

113TH CONGRESS
2D SESSION

S. 2230

To provide the legal framework necessary for the growth of innovative private financing options for students to fund postsecondary education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2014

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide the legal framework necessary for the growth of innovative private financing options for students to fund postsecondary education, 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 “Investing in Student
5 Success Act of 2014”.

1 **TITLE I—AUTHORIZATION OF**
2 **INCOME SHARE AGREEMENTS**

3 **SEC. 101. PURPOSE; LAWFULNESS OF INSTRUMENTS; PRE-**
4 **EMPTION OF STATE LAW.**

5 (a) PURPOSE.—It is the purpose of this title to au-
6 thorize individuals to enter into income share agreements
7 for the purposes of obtaining funds in exchange for agree-
8 ing to pay to the holder of the contract a specified percent-
9 age of the individual’s future income.

10 (b) LAWFULNESS OF CONTRACTS; PREEMPTION.—
11 Any income share agreement that complies with the re-
12 quirements of section 102 shall be a valid, binding, and
13 enforceable contract notwithstanding any State law lim-
14 iting or otherwise regulating assignments of future wages
15 or other income.

16 **SEC. 102. TERMS AND CONDITIONS OF INCOME SHARE**
17 **AGREEMENT CONTRACTS.**

18 (a) DEFINITION OF INCOME SHARE AGREEMENT.—
19 For purposes of this title, the term “income share agree-
20 ment” means an agreement between an individual and any
21 other person under which the individual commits to pay
22 a specified percentage of the individual’s future income,
23 for a specified period of time, in exchange for payments
24 to or on behalf of such individual for postsecondary edu-
25 cation, workforce development, or other purposes.

1 (b) TERMS AND CONDITIONS OF AGREEMENTS.—An
2 income share agreement complies with the requirements
3 of this section if the contract complies with each of the
4 following conditions:

5 (1) SPECIFIED PERCENTAGE OF INCOME.—An
6 income share agreement shall specify the percentage
7 of future income which the individual will be obli-
8 gated to pay, except that the contract shall exempt,
9 at a minimum, the first \$10,000 (adjusted each year
10 to reflect changes in the Consumer Price Index for
11 All Urban Consumers published by the Bureau of
12 Labor Statistics of the Department of Labor for the
13 most recent 12-month period for which such data
14 are available) of an individual's income when deter-
15 mining the individual's obligation for a given year.

16 (2) DEFINITION OF INCOME.—An income share
17 agreement shall specify the definition of income to
18 be used for purposes of calculating an individual's
19 obligation under the contract.

20 (3) AGGREGATE LIMITATION ON OBLIGATION.—
21 No eligible individual may enter into any income
22 share agreement if the total percentage of such indi-
23 vidual's future income that the individual agrees to
24 pay under that contract, and any other income share

1 agreements of such individual, exceeds 15 percent of
2 such future income.

3 (4) SPECIFIED DURATION; EXTENSION OF PE-
4 RIOD.—An income share agreement shall specify the
5 maximum period of time during which the individual
6 will be obligated to pay a portion of the individual's
7 future income, except that—

8 (A) except as provided in subparagraph
9 (B), such period may not exceed 360 months;
10 and

11 (B) such contract may provide that such
12 period may be extended by the number of years
13 during which the individual's income is below
14 the exemption amount specified in the agree-
15 ment under paragraph (1).

16 (5) EARLY TERMINATION.—An income share
17 agreement shall specify the terms and conditions by
18 which the individual may extinguish the individual's
19 obligations under the contract before the end of the
20 payment period specified in the agreement, based on
21 the remaining term of such period.

22 (c) REQUIRED DISCLOSURES.—An income share
23 agreement does not comply with the requirements of this
24 section unless the individual who is committing to pay fu-
25 ture income is provided, before entry into such agreement,

1 a disclosure document that clearly and simply discloses
2 that—

3 (1) the agreement is not a debt instrument, and
4 that the amount the individual will be required to
5 pay under the agreement—

6 (A) may be more or less than the amount
7 provided to the individual; and

8 (B) will vary in proportion to the individ-
9 ual's future income;

10 (2) the obligations of the individual under the
11 agreement are not dischargeable under bankruptcy
12 law;

13 (3) whether the obligations of the individual
14 under the agreement may be extinguished by accel-
15 erating payments, and, if so, under what terms;

16 (4) the duration of the individual's obligations
17 under the agreement (absent such accelerating pay-
18 ments), including any circumstances under which
19 the contract would be extended;

20 (5) the percentage of income the individual is
21 committing to pay and the amount of income that
22 is exempt from the calculation of the individual's ob-
23 ligation; and

24 (6) the definition of income to be used for pur-
25 poses of calculating the individual's obligation.

1 (d) NONINTERFERENCE.—An income share agree-
2 ment shall not be construed to give the contract holder
3 any rights over an individual’s actions—it simply rep-
4 resents an obligation by the individual to pay the specific
5 percentage of future income.

6 **SEC. 103. DEFINITIONS.**

7 As used in this title:

8 (1) STATE.—The term “State” includes, in ad-
9 dition to the several States of the Union, the Com-
10 monwealth of Puerto Rico, the District of Columbia,
11 Guam, American Samoa, the Virgin Islands, the
12 government of the Northern Mariana Islands, and
13 the Trust Territory of the Pacific Islands.

14 (2) STATE LAW.—The term “State law” means
15 any law, decision, rule, regulation, or other action
16 having the effect of a law of any State or any polit-
17 ical subdivision of a State, or any agency or instru-
18 mentality of a State or political subdivision of a
19 State, except that a law of the United States appli-
20 cable only to the District of Columbia shall be treat-
21 ed as a State law (rather than a law of the United
22 States).

1 **SEC. 104. PREEMPTION OF STATE LAW WITH RESPECT TO**
2 **USURY.**

3 Income share agreements shall not be subject to
4 State usury laws.

5 **TITLE II—TAX TREATMENT OF**
6 **INCOME SHARE AGREEMENTS**

7 **SEC. 201. TAX TREATMENT OF INCOME SHARE AGREE-**
8 **MENTS.**

9 (a) EXCLUSION FROM GROSS INCOME OF INCOME
10 SHARE AGREEMENT PROCEEDS.—Payments made under
11 an income share agreement to or on behalf of the indi-
12 vidual who commits to pay a specified percentage of such
13 individual's future income to another person under such
14 agreement shall not be includible in the gross income of
15 such individual for purposes of the Internal Revenue Code
16 of 1986.

17 (b) TREATMENT OF PAYMENTS OF FUTURE IN-
18 COME.—Payments of future income received by another
19 person under an income share agreement shall be treated
20 for purposes of the Internal Revenue Code of 1986—

21 (1) first, with respect to so much of such pay-
22 ments as does not exceed the amount of the pay-
23 ments to which subsection (a) applies with respect to
24 such agreement, as a repayment of investment in the
25 contract which reduces the holder's basis in such
26 agreement, and

1 (2) second, as interest which is includible in
2 gross income.

3 (c) INCOME SHARE AGREEMENT.—For purposes of
4 this title, the term “income share agreement” has the
5 meaning given such term under title I.

6 **TITLE III—QUALIFIED**
7 **EDUCATION LOAN**

8 **SEC. 301. QUALIFIED EDUCATION LOAN.**

9 (a) IN GENERAL.—Paragraph (1) of section 221(d)
10 of the Internal Revenue Code of 1986 is amended by add-
11 ing at the end the following: “Such term includes any in-
12 come share agreement (as defined in section 102 of the
13 Investing in Student Success Act of 2014), except that
14 payments made by the taxpayer during the taxable year
15 to meet an income share agreement obligation shall not
16 be taken into account under subsection (a)”.

17 (b) INFORMATION REPORTING NOT REQUIRED.—
18 Subsection (e) of section 6050S of such Code is amended
19 by inserting “(without regard to the last sentence there-
20 of)” after “section 221(d)(1)”.

1 **TITLE IV—FEDERAL INDIVIDUAL**
 2 **ASSISTANCE TREATMENT OF**
 3 **INCOME SHARE AGREEMENTS**

4 **SEC. 401. AMOUNTS RECEIVED NOT TREATED AS INCOME**
 5 **IN CALCULATION OF FINANCIAL NEED**
 6 **UNDER THE HIGHER EDUCATION ACT OF**
 7 **1965.**

8 No portion of any amounts received by an individual
 9 for entering into an income share agreement (as such term
 10 is defined in title I) shall be included as income or assets
 11 in the computation of expected family contribution for any
 12 program funded in whole or in part under the Higher
 13 Education Act of 1965.

14 **TITLE V—INVESTMENT**
 15 **COMPANY TREATMENT**

16 **SEC. 501. BUSINESSES MAKING INCOME SHARE AGREE-**
 17 **MENTS EXCLUDED FROM INVESTMENT COM-**
 18 **PANY TREATMENT.**

19 Section 3(c) of the Investment Company Act of 1940
 20 (15 U.S.C. 80a–3(c)) is amended—

21 (1) in paragraph (4), by inserting after “indus-
 22 trial banking,” the following: “income share agree-
 23 ments (as defined under section 102 of the Investing
 24 in Student Success Act of 2014),”; and

- 1 (2) in paragraph (5), by inserting “, including
- 2 income share agreements” after “services” each
- 3 place such term appears.

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