SENATE DOCKET, NO. 1028 FILED ON: 1/19/2017

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

Thomas J. Calter	*12th Plymouth*	*2/2/2017*
Barbara A. L'Italien	*Second Essex and Middlesex*	*2/2/2017*
Eric P. Lesser	*First Hampden and Hampshire*	*2/3/2017*
Michael O. Moore	*Second Worcester*	*2/3/2017*
Gailanne M. Cariddi	*1st Berkshire*	*2/3/2017*
Sheila C. Harrington	*1st Middlesex*	*2/3/2017*
James B. Eldridge	*Middlesex and Worcester*	*2/3/2017*
James Arciero	*2nd Middlesex*	*2/3/2017*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/3/2017*
Chris Walsh	*6th Middlesex*	*2/3/2017*
Bruce E. Tarr	*First Essex and Middlesex*	*2/14/2017*
Michael F. Rush	*Norfolk and Suffolk*	*2/22/2017*
William N. Brownsberger	*Second Suffolk and Middlesex*	*2/23/2017*
Cindy F. Friedman	*Fourth Middlesex*	*9/27/2017*

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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:

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

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

"Assessment," the amount a for-profit school is required to pay to the Student Tuition Recovery Fund.

"Board of Higher Education," the board of higher education established in section 4 of chapter 15A.

"Cost of attendance," the same meaning as defined in 20 U.S.C. section 1087ll.

"Division of Professional Licensure," the division of professional licensure established in section 8 of chapter 13.

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

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

"Fund," the Student Tuition Recovery Fund established in subsection (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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