

118TH CONGRESS  
1ST SESSION

# S. 3232

To amend the Higher Education Act of 1965 to require the standards for accreditation of an institution of higher education to assess the institution's adoption of admissions practices that refrain from preferential treatment in admissions based on an applicant's relationship to alumni of, or donors to, the institution, to authorize a feasibility study on data collection, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2023

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

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## A BILL

To amend the Higher Education Act of 1965 to require the standards for accreditation of an institution of higher education to assess the institution's adoption of admissions practices that refrain from preferential treatment in admissions based on an applicant's relationship to alumni of, or donors to, the institution, to authorize a feasibility study on data collection, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Merit-based Edu-  
3 cational Reforms and Institutional Transparency Act” or  
4 the “MERIT Act”.

5 **SEC. 2. ASSESSMENT OF ADMISSIONS PRACTICES.**

6       (a) IN GENERAL.—

7           (1) STANDARDS FOR ACCREDITATION.—Section  
8       496(a)(5) of the Higher Education Act of 1965 (20  
9       U.S.C. 1099b(a)(5)) is amended—

10           (A) by redesignating subparagraphs (G),  
11           (H), (I), and (J), as subparagraphs (H), (I),  
12           (J), and (K), respectively;

13           (B) by inserting after subparagraph (F)  
14       the following:

15           “(G) adoption of admissions practices that  
16       refrain from any manner of preferential treat-  
17       ment in the admission process to applicants on  
18       the basis of the applicant’s relationship to—

19           “(i) alumni of the institution; or

20           “(ii) donors to the institution;”;

21           (C) in subparagraph (H), as redesignated  
22       under subparagraph (A), by striking “and ad-  
23       missions”; and

24           (D) in the flush matter at the end, by  
25       striking “subparagraphs (A), (H), and (J)” and  
26       inserting “subparagraphs (A), (I), and (K)”.

1 (2) PREFERENTIAL TREATMENT DEFINITION.—

2 Section 496 of the Higher Education Act of 1965  
3 (20 U.S.C. 1099b) is amended by adding at the end  
4 the following:

5 “(r) PREFERENTIAL TREATMENT.—For the purpose  
6 of subsection (a)(5)(G), the term ‘preferential treatment’  
7 means making an admissions decision or awarding tan-  
8 gible education benefits where an applicant’s relationship  
9 with an alumni of, or donor to, the deciding institution  
10 serves as the determinative factor.”.

11 (b) RULE OF CONSTRUCTION.—Section 496(p) of the  
12 Higher Education Act of 1965 (20 U.S.C. 1099b(p)) is  
13 amended—

14 (1) by redesignating paragraphs (1) and (2) as  
15 subparagraphs (A) and (B), respectively, and mov-  
16 ing the margins of such subparagraphs (as so reded-  
17 ignated) 2 ems to the right;

18 (2) by striking “Nothing in subsection (a)(5)  
19 shall be construed to restrict the ability of” and in-  
20 serting the following:

21 “(1) IN GENERAL.—Nothing in subsection  
22 (a)(5) shall be construed to restrict the ability of”;  
23 and

24 (3) by adding at the end of the following:

1           “(2) DEMONSTRATED INTEREST.—Nothing in  
 2           subparagraph (G) of subsection (a)(5) shall be con-  
 3           strued to prevent institutions from considering the  
 4           demonstrated interest of an applicant as a factor in  
 5           admissions decisions if—

6                   “(A) the criteria for assessing dem-  
 7                   onstrated interest are clearly defined and made  
 8                   publicly available;

9                   “(B) the applicant is provided the oppor-  
 10                  tunity to explain why they have a demonstrated  
 11                  interest in the institution, which may be in-  
 12                  formed by lived experiences, values, attributes,  
 13                  and faith; and

14                  “(C) the opportunities to demonstrate in-  
 15                  terest are equally accessible to all applicants,  
 16                  regardless of their financial resources, alumni  
 17                  affiliation, or donor affiliation.

18           “(3) FAITH-BASED INSTITUTIONS.—Nothing in  
 19           subparagraph (G) of subsection (a)(5) shall be con-  
 20           strued to inhibit the right of a religious institution  
 21           to make admissions decisions consistent with the in-  
 22           stitution’s faith-based values.”.

23           (c) REPORT.—

24                   (1) IN GENERAL.—Not later than 180 days  
 25           after the date of completion of the negotiated rule-

1 making process under section 492 of the Higher  
2 Education Act of 1965 (20 U.S.C. 1098a) with re-  
3 spect to the amendments made by this section, and  
4 biennially thereafter, the Secretary of Education  
5 shall submit to the Committee on Health, Edu-  
6 cation, Labor, and Pensions of the Senate and the  
7 Committee on Education and the Workforce of the  
8 House of Representatives a report that identifies the  
9 efforts taken to ensure compliance with the require-  
10 ments of this section and the amendments made by  
11 this section, including—

12 (A) any technical assistance the Secretary  
13 has provided;

14 (B) any regulatory guidance the Secretary  
15 has issued; and

16 (C) any compliance monitoring the Sec-  
17 retary has conducted.

18 (2) PUBLIC AVAILABILITY.—Each report de-  
19 scribed under paragraph (1) shall be made available  
20 to the public.

21 **SEC. 3. FEASIBILITY STUDY TO IMPROVE DATA COLLEC-**  
22 **TION.**

23 (a) IN GENERAL.—Not later than 2 years after the  
24 date of enactment of this Act, the Secretary of Education  
25 shall explore the feasibility of working with the National

1 Student Clearinghouse to establish a third-party method  
2 to collect and produce institution-level analysis of data on  
3 the impact of an admissions decision based on an appli-  
4 cant's relationship with an alumni of, or donor to, the de-  
5 ciding institution, and how such data reported to the Na-  
6 tional Student Clearinghouse could be secured, while con-  
7 sidering the following:

8 (1) Whether data reported to the National Stu-  
9 dent Clearinghouse can accurately capture the im-  
10 pact and prevalence of admitting students with  
11 alumni or donor affiliations at various institutions.

12 (2) Whether institutions have clear and defined  
13 policies regarding admitting students with alumni or  
14 donor affiliations that can be transparently reported  
15 to the National Student Clearinghouse.

16 (3) Whether this new data stream can be inte-  
17 grated with reporting to the Integrated Postsec-  
18 ondary Education Data System (IPEDS) while en-  
19 suring that the quality of data remains consistent or  
20 improves compared to the data provided through  
21 IPEDS.

22 (4) Whether reporting this new data might  
23 alter the current interaction between institutions and  
24 the National Student Clearinghouse.

1           (5) Whether reporting such data can maintain  
2           confidentiality, especially regarding private dona-  
3           tions and donor identities, while still producing accu-  
4           rate measures of institutional practices.

5           (6) Whether the National Student Clearing-  
6           house can satisfy data reporting requirements with-  
7           out transferring any disaggregated data that would  
8           be personally identifiable to the Department of Edu-  
9           cation.

10          (7) Whether the data can be reported in such  
11          a way that it separates students with familial ties to  
12          alumni from those admitted due to direct donor af-  
13          filiations.

14          (8) Whether there's a distinction in admissions  
15          criteria for legacy and donor-affiliated applicants  
16          compared to traditional applicants.

17          (b) RULE OF CONSTRUCTION.—Nothing in this sec-  
18          tion shall be construed to authorize the development of  
19          a nationwide database of personally identifiable informa-  
20          tion on individuals involved in studies or other collections  
21          of data under this Act or an amendment made by this  
22          Act.

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