

SENATE No. 112

The Commonwealth of Massachusetts

PRESENTED BY:

Eileen M. Donoghue

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a student tuition recovery fund.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	
<i>Attorney General Maura Healey</i>		
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/24/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/25/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/25/2017</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/25/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/25/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/26/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>1/30/2017</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/31/2017</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>2/1/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/1/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/1/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/1/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/2/2017</i>

<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/2/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/3/2017</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/3/2017</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>2/3/2017</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/3/2017</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/3/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/14/2017</i>

SENATE No. 112

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 112) of Eileen M. Donoghue, Attorney General Maura Healey, Jennifer E. Benson, Denise Provost and other members of the General Court for legislation to establish a student tuition recovery fund. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 136 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing a student tuition recovery fund.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 12 of the General Laws is hereby amended by inserting after section 11N thereof
2 the following new section:-

3 Section 11O. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:

5 “Assessment,” the amount a for-profit school is required to pay to the Student Tuition
6 Recovery Fund.

7 “Board of Higher Education,” the board of higher education established in section 4 of
8 chapter 15A.

9 “Cost of attendance,” the same meaning as defined in 20 U.S.C. section 10871l.

10 “Division of Professional Licensure,” the division of professional licensure established in
11 section 8 of chapter 13.

12 “Economic loss,” pecuniary loss which is equivalent to the cost of attendance, plus any
13 amount the institution collected from the student and failed to pay to third parties on behalf of
14 the student for license fees or any other purpose, excluding grants provided by government
15 agencies for which the student’s eligibility for further grants is not changed by prior grant
16 receipt, and excluding legal fees, attorney fees, court costs, arbitration fees, or non-pecuniary
17 damages such as inconvenience, aggravation, emotional distress, or punitive damages.

18 “For-profit school,” a private post-secondary institution established, operated, or
19 incorporated for profit-making purposes, including any for-profit institution of higher education
20 that offers courses for credit or programs leading to a certificate, diploma, or degree. This shall
21 include all private post-secondary institutions established, operated, or incorporated for profit-
22 making purposes that advertise or do business within Massachusetts, including schools that
23 provide programs, services, courses, or instruction, in whole or in part, through electronic means
24 or on the Internet to students residing in Massachusetts, regardless of whether such schools
25 maintain a campus, facility, or physical presence in Massachusetts; are licensed to operate, either
26 by the Division of Professional Licensure or the equivalent regulatory or licensing body in
27 another jurisdiction; or are authorized by the Board of Higher Education, or the equivalent
28 regulatory or licensing body in another jurisdiction, to grant degrees.

29 “Fund,” the Student Tuition Recovery Fund established in subsection (b).

30 “Person injured,” a student of a for-profit school which charges prepaid tuition who
31 suffered an economic loss because of the school’s discontinuation of one or more of its
32 educational programs, failure to fulfill its contractual obligations, failure to comply with
33 licensing requirements and provisions pursuant to section 263 of chapter 112, failure to comply
34 with prohibitions against unfair and deceptive practices as provided in 940 C.M.R 31.00 et seq.,
35 or conduct that would provide the person with a defense to repayment or false certification
36 discharge of federal student loans under federal law; provided that “person injured” shall include,
37 without limitation:

38 (i) any student who was enrolled in a school’s educational program or on a medical or
39 approved leave of absence at the time that the program was discontinued, as applicable, who did
40 not complete the program of study through a teach-out at another school approved either by the
41 Division of Professional Licensure or the Board of Higher Education or by transferring all
42 academic credits or hours earned to another school so approved;

43 (ii) any student who withdrew from a school’s educational program within the 120-day
44 period before the program was discontinued or within a period longer than 120 days if the
45 attorney general determines there was a decline in the quality of education during that time
46 period prior to discontinuation and thus authorizes a longer eligibility period;

47 (iii) any student to whom a school has failed to pay or reimburse proceeds received by the
48 school in excess of tuition and other costs;

49 (iv) any student who has been awarded restitution, a refund, a loan defense or discharge,
50 or other monetary award by an arbitrator, court, or the federal government, based on a violation
51 of section 263 of chapter 112, a violation of 940 C.M.R 31.00 et seq., or conduct that provided

52 the person with a defense to repayment or false certification discharge of federal student loans
53 under federal law, but who has been unable to either collect the award or obtain relief for the full
54 amount of their economic loss;

55 (v) any student who is covered by government findings that would make them eligible for
56 a borrower defense to repayment of federal student loans;

57 (vi) any student who has been unable to collect a refund from a school in accordance with
58 the provisions of section 13K of chapter 255; or

59 (vii) any student who was enrolled in a school's educational program who did not meet
60 the program's minimum entrance requirements.

61 "Prepaid tuition," money advanced to an educational institution before it provides its
62 service.

63 "School," a for-profit school as defined in this section.

64 (b) There shall be a Student Tuition Recovery Fund established and administered by the
65 attorney general. The fund shall fully reimburse all persons injured, who may recover from the
66 fund an amount not to exceed their actual economic loss sustained. The attorney general shall
67 promulgate rules and regulations necessary to administer the fund. In administering the fund, the
68 attorney general may:

69 (1) pursue a lender, holder, guarantee agency, or the United States Department of
70 Education for the full or partial cancellation or discharge of student loan obligations to relieve
71 students of economic loss and thereby reduce the liability of the fund;

72 (2) after notifying the student, pay a student's claim directly to the lender, holder,
73 guarantee agency, or the United States Department of Education under a federally guaranteed
74 student loan program; provided, however, that the payment must satisfy all or a commensurate
75 part of the student's loan obligations related to attendance at the institution for which the claim
76 was filed;

77 (3) delay the payment of a claim pending the resolution of its attempt to obtain a
78 cancellation or discharge of the claimant's student loan obligation; provided, however, the
79 attorney general shall not delay payment of the claim if the attorney general has notice of any
80 adverse action that is not stayed taken against the claimant, including the commencement of a
81 civil or administrative action, tax offset, the enforcement of a judgment, or the denial of any
82 government benefit, provided that there are sufficient funds available to pay the claim.

83 (c) Each for-profit school which collects prepaid tuition shall annually pay an assessment
84 to the fund in an amount consistent with the following:

85 (1) Each new for-profit school shall make an initial payment of \$2,500 into the fund.

86 (2) Beginning in the year that begins on January 1, 2018, each for-profit school in
87 operation shall make a payment into the fund in the amount of 0.25 percent of the school's gross
88 tuition and fees received by the school during the prior year,

89 (3) Beginning in the year that begins on January 1, 2019, and for each year thereafter,
90 each for-profit school in operation shall make a payment into the fund in an amount determined
91 by the attorney general as necessary to meet the fund's needs, provided that the amount shall not
92 exceed 0.5 percent of a school's gross tuition and fees received by the school during the prior
93 year.

94 (4) The minimum amount of the annual payment into the fund is \$250, to be paid by each
95 school.

96 (d) The attorney general shall make an accounting at the end of each year. If at the end of
97 any year, the accounting indicates that the fund contains \$5,000,000 or more, then during the
98 next year an assessment may not be made against the schools. If the moneys in the fund are
99 insufficient to satisfy duly authorized claims, the attorney general may reassess the schools as
100 necessary, in addition to the annual assessment, and the schools shall pay the additional amounts
101 assessed.

102 (e) A person injured by a for-profit school is eligible to submit a claim against the fund.
103 A claim against the fund shall not be commenced later than six years after the date upon which
104 the person injured formally separated from the school. If the attorney general determines that a
105 claim is valid, the attorney general shall pay the claim in the amount it considers reasonable. The
106 money deposited in the fund shall be continuously appropriated to the attorney general to carry
107 out the purposes of the fund. The attorney general may use up to five percent of the fund per year
108 to administer the fund.

109 (f) For those for-profit schools licensed to operate by the Division of Professional
110 Licensure, pursuant to section 263 of chapter 112, the division may not issue a license to, and
111 may revoke any certificate of approval previously issued to, a school that fails to pay an
112 assessment or reassessment to the fund.

113 (g) For those for-profit schools authorized to grant degrees by the Board of Higher
114 Education, pursuant to sections 30A and 31A of chapter 69, the board may not approve, or may

115 revoke any previous approval, to a school that fails to pay an assessment or reassessment to the
116 fund.

117 (h) If claims are made by persons injured against a for-profit school licensed to operate
118 by the Division of Professional Licensure, or if a school ceases operations, the attorney general
119 may notify the guarantor of the surety bond or the holder of other form of indemnification that
120 the school is required to furnish under section 263 of chapter 112. If funds become available
121 from the surety bond or other form of indemnification, any unencumbered funds from that bond
122 or indemnification shall be used to reimburse the fund for payments previously made to persons
123 injured by the school's ceasing operations.

124 (i) Unexpended and unencumbered money in the fund at the close of a fiscal year shall
125 not revert to the General Fund.

126 (j) The attorney general may allocate any unencumbered restitution funds awarded to the
127 state from a lawsuit or settlement involving a for-profit school to reimburse the fund for
128 payments previously made to persons injured by that school.

129 (k) The attorney general may make an additional assessment against a for-profit school or
130 otherwise seek reimbursement to the fund from a school for a claim that was paid because of that
131 school's violation of the law.