

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1718 Session of 2013

INTRODUCED BY AUMENT, CLYMER, V. BROWN, ROCK, CUTLER, MURT, GINGRICH, PICKETT, GODSHALL, GROVE, WATSON, HICKERNELL AND C. HARRIS, SEPTEMBER 26, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JANUARY 29, 2014

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for online education
6 initiative; and establishing the Online Course Clearinghouse
7 Restricted Account.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
11 as the Public School Code of 1949, is amended by adding an
12 article to read:

ARTICLE XV-H

ONLINE EDUCATION INITIATIVE

15 Section 1501-H. Definitions.

16 The following words and phrases when used in this article
17 shall have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Account." The Online Course Clearinghouse Restricted

1 Account established under section 1502-H(f).

2 "Clearinghouse." The central online clearinghouse  
3 established under section 1502-H.

4 "Department." The Department of Education of the  
5 Commonwealth.

6 "Home education program." A program conducted in compliance  
7 with section 1327.1.

8 "Institution of higher education." The term includes any of  
9 the following:

10 (1) A community college operating under Article XIX-A.

11 (2) A university within the State System of Higher  
12 Education.

13 (3) The Pennsylvania State University.

14 (4) The University of Pittsburgh.

15 (5) Temple University.

16 (6) Lincoln University.

17 (7) Any other institution that is designated as "State-  
18 related" by the Commonwealth.

19 (8) The Thaddeus Stevens College of Technology.

20 (9) Any accredited private or independent college or  
21 university.

22 (10) Any private licensed school as defined in the act  
23 of December 15, 1986 (P.L.1585, No.174), known as the Private  
24 Licensed Schools Act.

25 "Keystone Exam." An assessment developed or caused to be  
26 developed by the department pursuant to 22 Pa. Code §4.51(f)  
27 (relating to State assessment system).

28 "Nonpublic school." A school, other than a public school,  
29 located within this Commonwealth where a Commonwealth resident  
30 may legally fulfill the compulsory school attendance

1 requirements of this act and that meets the applicable  
2 requirements of Title VI of the Civil Rights Act of 1964 (Public  
3 Law 88-352, 78 Stat. 241).

4 "Online course." A course of study that uses technology in  
5 order to provide a significant portion of its curriculum and to  
6 deliver a significant portion of instruction to students through  
7 the Internet or other electronic means. The term shall include  
8 all services and materials related to such course.

9 "Pennsylvania School Performance Profile." The Pennsylvania  
10 School Performance Profile developed by the Department of  
11 Education pursuant to section 1123.

12 "Provider." An individual or a nonprofit or for-profit  
13 organization, business, institution of higher education or  
14 school entity which has submitted one or more online courses to  
15 the Department of Education for inclusion in the clearinghouse  
16 established under this article.

17 "School entity." A school district, joint school district,  
18 charter school, regional charter school, cyber charter school,  
19 intermediate unit or area vocational-technical school.

20 "Secretary." The Secretary of Education of the Commonwealth.  
21 Section 1502-H. Clearinghouse for online course offerings.

22 (a) Duty to establish.--Within one year of the effective <--  
23 date of this section, the THE department shall establish a <--  
24 central online clearinghouse which shall at a minimum include an  
25 online database of online courses for students enrolled in  
26 grades six through twelve and which clearinghouse shall be  
27 accessible by school entities, nonpublic schools, home education  
28 programs and the general public. In establishing the  
29 clearinghouse the department shall+ ADHERE TO THE FOLLOWING <--  
30 IMPLEMENTATION SCHEDULE:

1           (1) FROM THE DATE OF ESTABLISHMENT OF THE CLEARINGHOUSE  
2 WHICH SHALL BE NO LATER THAN THE COMMENCEMENT OF THE 2015-  
3 2016 SCHOOL YEAR AND IN EACH SCHOOL YEAR THEREAFTER THE  
4 CLEARINGHOUSE SHALL OFFER ONLINE COURSES FOR ALL CONTENT  
5 AREAS ASSESSED BY A KEYSTONE EXAM, AS WELL AS ONLINE COURSES  
6 WHICH PROVIDE SUPPLEMENTARY INSTRUCTION RELATING TO A  
7 KEYSTONE EXAM, FREE OF CHARGE TO SCHOOL ENTITIES. IN  
8 PROVIDING THESE ONLINE COURSES THE DEPARTMENT SHALL DEVELOP,  
9 CAUSE TO BE DEVELOPED OR CONTRACT WITH A PROVIDER FOR ONLINE  
10 COURSES WHICH MEET THE REQUIREMENTS IN SUBSECTION (C) (2). THE  
11 DEPARTMENT MAY UTILIZE ANY EXISTING ONLINE COURSES IT HAS  
12 ALREADY DEVELOPED FOR CONTENT AREAS ASSESSED BY A KEYSTONE  
13 EXAM IN MEETING THIS REQUIREMENT.

14           (2) BEGINNING IN THE 2016-2017 SCHOOL YEAR AND IN EACH  
15 SCHOOL YEAR THEREAFTER THE CLEARINGHOUSE SHALL OFFER THOSE  
16 ONLINE COURSES FROM PROVIDERS THAT HAVE BEEN APPROVED UNDER  
17 SUBSECTION (C) IN ADDITION TO THE COURSES REQUIRED TO BE  
18 OFFERED UNDER PARAGRAPH (1). ONLINE COURSES INCLUDED IN THE  
19 CLEARINGHOUSE FROM PROVIDERS UNDER THIS PARAGRAPH SHALL BE  
20 SUBJECT TO PURCHASE UNDER THE PROVISIONS OF SUBSECTION (F).

21 (B) RESPONSIBILITIES OF THE DEPARTMENT.--THE DEPARTMENT  
22 SHALL:

23           (1) Create an online database that catalogs those online  
24 courses for which an application was approved under  
25 subsection ~~(b)~~ (C) AND WHICH THE DEPARTMENT SHALL DEVELOP, <--  
26 CAUSE TO BE DEVELOPED OR CONTRACT FOR and make the database  
27 available to school entities, nonpublic schools, home  
28 education programs and the general public.

29           (2) Construct the database provided for in paragraph (1)  
30 in such a way as to:

1           (i) Provide information on each online course listed  
2 in the database, including, but not limited to, a  
3 description of the content and applicable grade levels of  
4 each online course.

5           (ii) Provide each school entity, nonpublic school or  
6 home education program which has utilized an online  
7 course from the clearinghouse the opportunity to present  
8 feedback and rate the online course WHICH THE SCHOOL       <--  
9 ENTITY, NONPUBLIC SCHOOL OR HOME EDUCATION PROGRAM HAS  
10 UTILIZED. In providing feedback each school entity,  
11 nonpublic school or home education program may, with  
12 discretion and in compliance with all applicable Federal  
13 and State laws, share on the database personal comments  
14 received by the school entity, nonpublic school or home  
15 education program from parents and students about the  
16 online course.

17           (iii) Display feedback and a cumulative rating of an  
18 online course as a part of the information provided about  
19 the online course.

20           (iv) Facilitate communication between school  
21 entities, nonpublic schools or home education programs  
22 and providers of online courses cataloged in the  
23 clearinghouse to expedite the purchasing of those online  
24 courses.

25           (3) At least annually update the database provided for  
26 in paragraph (1) by adding or removing courses as necessary  
27 under this article.

28           (4) Collect application fees provided for in subsection  
29 ~~(e)~~ (D) and deposit the fees into the account.       <--

30           (5) Utilize the funds in the account, including interest

1 on the funds, to pay expenses incurred by the department in  
2 carrying out its duties relating to the administration of the  
3 clearinghouse.

4 (6) EXPLORE THE POSSIBILITY FOR FEDERAL AND PRIVATE <--  
5 FUNDING TO SUPPORT THE CLEARINGHOUSE.

6 (7) ASSIST SCHOOL DISTRICTS WHICH HAVE BEEN DECLARED TO  
7 BE IN FINANCIAL RECOVERY STATUS UNDER ARTICLE VI-A BY  
8 FACILITATING THE SCHOOL DISTRICTS' SEARCH FOR LOW-COST OR NO-  
9 COST ONLINE COURSE OPTIONS WHICH COULD BE USED TO SATISFY THE  
10 REQUIREMENT IN SECTION 1503-H(A).

11 ~~(b)~~ (C) Application development and approval process.--The <--  
12 department shall develop an application and an application  
13 process that specify the time, form and manner by which  
14 providers may submit their online course offerings to the  
15 department for inclusion in the clearinghouse. The department  
16 shall approve applications under one of the following  
17 procedures:

18 (1) In the case of an online course which does not  
19 provide instruction in a content area assessed by a Keystone  
20 Exam and which is not used to provide supplementary  
21 instruction relating to a Keystone Exam, a provider may  
22 submit an application to the department for approval of the  
23 online course through a certification process. The  
24 application for this process shall include:

25 (i) A notarized affidavit certifying that the online  
26 course being submitted for inclusion in the clearinghouse  
27 is aligned to the State academic standards for education.

28 (ii) Evidence that the online course being submitted  
29 for inclusion in the clearinghouse fulfills at least one  
30 of the following criteria:

1           (A) has been approved by another state for use  
2 by its public schools;

3           (B) has been DEVELOPED BY A PROVIDER THAT HAS <--  
4 BEEN accredited by a national accreditation body  
5 recognized by the United States Department of  
6 Education;

7           (C) has been designed by an intermediate unit in  
8 this Commonwealth and is being utilized by a school  
9 entity; or

10           (D) has been designed by a school district,  
11 joint school district, charter school, regional  
12 charter school, cyber charter school or area  
13 vocational technical school that: <--

14           ~~(I) through the 2015 2016 school year,~~  
15 ~~utilizes the online course or provides the online~~  
16 ~~course to another school entity for its use; or~~

17           ~~(II) beginning in the 2016 2017 school year~~  
18 ~~and in each school year thereafter, has received~~  
19 ~~a score on the Pennsylvania School Performance~~  
20 ~~Profile of at least 80 for the school year~~

21 ~~preceding the application and utilizes the online~~  
22 ~~course or provides the online course to another~~  
23 ~~school entity for its use. VOCATIONAL-TECHNICAL~~ <--  
24 ~~SCHOOL THAT UTILIZES THE ONLINE COURSE OR~~  
25 ~~PROVIDES THE ONLINE COURSE TO ANOTHER SCHOOL~~  
26 ~~ENTITY FOR ITS USE.~~

27           (2) In the case of an online course which provides  
28 instruction in a content area assessed by a Keystone Exam or  
29 which is used to provide supplementary instruction relating  
30 to a Keystone Exam, a provider shall submit an application to

1 the department for approval of the online course through a  
2 department review process. The department shall perform a  
3 review of the online course to confirm that the online course  
4 meets the following criteria:

5 (i) Is aligned to the State academic standards for  
6 education.

7 (ii) Provides a detailed and quality curriculum and  
8 accountability plan.

9 (iii) Includes an assessment component for  
10 determining student proficiency.

11 (iv) Is adapted to the age, development and needs of  
12 the students.

13 (3) In the case of an online course which does not  
14 provide instruction in a content area assessed by a Keystone  
15 Exam and which is not used to provide supplementary  
16 instruction relating to a Keystone Exam, a provider may  
17 voluntarily submit an application to the department for  
18 approval of the online course through the department review  
19 process established in paragraph (2).

20 ~~(e)~~ (D) Fees, application review and approval.--The <--  
21 establishment of fees and the review and approval of  
22 applications shall be as follows:

23 (1) The department may establish a nonrefundable  
24 administrative fee not to exceed \$75 for the purpose of  
25 reviewing each application submitted by a provider under  
26 subsection ~~(b)(1)~~ (C) (1). <--

27 (2) The department may establish a nonrefundable  
28 administrative fee not to exceed \$750 for the purpose of  
29 reviewing each application submitted by a provider under  
30 subsection ~~(b)(2)~~ (C) (2) and (3). <--

1       (3) If, after a review of an application, the department  
2 determines that the application meets the applicable  
3 requirements under subsection ~~(b)~~ (C), the department shall <--  
4 approve the application, notify the provider of the approval  
5 and include the online course in the database provided for  
6 under subsection ~~(a)(1)~~ (B)(1) until such time as the <--  
7 provider requests that the online course be removed or the  
8 department removes the online course under the provisions of  
9 paragraph (5).

10       (4) If, after a review of an application, the department  
11 determines that the application does not meet the applicable  
12 requirements under subsection ~~(b)~~ (C), the department shall <--  
13 withhold approval of the application and notify the provider  
14 of the reason approval was withheld so that the provider may  
15 revise and resubmit the application. Any application that has  
16 been resubmitted for review shall be subject to the  
17 associated administrative fee authorized by this subsection.

18       (5) The department may revisit and review any approved  
19 application at any time and remove the associated online  
20 course from the database provided for under subsection ~~(a)(1)~~ <--  
21 (B)(1) if the department determines that: <--

22           (i) the information contained in the application was  
23 false or misleading or is no longer accurate;

24           (ii) the online course has been materially changed  
25 or revised in such a way that the approval previously  
26 granted for the online course should not apply and the  
27 provider of the online course has not submitted an  
28 application to the department seeking approval of the  
29 revisions to the online course in accordance with the  
30 application and fee requirements of this section; or

1           (iii) the standards applicable to the course have  
2 materially changed in such a way that the approval  
3 previously granted for the online course should not apply  
4 and the provider of the online course has not submitted  
5 an application to the department within 30 days seeking  
6 approval of the online course with revisions to address  
7 the revised standards in accordance with the application  
8 and fee requirements of this section.

9     ~~(d)~~ (E) Appeal.--A determination by the department that an <--  
10 online course which provides instruction in a content area  
11 assessed by a Keystone Exam or which is used to provide  
12 supplementary instruction relating to a Keystone Exam does not  
13 meet the criteria under subsection ~~(b)(2)~~ (C)(2) shall be <--  
14 appealable under 2 Pa.C.S. (relating to administrative law and  
15 procedure).

16     ~~(e)~~ (F) Contracts for the provision of courses cataloged in <--  
17 the clearinghouse.--The following shall apply to contracts  
18 entered into by school entities, nonpublic schools or home  
19 education programs and providers of online courses cataloged in  
20 the clearinghouse:

21           (1) The purchase price AND OTHER PAYMENT AND CONTRACT <--  
22 TERMS of an online course cataloged in the clearinghouse  
23 shall be determined by direct negotiations between a school  
24 entity, nonpublic school or home education program and a  
25 provider.

26           (2) A school entity, nonpublic school or home education  
27 program shall not be required to pay more than 40% 60% of the <--  
28 total purchase price per participating student for an online  
29 course prior to a student's completion of the online course.  
30 Upon a student's completion of an online course, the school

1 entity, nonpublic school or home education program shall pay  
2 the provider the remainder of the total purchase price per  
3 participating student for each student that completed the  
4 online course.

5 (3) IMMEDIATELY UPON COMMENCING NEGOTIATIONS OF THE <--  
6 TERMS OF A CONTRACT FOR AN ONLINE COURSE, A PROVIDER SHALL  
7 PROVIDE THE SCHOOL ENTITY, NONPUBLIC SCHOOL OR HOME EDUCATION  
8 PROGRAM WITH INFORMATION REGARDING REFUND POLICIES AND THE  
9 PROCESS FOR CONTESTING PAYMENT AMOUNTS.

10 ~~(f)~~ (G) Online Course Clearinghouse Restricted Account.-- <--

11 (1) There is hereby established a restricted revenue  
12 account in the General Fund to be known as the Online Course  
13 Clearinghouse Restricted Account.

14 (2) The account shall consist of application fees  
15 collected under subsection ~~(e)~~ (D), fines collected under <--  
16 section 1504-H and any interest generated by funds in the  
17 account.

18 (3) The funds in the account are hereby appropriated to  
19 the department on a continuing basis for the purposes of  
20 paying expenses incurred by the department in carrying out  
21 its duties relating to the administration of the  
22 clearinghouse under this article.

23 Section 1503-H. School entities.

24 (a) General rule.--Beginning in the 2015-2016 2016-2017 <--  
25 school year and continuing each school year thereafter, each  
26 school entity shall MAY offer its students the opportunity to <--  
27 participate in online courses. EACH SCHOOL ENTITY THAT CHOOSES <--  
28 TO OFFER ITS STUDENTS THE OPPORTUNITY TO PARTICIPATE IN ONLINE  
29 COURSES IS ENCOURAGED TO OFFER THE ONLINE COURSE OPPORTUNITY,  
30 according to the following schedule:

1           (1) For the ~~2015-2016~~ 2016-2017 school year through the <--  
2           ~~2017-2018~~ 2018-2019 school year, students in grades nine <--  
3           through twelve.

4           (2) For the ~~2018-2019~~ 2019-2020 school year and each <--  
5           school year thereafter, students in grades six through  
6           twelve.

7           (b) School entity responsibilities.--In providing the  
8           opportunity ~~required by~~ UNDER subsection (a), a school entity <--  
9           may utilize any online course made available through a school  
10           entity through the clearinghouse or through any other source and  
11           shall:

12           (1) DETERMINE HOW INSTRUCTION RELATING TO AN ONLINE <--  
13           COURSE SHALL BE DELIVERED.

14           ~~(1)~~ (2) Establish policies and procedures for student <--  
15           eligibility and participation, including a policy on the  
16           selection of online courses made available to students by the  
17           school entity. The policies and procedures shall be made  
18           accessible to parents and students and posted on the school  
19           entity's publicly accessible Internet website.

20           ~~(2)~~ (3) Ensure that parents and students are made aware <--  
21           of the opportunity for online learning under this article and  
22           make information about available online courses easily  
23           accessible to parents and students.

24 Section 1504-H. Penalties.

25           (a) Participation prohibited.--If the department determines  
26           that a provider intentionally submitted false or misleading  
27           information on an application, the provider shall be prohibited  
28           from participating in the clearinghouse for a period of five  
29           years.

30           (b) Fine.--In addition to the penalty provided under

1 subsection (a), the department may also assess a provider a fine  
2 of up to \$1,000 for each application on which the provider was  
3 found by the department to have intentionally submitted false or  
4 misleading information.

5 (c) Deposit of fines.--Any fines assessed in accordance with  
6 this section shall be deposited into the account.

7 (d) Appeal.--A determination by the department that a  
8 provider intentionally submitted false or misleading information  
9 on an application shall be appealable under 2 Pa.C.S. (relating  
10 to administrative law and procedure).

11 Section 1505-H. Reports.

12 (a) Report on grades nine through twelve.--The secretary  
13 shall submit an initial report to the Governor, the chairman and  
14 minority chairman of the Education Committee of the Senate and  
15 the chairman and minority chairman of the Education Committee of  
16 the House of Representatives AND POST THE REPORT ON THE <--  
17 DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE no later than  
18 June 30, ~~2018~~ 2019. The report shall at a minimum include all of <--  
19 the following information as it pertains to students in grades  
20 nine through twelve:

21 (1) The number of students participating in online  
22 courses.

23 (2) The number of online courses available through the  
24 clearinghouse.

25 (3) A description of the types of online courses  
26 available through the clearinghouse.

27 (4) An assessment of the academic impact of online  
28 courses on the participating students.

29 (5) An assessment of the financial costs incurred by  
30 school districts in offering online courses to students.

1 (6) Recommendations for improving the clearinghouse and  
2 the requirement OPTION in section 1503-H relating to offering <--  
3 students the opportunity to participate in online courses.

4 (b) Report on grades six through eight.--The secretary shall  
5 submit a second report to the Governor, the chairman and  
6 minority chairman of the Education Committee of the Senate and  
7 the chairman and minority chairman of the Education Committee of  
8 the House of Representatives AND POST THE REPORT ON THE <--  
9 DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE no later than  
10 June 30, 2020 2021. The report shall at a minimum include all of <--  
11 information required under subsection (a) as it pertains to  
12 students in grades six through eight.

13 Section 1506-H. Construction.

14 Nothing in this article shall be construed:

15 (1) To prevent a school entity from establishing and  
16 offering its own online course or program.

17 (2) TO PREVENT A SCHOOL ENTITY OR SCHOOL ENTITY <--  
18 PERSONNEL FROM:

19 (I) SUPPLEMENTING AN ONLINE COURSE;

20 (II) PROVIDING ASSISTANCE, TUTORING OR ENRICHMENT TO  
21 A STUDENT ENROLLED IN AN ONLINE COURSE;

22 (III) USING THE CONTENT OF AN ONLINE COURSE IN  
23 INSTRUCTION DELIVERED BY SCHOOL DISTRICT PERSONNEL; OR

24 (IV) MONITORING A STUDENT'S PROGRESS AND ATTENTION  
25 TO INSTRUCTION IN AN ONLINE COURSE.

26 ~~(2)~~ (3) To require a student to participate in an online <--  
27 course offered by a school entity in compliance with this  
28 article.

29 ~~(3)~~ (4) To supersede or preempt the rights, remedies and <--  
30 procedures afforded to school employees or labor

1 organizations under Federal or State law, including the act  
2 of July 23, 1970 (P.L.563, No.195), known as the Public  
3 Employe Relations Act, or any provision of a collective  
4 bargaining agreement negotiated between a school entity and  
5 an exclusive representative of the employees in accordance  
6 with that act.

7 Section 1507-H. Regulations.

8 The State Board of Education may promulgate regulations  
9 pursuant to the act of June 25, 1982 (P.L.633, No.181), known as  
10 the Regulatory Review Act, necessary to establish approval  
11 periods for courses approved under section 1502-H(b) and to  
12 implement this article.

13 Section 2. This act shall take effect in 60 days.