

HOUSE No. 4692

The Commonwealth of Massachusetts

PRESENTED BY:

William C. Galvin, (BY REQUEST)

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 relative to educational freedom.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

DATE ADDED:

Paul McAuliffe

3/2/2022

HOUSE No. 4692

By Mr. Galvin of Canton (by request), a petition (subject to Joint Rule 12) of Paul McAuliffe for legislation to create promise scholarship accounts composed of state funds deposited on behalf of participating students to be used for qualified education expenses. Education.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to educational freedom.

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 15 of the General Laws is hereby amended by adding the following section:-

2 Section 67. (a) As used in sections 67 through 74, inclusive, the following words shall
3 have the following meanings:

4 “Account” or “promise scholarship account”, a consumer directed account and composed
5 of state funds deposited on behalf of a participating student and which may be used for qualified
6 education expenses.

7 “Account funds”, the funds awarded on behalf of a participating student.

8 “Curriculum”, a complete course of study for a particular content area or grade level,
9 including any supplemental materials required by the course of study.

10 “Parent”, a biological parent, legal guardian, custodian or other person with legal
11 authority to act on behalf of a student.

12 “Participating school”, a private school that has notified the department of its intention to
13 participate in the program and that complies with the department's requirements.

14 “Participating student”, a student for whom a promise scholarship account has been
15 established.

16 “Higher education institution” means a school which is: (1) a unit of the public
17 institutions of higher education system as provided in section 5 of chapter 15A; or (2) an
18 independent or private college or university located in the commonwealth.

19 “Private school”, a nonpublic school, sectarian or nonsectarian, which is approved by a
20 school committee and provides comparable education to a public school pursuant to section 1 of
21 chapter 76.

22 “Program”, the promise scholarship account program established pursuant to sections 67
23 through 74, inclusive.

24 “Qualified education expenses”, any 1 or more of the following: (1) tuition, fees and
25 required textbooks at a participating school; (2) tuition, fees, and required textbooks at a
26 community college or accredited postsecondary institution; (3) tutoring services provided by an
27 educator certified by pursuant to section 38G of chapter 71; (4) payment for the purchase of a
28 curriculum, including any supplemental materials required by the curriculum; (5) tuition and fees
29 for a nonpublic online learning program or course; (6) services from a licensed physician or
30 therapist, including, but not limited to, for occupational, behavioral, physical or speech-language
31 therapies; (7) fees paid to a fee-for-service transportation provider for transportation to or from a
32 participating school or service provider, except that said fees shall not exceed \$500 per year; (8)
33 fees for the management of account funds in accordance with subsection (e) of section 72; or (9)

34 computer hardware or other technological devices approved by the department or a physician if
35 the computer hardware or other technological device is used to meet the student's educational
36 needs.

37 “Resident school system”, the public school system in which the student would be
38 enrolled based on their residence.

39 “Service provider”, a person or entity that provides services that are covered as qualified
40 education expenses other than a participating school.

41 Section 68. (a) A student shall qualify for a promise scholarship account if:

42 (1) the student's parent or parents currently reside within the commonwealth;

43 (2) the student was enrolled in and attended a public school in the commonwealth for at
44 least 6 weeks during the school year immediately preceding such student's initial or resumed
45 participation in the program;

46 (3) the student's parent signs an agreement promising: (A) to provide an education for the
47 participating student in at least the subjects of reading, grammar, mathematics, social studies and
48 science; (B) not to enroll the student in a local school system school, local charter school or state
49 charter school while participating in the program; and (C) to use account funds only for qualified
50 education expenses of the participating student;

51 (4) the student is not receiving special education in a private school paid for by a school
52 committee pursuant to chapter 71B, nor shall the student or the student’s family seek to receive
53 such special education in a private school at any time while participating in the program; and

54 (5) the student's parent submits an application for an account to the department no later
55 than the deadline established by the department; provided, however, that the department shall
56 provide quarterly application periods that correspond with quarterly funding dates pursuant to
57 subsection (b) of section 70.

58 (b) Upon acceptance of the account, the parent shall assume full financial responsibility
59 for the education of the participating student, including transportation to and from the
60 participating school or service provider.

61 (c) Students enrolled in educational programming conducted in a house of correction or
62 state prison shall not be eligible for the program.

63 (e) Subject to appropriation, a participating student shall continue to be eligible to receive
64 account funds until the student returns to a public school, graduates from high school or reaches
65 the age of 20 years, or for special education students, reaches the age of 22 years; provided,
66 however, that a student who participated in the program for any length of time before returning
67 to a public school shall submit a new application for an account in order to participate in the
68 program for a second or subsequent time.

69 (d) For participating students with a disability, acceptance of an account shall have the
70 same effect as a parental refusal to consent to services pursuant to the Individuals with
71 Disabilities Education Act, 20 U.S.C. section 1414 and a parental waiver of rights to educational
72 accommodations under Section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. Section
73 701, et seq.

74 (e) The creation of the program or the granting of an account shall not be construed to
75 imply that a public school did not provide a free and appropriate public education for a student or
76 constitute a waiver or admission by the commonwealth.

77 (f) Any account funds directed to a participating school or service provider are so
78 directed wholly as a result of the genuine and independent private choice of the parent.

79 (g) The parent of each student participating in the program shall comply fully with the
80 participating school or service provider's rules and policies.

81 (h) Any parent who fails to comply with sections 67 to 74, inclusive and department
82 regulations relating to the program shall forfeit the account and all account funds therein.

83 Section 69. (a) To be eligible to enroll a participating student, a participating school shall:

84 (1) demonstrate fiscal soundness by having been in operation for 1 school year or by
85 submitting a financial information report for the school that complies with uniform financial
86 accounting standards established by the department and conducted by a certified public
87 accountant; provided, that he report shall confirm that the school desiring to participate is insured
88 and the owner or owners have sufficient capital or credit to operate the school for the upcoming
89 school year serving the number of students anticipated with expected revenues from tuition and
90 other sources that may be reasonably expected; and provided, further, that the report shall be
91 limited in scope to those records that are necessary for the department to make a determination
92 on fiscal soundness of the school;

93 (2) comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

94 (3) comply with all health and safety laws or codes that apply to private schools;

95 (4) Comply with section 1 of chapter 76 and any other state law applicable to private
96 schools; and

97 (5) employ or contract with teachers who hold a bachelor's degree or higher degree or
98 have at least 3 years of experience in education and annually provide to the parents the relevant
99 credentials, including any teacher or subject matter certifications, of the teachers who will be
100 teaching their students.

101 (b) A participating school or service provider may apply to the department to participate
102 in the program and accept account funds for providing services covered as qualified education
103 expenses.

104 (c) The department shall establish standards that a participating school or service provider
105 shall meet to receive approval by the department to participate in the program.

106 (d) The department shall, not later than 60 days after receiving a participating school's or
107 service provider's application for approval, notify such school or service provider as to whether
108 the application has been approved or denied. If the department denies an application, the
109 department shall provide a reason and notify the school or service provider that it may appeal the
110 decision to the parent review committee created pursuant to section 71.

111 (e) A participating school and service provider shall not refund, rebate or share account
112 funds with a parent or student in any manner.

113 (f) The creation of the program shall not be construed to expand the regulatory authority
114 of the commonwealth, its officers or any local school system to impose any additional regulation

115 of nonpublic schools beyond those reasonably necessary to enforce the requirements of sections
116 67 to 74, inclusive.

117 Section 70. (a) Subject to appropriation, the account funds granted to a participating
118 student shall be \$9,500 per school year.

119 (b)(1) When a student enters the program, the department shall receive all documentation
120 required for the student's participation during a quarterly enrollment period pursuant to clause (5)
121 of subsection (a) of section 68 before the first quarterly account payment is made for the student.

122 (2) Subject to appropriation and upon proper documentation received by the department,
123 the department shall make quarterly payments to the account of a participating student,
124 beginning with the first quarterly payment that corresponds with the enrollment period in which
125 the student's application was received. As nearly as practical, the quarterly payments shall be
126 equal.; provided, however, that this shall not prevent payments from being reduced pursuant to
127 section 9C of chapter 29. The state auditor shall cite as an audit exception any failure by the
128 department to meet any payment deadlines and shall include such audit exceptions on the
129 website established pursuant to section 14C of chapter 7.

130 (3) The department shall develop a system for parents to direct account funds to
131 participating schools and service providers by electronic funds transfer, automated clearing-
132 house transfer or another system that the department finds to be commercially viable, cost-
133 effective and easy for parents of participating students to use. The department shall not adopt a
134 system that relies solely on reimbursing parents for out-of-pocket expenses, but may determine
135 certain qualified education expenses that shall require reimbursement or preapproval for
136 purchase. The department may qualify private financial management firms to manage the

137 payment system. The department, at its discretion, may create a system of individually funded
138 accounts or notional accounts funded through a single state account.

139 (4) If the participating school requires partial payment of tuition prior to the start of the
140 academic year to reserve space for students admitted to the school, such partial payment may be
141 paid by the department prior to the first quarterly payment of the year in which the account is
142 awarded, up to a maximum of \$1,000, and deducted from subsequent account payments. If a
143 student decides not to attend the participating school, the partial reservation payment shall be
144 returned to the department by the school. Only 1 reservation payment per student may be made
145 per year.

146 (d) Funds received pursuant to this section shall not constitute taxable income of the
147 parent of the participating student.

148 (e) Funds deposited into an account shall be used only for qualified education expenses
149 for the participating student. Unused funds in an account, up to an amount not greater than 50 per
150 cent of the total funds deposited into the account for the current school year, shall roll over to the
151 following school year; provided, however, that, if an account has been inactive for 2 consecutive
152 years, the funds in such account shall be returned to the General Fund and the account shall be
153 closed. Upon high school graduation of the participating student, any unused funds shall roll over
154 and may be used for tuition at a postsecondary institution located in the commonwealth.

155 (f) Nothing in sections 67 to 74, inclusive, shall be deemed to prohibit a parent or student
156 from making a payment for any tuition, fee, service or product described in said sections 67 to
157 74, inclusive, from a source other than the account funds of the student.

158 Section 71. (a) To assist in the determination of whether certain expenses meet the
159 requirements to be considered a qualified education expense under sections 67 to 74, inclusive, a
160 parent review committee shall be established.

161 (b)(1) The committee shall be composed of 8 parents of participating students. Four of
162 the parents shall reside in communities with student enrollment of greater than 10,000, and 4 of
163 the parents shall reside in communities with student enrollment of less than 10,000.

164 (2) Members of the committee shall be appointed by and serve at the pleasure of the
165 commissioner.

166 (3) Members of the committee shall serve for 1-year terms and may be reappointed.

167 (4) The commissioner or the commissioner's designee shall serve as the chair of the
168 committee and shall only vote in the event of a tie.

169 (c) The department may request the committee to determine whether an expenditure of
170 account funds from an account qualifies as a qualified education expense under sections 67 to 74,
171 inclusive.

172 (d) The department may request the committee review appeals of participating schools or
173 service provider application denials pursuant to subsection (d) of section 69.

174 Section 72. (a) The department shall adopt rules and regulations as necessary for the
175 administration of the program and shall include rules and regulations regarding the selection of
176 participating students by a lottery process governed by chance if either the number of
177 participating students or the number of applications for accounts exceeds the funds available for
178 the program; provided, however, that continued participation in the program by participating

179 students shall be prioritized over new applications for accounts. The department shall adopt rules
180 and regulations regarding eligibility and participation of participating schools and service
181 providers, including, but not limited to, timelines that will maximize student and private school
182 participation, the calculation and distribution of accounts to participating students, and the
183 application and approval procedures for participating students, participating schools, and service
184 providers. The department shall develop and utilize a compliance form for completion by
185 participating schools and service providers. The department shall be authorized to require any
186 pertinent information as it deems necessary from participating schools and service providers for
187 the purpose of implementing the program. Participating schools and service providers shall be
188 required to complete such forms and certify their accuracy.

189 (b) No liability shall arise on the part of the department or the commonwealth or of any
190 local board of education based on the award or use of an account awarded pursuant to sections
191 67 to 74, inclusive.

192 (c) The department shall have the authority to conduct or contract for the auditing of
193 accounts and shall, at a minimum, conduct random audits on an annual basis. The department
194 shall have the authority to make any parent or participating student ineligible for the program in
195 the event of misuse of account funds.

196 (d) The department shall have the authority to refer cases of substantial misuse of account
197 funds to the attorney general for investigation if evidence of fraudulent use is obtained.

198 (e) The department may deduct an amount from accounts to cover the costs of overseeing
199 and administering the program, up to a maximum of 3 per cent annually.

200 (f) The department may contract with a qualified nonprofit organization to administer the
201 program or specific functions of the program.

202 (g) The department shall provide parents of participating students with an explanation of
203 the allowable uses of account funds, the responsibilities of parents and the duties of the
204 department.

205 Section 73. (a)(1) In order to allow parents and taxpayers to measure the achievements of
206 the program, the department shall annually approve no fewer than 3 nationally norm-referenced
207 tests that measure student academic progress in math and language arts.

208 (2) Private schools enrolling participating students shall ensure that all participating
209 students are annually administered a nationally norm-referenced test identified by the department
210 or a state-wide assessment administered pursuant to section 1D of chapter 69 of the General
211 Laws, which shall be made available by the resident school system.

212 (3) The department shall develop a process for the annual administration of a nationally
213 norm-referenced test or a state-wide assessment and the collection of results for participating
214 students not enrolled full time in a private school.

215 (b) The results of such norm-referenced tests or state-wide assessments shall be provided
216 to and collected by the department or an organization chosen by the department on an annual
217 basis.

218 (c) Student information shall be reported and collected in a manner that allows the
219 commonwealth to aggregate data by grade level, gender, family income level and race.

220 (d) The department or an organization chosen by the department shall collect information
221 regarding the high school graduation of all participating students.

222 Section 74. (a) The department shall annually file with the clerks of the house of
223 representatives and the senate not later than December 1 a report regarding the program for the
224 previous fiscal year. The report shall also be posted on the department's website.

225 (b) The report shall include, but not be limited to, numbers and demographics of
226 participating students and numbers of participating schools. The report shall also include: (1)
227 participating student performance on nationally norm-referenced tests or state-wide assessments,
228 including aggregate information on long-term performance gains; (2) the level of satisfaction
229 with the program from parents of participating students; (3) the percentage of funds used for
230 each type of qualified education expense included enumerated in section 67; and (4) the fiscal
231 impact to the state and resident school systems of the program, taking into consideration both the
232 impact on revenue and the impact on expenses. The fiscal savings associated with students
233 departing public schools shall be explicitly quantified, even if the public school losing the
234 student or students does not reduce its spending.

235 (c) The report shall apply appropriate analytical and behavioral science methodologies to
236 ensure public confidence in the report.

237 (d) The report shall protect the identity of participating students through whatever means
238 the department deems appropriate, including, but not limited to, by keeping anonymous all
239 disaggregated data and complying with state and federal guidelines for student privacy. The
240 names of participating schools and the number of participating students at each such school shall
241 be included in the report.

242 (e) The state auditor shall audit the program annually. Audit reports, including, but not
243 limited to, any findings and recommendations by the state auditor, shall be included in the first
244 annual report submitted by the department following completion of each audit of the program by
245 the department of the state auditor. Nothing in this subsection shall be construed to limit the
246 authority of the state auditor to conduct an audit at any time.