

112TH CONGRESS
2D SESSION

S. 3527

To provide for enhanced criminal penalties for individuals who file a SEVP certification petition under false pretenses, to prohibit certain schools from accessing SEVIS or participating in the SEVP and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2012

Mr. SCHUMER (for himself, Mr. GRASSLEY, Mrs. FEINSTEIN, and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for enhanced criminal penalties for individuals who file a SEVP certification petition under false pretenses, to prohibit certain schools from accessing SEVIS or participating in the SEVP 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Visa Integrity
5 Act”.

6 **SEC. 2. SEVIS AND SEVP DEFINED.**

7 In this Act:

1 (1) SEVIS.—The term “SEVIS” means the
2 Student and Exchange Visitor Information System
3 of the Department of Homeland Security.

4 (2) SEVP.—The term “SEVP” means the Stu-
5 dent and Exchange Visitor Program of the Depart-
6 ment of Homeland Security.

7 **SEC. 3. INCREASED CRIMINAL PENALTIES.**

8 (a) CRIMINAL PENALTY.—Chapter 75 of title 18,
9 United States Code, is amended by adding at the end the
10 following:

11 **“§ 1548. Filing of certification petition under false**
12 **pretenses**

13 “(a) IN GENERAL.—Any person who, while rep-
14 resenting himself or herself as a principal, officer, director,
15 or any other official of an educational institution, know-
16 ingly files a petition or provides evidence for a petition
17 for certification or recertification with the Student and
18 Exchange Visitor Program for attendance at such institu-
19 tion of nonimmigrant students under subparagraph (F)(i)
20 or (M)(i) of section 101(a)(15) of the Immigration and
21 Nationality Act (8 U.S.C. 1101(a)(15)) under false pre-
22 tenses, or attempts or conspires to do so, shall be fined
23 under this title, imprisoned for at least 2 years and not
24 more than 15 years, or both.

1 “(b) DEFINITION.—As used in this section, the term
 2 ‘false pretenses’ includes making a materially false state-
 3 ment or providing materially false information to the Sec-
 4 retary of Homeland Security with regard to any aspect
 5 of the Student and Exchange Visitor Program.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
 7 for chapter 75 of title 18, United States Code, is amended
 8 by adding at the end the following:

“1548. Filing of certification petition under false pretenses.”.

9 (c) SENTENCING GUIDELINES.—Pursuant to its au-
 10 thority under section 994 of title 28, United States Code,
 11 the United States Sentencing Commission shall amend the
 12 Federal Sentencing Guidelines and policy statements to
 13 reflect the penalties applicable to persons convicted of vio-
 14 lating section 1548 of title 18, United States Code, as
 15 added by subsection (a).

16 **SEC. 4. ACCREDITATION REQUIREMENT.**

17 Section 101(a) of the Immigration and Nationality
 18 Act (8 U.S.C. 1101(a)) is amended—

19 (1) in paragraph (15)(F)(i)—

20 (A) by striking “section 214(l) at an estab-
 21 lished college, university, seminary, conserv-
 22 atory, academic high school, elementary school,
 23 or other academic institution or in an accred-
 24 ited language training program in the United
 25 States” and inserting “section 214(m) at an ac-

1 credited college, university, or language training
 2 program, or at an established seminary, con-
 3 servatory, academic high school, or elementary
 4 school”; and

5 (B) by striking “Attorney General” each
 6 place such term appears and inserting “Sec-
 7 retary of Homeland Security”; and

8 (2) by amending paragraph (52) to read as fol-
 9 lows:

10 “(52) Except as provided in section 214(m)(4), the
 11 term ‘accredited college, university, or language training
 12 program’ means a college, university, or language training
 13 program that is accredited by an accrediting agency recog-
 14 nized by the Secretary of Education.”.

15 **SEC. 5. OTHER REQUIREMENTS FOR ACADEMIC INSTITU-**
 16 **TIONS.**

17 Section 214(m) of the Immigration and Nationality
 18 Act (8 U.S.C. 1184(m)) is amended by adding at the end
 19 the following:

20 “(3) The Secretary of Homeland Security shall re-
 21 quire accreditation of an academic institution (except for
 22 seminaries or other religious institutions) for purposes of
 23 section 101(a)(15)(F) if—

24 “(A) that institution is not already required to
 25 be accredited under section 101(a)(15)(F)(i); and

1 “(B) an appropriate accrediting agency recog-
 2 nized by the Secretary of Education is able to pro-
 3 vide such accreditation.

4 “(4) The Secretary of Homeland Security, in the Sec-
 5 retary’s discretion, may waive the accreditation require-
 6 ment in section 101(a)(15)(F)(i) with respect to an ac-
 7 credited college, university, or language training program
 8 if the academic institution—

9 “(A) is otherwise in compliance with the re-
 10 quirements of such section; and

11 “(B) is, on the date of the enactment of the
 12 Student Visa Integrity Act, a candidate for accredi-
 13 tation or, after such date, has been a candidate for
 14 accreditation for at least 1 year and continues to
 15 progress toward accreditation by an accreditation
 16 agency recognized by the Secretary of Education.”.

17 **SEC. 6. STUDENT START DATE FOR PROGRAM TO COLLECT**
 18 **INFORMATION RELATING TO FOREIGN STU-**
 19 **DENTS AND OTHER EXCHANGE PROGRAM**
 20 **PARTICIPANTS.**

21 (a) STUDENT START DATE.—Section 641(a) of the
 22 Illegal Immigration Reform and Immigrant Responsibility
 23 Act of 1996 (8 U.S.C. 1372(a)) is amended—

24 (1) by redesignating paragraph (4) as para-
 25 graph (5); and

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

3 “(4) STUDENT START DATE.—Not later than
 4 one year after the date of the enactment of the Stu-
 5 dent Visa Integrity Act, the Secretary of Homeland
 6 Security may issue regulations that set a start date
 7 for the program for an academic term at each ap-
 8 proved institution of higher education or other ap-
 9 proved educational institution.”.

10 (b) TECHNICAL AMENDMENTS.—Section 641 of the
 11 Illegal Immigration Reform and Immigrant Responsibility
 12 Act of 1996 (8 U.S.C. 1372) is amended—

13 (1) by striking “Attorney General” each place
 14 that term appears and inserting “Secretary of
 15 Homeland Security”;

16 (2) in subsection (a)(4), by striking “Immigra-
 17 tion and Naturalization Service” and inserting “Sec-
 18 retary of Homeland Security”; and

19 (3) in subsection (e)(4)(A), by striking “Attor-
 20 ney General’s” and inserting “Secretary’s”.

21 **SEC. 7. VISA FRAUD.**

22 (a) IMMEDIATE WITHDRAWAL OF SEVP CERTIFI-
 23 CATION.—Section 641(d) of the Illegal Immigration Re-
 24 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
 25 1372(d)) is amended—

1 (1) in paragraph (1)(A), by striking “institu-
2 tion,” and inserting “institution,”; and

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

4 “(3) EFFECT OF REASONABLE SUSPICION OF
5 FRAUD.—If the Secretary of Homeland Security has
6 reasonable suspicion that an owner of, or a des-
7 ignated school official at, an approved institution of
8 higher education, an other approved educational in-
9 stitution, or a designated exchange visitor program
10 has committed fraud or attempted to commit fraud
11 relating to any aspect of the Student and Exchange
12 Visitor Program, the Secretary may immediately—

13 “(A) withdraw such certification without
14 prior notification; and

15 “(B) terminate such official’s or such
16 school’s access to the Student and Exchange
17 Visitor Information System (SEVIS).

18 “(4) EFFECT OF INDICTMENT FOR FRAUD.—If
19 an owner of, or a designated school official at, an
20 approved institution of higher education, an other
21 approved educational institution, or a designated ex-
22 change visitor program is indicted for fraud relating
23 to any aspect of the Student and Exchange Visitor
24 Program, the Secretary of Homeland Security shall
25 immediately—

1 “(A) withdraw such certification without
 2 prior notification during the pendency of the
 3 criminal prosecution; and

4 “(B) terminate such official’s or such
 5 school’s access to SEVIS during such time.”.

6 (b) EFFECT OF CONVICTION FOR VISA FRAUD.—Sec-
 7 tion 641(d) of the Illegal Immigration Reform and Immi-
 8 grant Responsibility Act of 1996, as amended by sub-
 9 section (a), is further amended by adding at the end the
 10 following:

11 “(5) PERMANENT DISQUALIFICATION FOR
 12 FRAUD.—A designated school official at, or an owner
 13 of, an approved institution of higher education, an
 14 other approved educational institution, or a des-
 15 ignated exchange visitor program who is convicted
 16 for fraud relating to any aspect of the Student and
 17 Exchange Visitor Program shall be permanently dis-
 18 qualified from filing future petitions and from hav-
 19 ing an ownership interest or a management role, in-
 20 cluding serving as a designated school official, in any
 21 United States educational institution that enrolls
 22 nonimmigrant alien students described in subpara-
 23 graph (F) or (M) of section 101(a)(15) the Immi-
 24 gration and Nationality Act (8 U.S.C.
 25 1101(a)(15)).”.

1 **SEC. 8. BACKGROUND CHECKS AND USE OF E-VERIFY.**

2 (a) IN GENERAL.—Section 641(d) of the Illegal Im-
 3 migration Reform and Immigrant Responsibility Act of
 4 1996 (8 U.S.C. 1372(d)), as amended by section 3, is fur-
 5 ther amended by adding at the end the following:

6 “(6) BACKGROUND CHECK REQUIREMENT.—

7 “(A) IN GENERAL.—An individual may not
 8 serve as a designated school official or be grant-
 9 ed access to SEVIS unless the individual is a
 10 national of the United States or an alien law-
 11 fully admitted for permanent residence and dur-
 12 ing the most recent 3-year period—

13 “(i) the Secretary of Homeland Secu-
 14 rity has—

15 “(I) conducted a thorough back-
 16 ground check on the individual, in-
 17 cluding a review of the individual’s
 18 criminal and sex offender history and
 19 the verification of the individual’s im-
 20 migration status by the school
 21 through the E-Verify Program de-
 22 scribed in section 403(a); and

23 “(II) determined that the indi-
 24 vidual has not been convicted of any
 25 violation of United States immigration
 26 law, any offense under title 18,

1 United States Code, or any analogous
2 State law, and is not a risk to na-
3 tional security of the United States;
4 and

5 “(ii) the individual has successfully
6 completed an on-line training course on
7 SEVP and SEVIS, which has been devel-
8 oped by the Secretary.

9 “(B) INTERIM DESIGNATED SCHOOL OFFI-
10 CIAL.—

11 “(i) IN GENERAL.—An individual may
12 serve as an interim designated school offi-
13 cial during the period that the Secretary is
14 conducting the background check required
15 by subparagraph (A)(i)(I).

16 “(ii) REVIEWS BY THE SECRETARY.—
17 If an individual serving as an interim des-
18 ignated school official under clause (i) does
19 not successfully complete the background
20 check required by subparagraph (A)(i)(I),
21 the Secretary shall review each Form I-20
22 issued by such interim designated school
23 official.

24 “(7) FEE.—The Secretary is authorized to col-
25 lect a fee from an approved school for each back-

1 ground check conducted under paragraph (6)(A)(i).
2 The amount of such fee shall be equal to the average
3 amount expended by the Secretary to conducted
4 such background checks.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect on the date that is 1 year
7 after the date of the enactment of this Act.

8 **SEC. 9. REVOCATION OF AUTHORITY TO ISSUE FORM I-20.**

9 (a) FLIGHT SCHOOLS NOT CERTIFIED BY FAA.—
10 Immediately upon the enactment of this Act, the Secretary
11 of Homeland Security shall prohibit any flight school in
12 the United States from accessing SEVIS or issuing a
13 Form I-20 to an alien seeking a student visa pursuant
14 to subparagraph (F)(i) or (M)(i) of section 101(a)(15) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1101(a)(15)) if the flight school has not been certified to
17 the satisfaction of the Secretary and by the Federal Avia-
18 tion Administration pursuant to part 141 or part 142 of
19 title 14, Code of Federal Regulations (or similar successor
20 regulations).

21 (b) SCHOOLS NOT LICENSED BY A STATE.—Not
22 later than 180 days after the date of the enactment of
23 this Act, the Secretary of Homeland Security shall pro-
24 hibit any school or designated school official in the United
25 States from accessing the SEVIS or issuing a Form I-

1 20 to an alien seeking a student visa pursuant to section
2 subparagraph (F)(i) or (M)(i) of section 101(a)(15) of the
3 Immigration and Nationality Act (8 U.S.C. 1101(a)(15))
4 if the school that has not been licensed or authorized to
5 offer a post-secondary credential by a State. The Sec-
6 retary may waive the application of this paragraph for reli-
7 gious-affiliated, elementary, or secondary schools.

8 **SEC. 10. REVOCATION OF ACCREDITATION.**

9 At the time an accrediting agency or association is
10 required to notify the Secretary of Education and the ap-
11 propriate State licensing or authorizing agency of the final
12 denial, withdrawal, suspension, or termination of accredi-
13 tation of an institution pursuant to section 496 of the
14 Higher Education Act of 1965 (20 U.S.C. 1099b), such
15 accrediting agency or association shall notify the Secretary
16 of Homeland Security of such determination and the Sec-
17 retary of Homeland Security shall immediately withdraw
18 the school from the SEVP and prohibit the school from
19 accessing SEVIS.

20 **SEC. 11. REPORT ON RISK ASSESSMENT.**

21 Not later than 180 days after the date of the enact-
22 ment of this Act, the Secretary of Homeland Security shall
23 submit to the Committee on the Judiciary of the Senate
24 and the Committee on the Judiciary of the House of Rep-
25 resentatives a report that contains the risk assessment

1 strategy that will be employed by the Secretary to identify,
2 investigate, and take appropriate action against schools
3 and school officials that are facilitating the issuance of
4 Form I-20 and the maintenance of student visa status
5 in violation of the immigration laws of the United States.

6 **SEC. 12. IMPLEMENTATION OF GAO RECOMMENDATIONS.**

7 Not later than 180 days after the date of the enact-
8 ment of this Act, the Secretary of Homeland Security shall
9 submit to the Committee on the Judiciary of the Senate
10 and the Committee on the Judiciary of the House of Rep-
11 resentatives a report that describes—

12 (1) the process in place to identify and assess
13 risks in the SEVP;

14 (2) a risk assessment process to allocate
15 SEVP's resources based on risk;

16 (3) the procedures in place for consistently en-
17 suring a school's eligibility, including consistently
18 verifying in lieu of letters;

19 (4) how SEVP identified and addressed missing
20 school case files;

21 (5) a plan to develop and implement a process
22 to monitor state licensing and accreditation status of
23 all SEVP-certified schools;

24 (6) whether all flight schools that have not been
25 certified to the satisfaction of the Secretary and by

1 the Federal Aviation Administration have been re-
2 moved from the program and have been restricted
3 from accessing SEVIS;

4 (7) the standard operating procedures that gov-
5 ern coordination among SEVP, Counterterrorism
6 and Criminal Exploitation Unit, and U.S. Immigra-
7 tion and Customs Enforcement field offices; and

8 (8) the established criteria for referring cases of
9 a potentially criminal nature from SEVP to the
10 counterterrorism and intelligence community.

11 **SEC. 13. IMPLEMENTATION OF SEVIS II.**

12 Not later than 2 years after the date of the enact-
13 ment of this Act, the Secretary of Homeland Security shall
14 complete the deployment of both phases of the 2nd genera-
15 tion Student and Exchange Visitor Information System
16 (commonly known as “SEVIS II”).

○