 written statement, in the student’s own words
8 and signed by the student, acknowledging that
9 the student wishes to enroll in the gainful em-
10 ployment program despite knowing that the
11 gainful employment program does not meet the
12 licensure or certification requirements for the
13 occupation in the State in which the student in-
14 tends to reside, practice, or seek employment.

15 “(4) REQUIREMENTS REGARDING REESTAB-
16 LISHMENT OF ELIGIBILITY.—The institution shall
17 not seek to reestablish the eligibility of a gainful em-
18 ployment program that is ineligible for funding
19 under this subsection until not less than 3 years fol-
20 lowing the date specified in the notice of determina-
21 tion informing the institution of the program’s ineli-
22 gibility.”.

1 **SEC. 5. STATE AUTHORIZATION REQUIREMENTS FOR DIS-**
2 **TANCE EDUCATION PROGRAMS.**

3 Section 101 of the Higher Education Act of 1965 (20
4 U.S.C. 1001(a)) is amended—

5 (1) in subsection (a)(2), by inserting “, in ac-
6 cordance with subsection (d)” before the semicolon;
7 and

8 (2) by adding at the end the following:

9 “(d) STATE AUTHORIZATION.—

10 “(1) IN GENERAL.—An institution that offers
11 postsecondary education through distance education
12 or correspondence courses shall meet the require-
13 ments of subsection (a)(2) by being legally author-
14 ized within each State in which the institution’s en-
15 rolled students are located, subject to paragraph (2).

16 “(2) STATE AUTHORIZATION RECIPROCITY
17 AGREEMENTS.—An institution described in para-
18 graph (1) that is located in a State that participates
19 in a State authorization reciprocity agreement with
20 another State and that is covered by such State au-
21 thorization reciprocity agreement, is considered to
22 meet State requirements for the institution to be le-
23 gally offering postsecondary distance education or
24 correspondence courses in the other State—

25 “(A) subject to any additional require-
26 ments of that State; and

1 “(B) if the institution documents, in the
 2 manner required by the Secretary, that each
 3 State in which the institution’s enrolled stu-
 4 dents are located has a State process—

5 “(i) to review and take appropriate
 6 action on complaints from any of such en-
 7 rolled students concerning the institution,
 8 including enforcing applicable State law;
 9 and

10 “(ii) to make the complaints public.

11 “(3) STATE AUTHORIZATION RECIPROCITY
 12 AGREEMENT DEFINED.—In this subsection, the term
 13 ‘State authorization reciprocity agreement’ means an
 14 agreement between 2 or more States that—

15 “(A) authorizes an institution located and
 16 legally authorized in a State covered by the
 17 agreement to provide postsecondary education
 18 through distance education or correspondence
 19 courses to students located in other States cov-
 20 ered by the agreement; and

21 “(B) does not prohibit any State in the
 22 agreement from enforcing the State’s own stat-
 23 utes and regulations, regardless as to whether
 24 such statutes and regulations are general and
 25 apply to all educational institutions or specifi-

- 1 cally directed at a subset of educational institu-
- 2 tions.”.

