

HOUSE No. 3807

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer E. Benson

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: | DATE ADDED: |
|------------------------------|------------------------------------|------------------|
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> | <i>1/16/2019</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>1/23/2019</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> | <i>1/23/2019</i> |
| <i>Bud L. Williams</i> | <i>11th Hampden</i> | <i>1/23/2019</i> |
| <i>Stephan Hay</i> | <i>3rd Worcester</i> | <i>1/24/2019</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>1/30/2019</i> |
| <i>Daniel R. Cullinane</i> | <i>12th Suffolk</i> | <i>1/30/2019</i> |
| <i>Natalie M. Higgins</i> | <i>4th Worcester</i> | <i>1/30/2019</i> |
| <i>Liz Miranda</i> | <i>5th Suffolk</i> | <i>1/31/2019</i> |
| <i>Kate Hogan</i> | <i>3rd Middlesex</i> | <i>2/1/2019</i> |
| <i>Ryan C. Fattman</i> | <i>Worcester and Norfolk</i> | <i>2/1/2019</i> |
| <i>Eric P. Lesser</i> | <i>First Hampden and Hampshire</i> | <i>2/1/2019</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>2/1/2019</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> | <i>2/1/2019</i> |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> | <i>2/1/2019</i> |
| <i>Mindy Domb</i> | <i>3rd Hampshire</i> | <i>5/14/2019</i> |
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> | <i>5/14/2019</i> |
| <i>Nika C. Elugardo</i> | <i>15th Suffolk</i> | <i>5/14/2019</i> |

| | | |
|----------------------------|----------------------------|------------------|
| <i>Paul R. Feeney</i> | <i>Bristol and Norfolk</i> | <i>5/14/2019</i> |
| <i>Carlos González</i> | <i>10th Hampden</i> | <i>5/14/2019</i> |
| <i>Natalie M. Blais</i> | <i>1st Franklin</i> | <i>5/14/2019</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> | <i>5/14/2019</i> |

HOUSE No. 3807

By Ms. Benson of Lunenburg, a petition (accompanied by bill, House, No. 3807) of Jennifer E. Benson and others for legislation to establish a student tuition recovery fund to be administered by the Attorney General. Higher Education.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 the
2 following section:-

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

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,” shall have the same meaning as defined in 20 U.S.C. section
10 10871l.

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

13 “Economic loss,” includes, but is not limited to, pecuniary loss, which is equivalent to the
14 cost of attendance, the cost of equipment and materials required for the educational program,
15 interest on any student loan used to pay for such charges, collection costs, penalties, and any
16 amount the institution collected from the student and failed to pay to third parties on behalf of
17 the student for license fees or any other purpose; excluding grants provided by government
18 agencies for which the student’s eligibility for further grants is not changed by prior grant
19 receipt, and excluding legal fees, attorney fees, court costs, arbitration fees, or non-pecuniary
20 damages such as inconvenience, aggravation, emotional distress or punitive damages.

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

32 “Fund,” the student tuition recovery fund established in subsection (b).

33 “Person injured,” a student of a for-profit school, which charges prepaid tuition and who
34 suffered an economic loss because of the school’s discontinuation of 1 or more of its educational
35 programs, failure to fulfill its contractual obligations, failure to comply with licensing
36 requirements and provisions pursuant to section 263 of chapter 112, failure to comply with
37 prohibitions against unfair and deceptive practices as provided in 940 C.M.R section 31.00 et
38 seq., or conduct that would provide the person with a defense to repayment or false certification
39 discharge of federal student loans under federal law; provided that “person injured” shall include,
40 without limitation:

41 (i) any student who was enrolled in a school’s educational program or on a medical or
42 approved leave of absence at the time that the school closed or the program was discontinued, as
43 applicable, who did not complete the program of study through a teach-out at another school
44 approved either by the division of professional licensure or the board of higher education or by
45 transferring all academic credits or hours earned to another school so approved;

46 (ii) any student who withdrew from a school’s educational program within the 120-day
47 period before the school closed or the program was discontinued or within a period longer than
48 120 days if the attorney general determines there was a decline in the quality of education during
49 that time period prior to closure or discontinuation and thus authorizes a longer eligibility period;

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

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

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

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

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

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

64 (viii) any student enrolled at a for-profit school that charges prepaid tuition, who
65 otherwise fall into subsections (i) – (vii), who has paid the school the student insurance fee
66 established pursuant to subsection (c), regardless of whether said student is a resident of the
67 commonwealth.

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

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

71 (b) There shall be a Student Tuition Recovery Fund established and administered by the
72 attorney general. The fund shall include assessments and fees collected pursuant to subsection
73 (c). The fund shall fully reimburse all persons injured, who may recover from the fund an
74 amount not to exceed their actual economic loss sustained. The attorney general shall promulgate

75 rules and regulations necessary to administer the fund. In administering the fund, the attorney
76 general may:

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

80 (ii) after notifying the student, pay a student's claim directly to the lender, holder,
81 guarantee agency, or the United States Department of Education under a federally guaranteed
82 student loan program; provided, however, that the payment must satisfy all of the student's loan
83 obligations related to attendance at the institution for which the claim was filed; otherwise, the
84 claim will be paid directly to the student;

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

91 (c) Each for-profit school that collects prepaid tuition shall assess on each student
92 enrolled at said school a student insurance fee in an amount equal to 50 cents for every \$1,000
93 paid by said student in tuition, which shall be paid by said student at such time as said student
94 pays such tuition. Each school shall keep such student insurance fees in a separate account, and
95 shall annually remit the fees held in such account to the student tuition recovery fund established

96 pursuant to subsection (b) at such time as the school pays the assessment to the fund pursuant to
97 this subsection.

98 (d) In addition to the fees collected from students and paid pursuant to subsection (c),
99 each for-profit school which collects prepaid tuition shall annually pay an assessment to the fund
100 in an amount consistent with the following:

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

102 (ii) Beginning in the year that begins on January 1, 2020, each for-profit school in
103 operation shall make a payment into the fund in the amount of 0.25 per cent of the school's gross
104 tuition and fees received by the school during the prior year,

105 (iii) Beginning in the year that begins on January 1, 2021, and for each year thereafter,
106 each for-profit school in operation shall make a payment into the fund in an amount determined
107 by the attorney general as necessary to meet the fund's needs, provided that the amount shall not
108 exceed 0.5 per cent of a school's gross tuition and fees received by the school during the prior
109 year.

110 (iv) The minimum amount of the annual payment to be paid by each school into the fund
111 is \$250.

112 (e) The attorney general shall make an accounting at the end of each year. If at the end of
113 any year, the accounting indicates that the fund contains \$5,000,000 or more, then during the
114 next year an assessment may not be made against the schools. If the moneys in the fund are
115 insufficient to satisfy duly authorized claims, the attorney general may reassess the schools as

116 necessary, in addition to the annual assessment, and the schools shall pay the additional amounts
117 assessed.

118 (f) A person injured by a for-profit school is eligible to submit a claim against the fund. A
119 claim against the fund shall not be commenced later than 6 years after the date upon which the
120 person injured formally separated from the school or 6 years after the date of the event giving
121 rise to eligibility, whichever is later. If the attorney general determines that a claim is valid, the
122 attorney general shall pay the claim. The money deposited in the fund shall be continuously
123 appropriated to the attorney general to carry out the purposes of the fund. The attorney general
124 may use up to 5 per cent of the fund per year to administer the fund.

125 (g) For those for-profit schools licensed to operate by the division of professional
126 licensure, pursuant to section 263 of chapter 112, the division may not issue a license to, and
127 may revoke any certificate of approval previously issued to, a school that fails to pay an
128 assessment or reassessment to the fund.

129 (h) For those for-profit schools authorized to grant degrees by the board of higher
130 education, pursuant to sections 30A and 31A of chapter 69, the board may not approve, or may
131 revoke any previous approval, to a school that fails to pay an assessment or reassessment to the
132 fund.

133 (i) If claims are made by persons injured against a for-profit school licensed to operate by
134 the division of professional licensure, or if a school ceases operations, the attorney general may
135 notify the guarantor of the surety bond or the holder of any other form of indemnification that the
136 school is required to furnish under section 263 of chapter 112. If funds become available from
137 the surety bond or other form of indemnification, any unencumbered funds from that bond or

138 indemnification shall be used to reimburse the fund for payments previously made to persons
139 injured by the school's ceasing operations.

140 (j) Unexpended and unencumbered money in the fund at the close of a fiscal year shall
141 not revert to the general fund.

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

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