

1 SB383
2 166471-2
3 By Senator Brewbaker
4 RFD: Education and Youth Affairs
5 First Read: 16-APR-15

1 SB383

2
3
4 ENROLLED, An Act,

5 Relating to the purchase of school textbooks; to
6 amend Sections 16-36-62, 16-36-64 and 16-36-65, Code of
7 Alabama 1975; to add Sections 16-36-60.1 and 16-36-71 to the
8 Code of Alabama 1975; to establish qualified depositories for
9 textbooks, which would be facilities that receive textbook
10 orders from boards of education, store sufficient quantities
11 of textbooks, and distribute textbooks to local school
12 systems; to prohibit a qualified depository for textbooks from
13 charging a board of education for its services, but would
14 authorize it to charge a publisher a fee for its services; to
15 prohibit the price of any textbook to exceed the costs already
16 prescribed by law; to clarify that textbooks include digital
17 textbooks for the purposes of public school textbook
18 purchasing; and to create a Digital Depository Study
19 Commission to examine the application of a depository to
20 digital material.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 16-36-62, 16-36-64 and 16-36-65,
23 Code of Alabama 1975, are amended to read as follows:

24 "§16-36-62.

1 "(a) A local textbook committee or committees shall
2 be appointed by each separate local board of education. The
3 number, size, and composition, which shall include parents, of
4 the committee or committees shall be determined by each local
5 board of education. A copy of local school board policies in
6 regard to local textbook committees shall be kept on file by
7 each local superintendent. Names of each person serving on a
8 local textbook committee shall also be kept on file by each
9 local superintendent.

10 "(b) In order to qualify as a member of the
11 committee, each member of the local textbook committee and its
12 secretary shall prepare an affidavit to be filed with the
13 local board of education within 10 days after notice of the
14 member's appointment stating each of the following:

15 "(1) The member agrees to discharge faithfully all
16 the duties imposed upon him or her as a member or as secretary
17 of the textbook committee.

18 "(2) The member has no interest, directly or
19 indirectly, in any contract that may be made under this
20 article for the purchase of textbooks.

21 "(3) The member has no interest as author, as
22 associate author, as publisher, or as a representative of the
23 author or publisher of any textbooks.

24 "(4) The member has no pecuniary interest, directly
25 or indirectly, in the business or profits of any person, firm,

1 or corporation engaged in manufacturing, publishing, or
2 selling textbooks.

3 "(5) The member agrees not to accept any emolument
4 or promise of future reward of any kind from any publisher of
5 textbooks, the publisher's agent, or anyone interested in or
6 intending to bias the member's judgment in any way in the
7 selection of any textbook for adoption.

8 "(c) Members shall serve for terms of one year.

9 "(d) The local textbook committee shall meet on call
10 of the chairperson of the local board of education for the
11 purpose of recommending textbooks to the local board of
12 education from the list of adoptions by the State Board of
13 Education or from a list submitted to the committee for
14 consideration by the local superintendent or his or her
15 designee, or from both lists. Textbooks which have been
16 rejected by the State Board of Education shall not be
17 considered for future adoption by the local board of
18 education, except for the length of an existing local contract
19 approved by the state superintendent. The recommendations of a
20 local textbook committee shall be by majority vote for each
21 textbook. No textbook shall be used in any public school of
22 this state unless recommended by a local textbook committee
23 and, upon the recommendation of a local superintendent,
24 adopted by the local board of education.

1 "(e) The adoption of a textbook by a local board of
2 education shall be by majority vote of the local board of
3 education and shall be for a period determined by the State
4 Superintendent of Education. Not later than 30 days after the
5 date of the local adoption, the local superintendent of
6 education shall file a report with the State Superintendent of
7 Education listing the title, the name of the author, the
8 publisher, and the date of adoption of the textbook with
9 verification to the state superintendent that all procedures
10 described in subsection (d) have been followed. This procedure
11 shall apply each time a textbook is adopted for use in a local
12 school or school system.

13 "(f) Publishers shall furnish samples of all
14 state-adopted textbooks to each local board of education for
15 evaluation by the local textbook committee. One copy of each
16 textbook adopted by the local textbook committee shall be
17 retained by the local board of education as an official
18 sample. All samples not adopted by the local boards shall be
19 returned to the publishers at the expense of the publishers,
20 and samples of those books adopted shall become the property
21 of the local boards of education. If the publisher fails to
22 reclaim samples of nonadopted books within 90 days, the sample
23 books shall become the property of the local board of
24 education.

1 "(g) Any textbook publisher that solicits a local
2 textbook committee or local board to adopt their textbooks and
3 has not participated in the state adoption process shall
4 provide the reason for not participating in the state adoption
5 process in writing to the local textbook committee and local
6 board at the time of the solicitation. A copy of the document
7 submitted to the local textbook committee and the local board
8 of education shall also be sent to the State Superintendent of
9 Education.

10 "(h) Publishers shall be required to use a qualified
11 depository in Alabama for distribution of state or local
12 adopted textbooks if requested to do so by the local board of
13 education and shall have a sufficient supply of the adopted
14 textbooks on deposit at a qualified depository for
15 distribution or sufficient ability to provide access to
16 digital textbooks as ordered through a qualified depository.
17 Nothing in this subsection shall preclude publishers from
18 selling textbooks to the local board of education directly or
19 through means other than a qualified depository for textbooks,
20 but a publisher may not refuse to sell through a qualified
21 depository. Regardless of whether a qualified depository is
22 used in a transaction, the prices charged by a publisher shall
23 not exceed the prices prescribed in subsection (c) of Section
24 16-36-64.

25 "§16-36-64.

1 "(a) No contract shall be made pursuant to this
2 article for the purchase of textbooks rejected by the State
3 Board of Education. The only contracts entered into by the
4 State Board of Education pursuant to this article shall be for
5 textbooks considered by the State Textbook Committee and
6 adopted by the State Board of Education as provided for in
7 this article.

8 "(b) In addition to all other laws which forbid the
9 use of textbooks in the public schools of the state by authors
10 who are members of the Communist Party or members of communist
11 front organizations, all contracts with publishers for
12 textbooks made pursuant to this article shall stipulate that
13 the author or authors of such book or books is not a member of
14 the Communist Party or known advocate of communism or Marxist
15 socialism and is not a member of a communist front
16 organization.

17 "(c) The maximum price at which the State Board of
18 Education shall contract for local boards of education to pay
19 f.o.b. the local board of education for any books to be used
20 in the public schools of this state, after all discounts have
21 been deducted, shall not exceed the minimum price at which the
22 publisher sells such books in wholesale quantities f.o.b., the
23 publisher's publishing house, after all discounts have been
24 deducted. Any contract made for the purchase of books for use

1 in the public schools of this state at a price higher than
2 such determined maximum shall be void.

3 "(d) Every contract entered into under this article
4 by the State Board of Education on behalf of the local boards
5 of education and any publisher or publishing company shall
6 contain a provision that the publisher covenants and agrees to
7 all of the following:

8 "(1) The publisher is not furnishing under contract
9 executed after the first day of January of the year in which
10 the contract becomes effective, to any state, county, or
11 school district in the United States the textbooks embraced in
12 the contract at a price below the price stipulated in the
13 contract.

14 "(2) If, at any time during the period of the
15 contract, the textbooks named in the contract shall be
16 contracted for at a price to any state, county, or school
17 district in the United States, lower than the price agreed
18 upon in the contract, then that lower price shall become the
19 contract price between the State Board of Education on behalf
20 of the local board of education and the publisher named in the
21 contract.

22 "(3) If, at any time during the period of the
23 contract, any editions of the textbooks named in the contract
24 substantially similar to the official copy on file in the
25 office of the State Superintendent of Education shall be

1 contracted for at a lower price with any state, county, or
2 school district in the United States, the State Board of
3 Education may at its option substitute for the edition
4 contracted for the substantially similar edition at the lower
5 price.

6 "(4) If the publisher offers any free or discounted
7 ancillary items or services, or both, to any local board of
8 education or any public school, the publisher shall offer the
9 same free or discounted ancillary items or services, or both,
10 to all local boards of education or schools under the same or
11 similar circumstances.

12 "(e) If the State Board of Education determines that
13 any book or books contracted for are being sold at a lower
14 contract price in any other state than the price for which the
15 book or books are being sold to Alabama, the contract shall be
16 forfeited. Each contract shall provide that in the event of
17 violation of this pricing agreement, the contractor shall
18 return all money collected for the books and also forfeit the
19 book or books to the respective local boards of education,
20 this being the agreed measure of damages stipulated to have
21 been suffered by the State Board of Education and the local
22 boards of education. Action may be brought in the name of the
23 state on the bond of the contractor for all losses sustained,
24 and any sum recovered shall be deposited to the credit of the
25 Education Trust Fund.

1 "(f) Contracts with textbook publishers shall
2 include all of the following:

3 "(1) A provision that local boards of education
4 shall be permitted to purchase with local funds textbooks for
5 free distribution at the same price at which the local boards
6 of education are permitted to purchase such books with state
7 funds.

8 "(2) The publishers shall replace defective or
9 substandard books without cost to the purchaser.

10 "(3) Provisions for the time of delivery, penalties
11 for delay in delivery, and other provisions as in the judgment
12 of the State Board of Education will insure prompt delivery of
13 all textbooks at the lowest possible price.

14 "(4) The publishers shall be required to use a
15 qualified depository in Alabama for distribution of state or
16 local adopted textbooks if requested to do so by the
17 contracting board of education and shall have a sufficient
18 supply of the adopted textbooks on deposit at a qualified
19 depository for distribution or sufficient ability to provide
20 access to digital textbooks as ordered through a qualified
21 depository. Nothing in this subdivision shall preclude
22 publishers from selling textbooks to the State Board of
23 Education directly or through means other than a qualified
24 depository for textbooks, but a publisher may not refuse to
25 sell through a qualified depository. Regardless of whether a

1 qualified depository is used in a transaction, the prices
2 charged by a publisher shall not exceed the prices prescribed
3 in subsection (c).

4 "(g) In the case of the failure of any contractor to
5 furnish the books as provided in this contract, the bond of
6 the publisher shall be forfeited and the State Board of
7 Education may contract for other books as needed. The State
8 Board of Education may drop any textbook by giving written
9 notice to the publisher at least 90 days in advance and upon
10 the recommendation of the State Textbook Committee to make
11 another adoption instead of the textbook.

12 "(h) The State Board of Education, upon the
13 recommendation of the State Superintendent of Education, may
14 renew or extend contracts for no less than one year nor more
15 than two years. This provision shall be made a part of the
16 publishers contract, and the State Board of Education may
17 exercise the provision by notifying the publisher in advance.

18 "(i) The State Board of Education may include any
19 additional regulations in the contract form that the State
20 Board of Education deems best for the administration of this
21 article, and any regulations included in the contract form and
22 accepted by the publisher shall be construed as a part of this
23 article. Publishers shall be required to comply with
24 additional rules and regulations approved by the State Board
25 of Education as if they were included in this article.

1 "(j) The State Superintendent of Education shall
2 preserve in the offices of the State Department of Education
3 or in another suitable location, one copy of each book which
4 has been made the basis of any contract as the standard
5 specimen of quality and excellence to be maintained in such
6 books during the period of the contract.

7 "§16-36-65.

8 "~~(a) Upon receipt of requisitions from the State~~
9 ~~Superintendent of Education, the state Purchasing Agent shall,~~
10 ~~in accordance with existing statutes and procedures governing~~
11 ~~state purchases, issue statewide purchase contracts upon which~~
12 ~~local boards of education shall issue local purchase orders to~~
13 ~~the publishers who shall ship the books ordered to the local~~
14 ~~board of education, shipping charges prepaid.~~

15 "~~(b)~~ (a) The State Department of Education in
16 conjunction with the state Purchasing Agent shall furnish
17 contracts from which state-adopted textbooks for the pupils
18 and teachers in classrooms and schools operated under the
19 jurisdiction and supervision of the Alabama Department of
20 Mental Health ~~and Mental Retardation~~ can be purchased. These
21 purchases shall be made from appropriations to the state
22 Department of Mental Health ~~and Mental Retardation~~. The State
23 Board of Education may make and enforce regulations for the
24 proper care and accounting for such textbooks.

1 "~~(c)~~ (b) The State Department of Education in
2 conjunction with the state Purchasing Agent shall furnish
3 contracts from which state-adopted textbooks for the pupils
4 and teachers in classrooms and schools operated under the
5 jurisdiction of the Alabama Institute for Deaf and Blind can
6 be purchased. These purchases shall be made from
7 appropriations to the Alabama Institute for Deaf and Blind.
8 The State Board of Education may make and enforce regulations
9 for the proper care and accounting for these textbooks and
10 shall not be required to purchase and furnish special books or
11 materials for the deaf and blind.

12 "~~(d)~~ (c) The State Department of Education in
13 conjunction with the state Purchasing Agent shall furnish
14 contracts from which state-adopted textbooks for the pupils
15 and teachers in classrooms and schools operated by the
16 Department of Youth Services can be purchased. The cost of the
17 textbooks provided herein shall be paid from appropriations to
18 the Department of Youth Services. The State Board of Education
19 may make and enforce regulations for the proper care and
20 accounting for these textbooks and shall not be required to
21 purchase and furnish any special books or materials under this
22 section.

23 "~~(e)~~ (d) The State Board of Education shall have no
24 power or authority to enter into any contract or arrangement
25 for furnishing textbooks or providing a depository for

1 textbooks or delivering textbooks, but shall have the power
2 and authority to enter into any contract or arrangement
3 requiring the use of a qualified depository for textbooks."

4 Section 2. Sections 16-36-60.1 and 16-36-71 are
5 added to the Code of Alabama 1975, to read as follows:

6 §16-36-60.1.

7 For the purposes of this article, the following
8 words shall have the following meanings:

9 (1) QUALIFIED DEPOSITORY FOR TEXTBOOKS or QUALIFIED
10 DEPOSITORY. A facility in the state responsible for receiving
11 orders for, storing of, and distribution of textbooks pursuant
12 to the provisions of Section 16-36-71.

13 (2) TEXTBOOK. Includes digital textbooks, as defined
14 in Section 16-16B-2. Digital textbooks shall be recommended,
15 adopted, and purchased in the same manner as provided for
16 textbooks under this article.

17 §16-36-71.

18 (a) A qualified depository of textbooks shall be
19 responsible for receiving textbook orders from the State Board
20 of Education or local boards of education, storing sufficient
21 quantities of textbooks, and distributing textbooks in
22 accordance with this article.

23 (b) A qualified depository shall do all of the
24 following:

1 (1) Have sufficient warehouse space to maintain
2 sufficient stock.

3 (2) Be located within the state.

4 (3) Have the financial capacity to provide steady
5 and continuous operations upon which the State Board of
6 Education and local boards of education can rely. The
7 financial capacity may be maintained in a qualified depository
8 or in another member of the same Alabama affiliated group, as
9 that term is defined in Section 40-18-39.

10 (c) For the services provided herein, a qualified
11 depository may not charge the State Board of Education or a
12 local board of education, but rather shall sell the textbooks
13 in accordance with the prices prescribed in subsection (c) of
14 Section 16-36-64. A qualified depository may negotiate
15 contracts directly with publishers of textbooks to charge a
16 fee to the publishers.

17 (d) It shall be the responsibility of the publisher
18 to ensure that a sufficient stock of textbooks is maintained
19 at a qualified depository. Upon the failure of any publisher
20 to carry a sufficient stock to meet all of the immediate
21 demands of the State Board of Education and local boards of
22 education as required by a contract made under this article,
23 the contracting board of education may recover on the bond
24 given by the publisher for the full value of the books not

1 furnished as required by the contract and terminate the
2 contract.

3 Section 3. (a) There is hereby established a Digital
4 Depository Study Commission which shall consist of 12 members
5 to be appointed as follows:

6 (1) Two members to be appointed by the Governor.

7 (2) Two members to be appointed by the Speaker of
8 the House of Representatives, one whom shall be a
9 representative of a qualified depository.

10 (3) One member to be appointed by the President Pro
11 Tempore of the Senate.

12 (4) One member to be appointed by the Lieutenant
13 Governor.

14 (5) Two members to be appointed by the State
15 Superintendent of Education.

16 (6) One member to be appointed by the Executive
17 Director of the Alabama Association of School Business
18 Officials or his or her designee.

19 (7) One member to be appointed by the Executive
20 Director of the School Superintendents of Alabama or his or
21 her designee.

22 (8) One member to be appointed by the Executive
23 Director of the Alabama Association of Schools Boards or his
24 or her designee.

1 (9) One member to be appointed by the President of
2 the Association of American Publishers or his or her designee.

3 (b) The commission shall meet at least four times
4 prior to the start of the 2016 Regular Session to examine the
5 application of a depository to digital material. The
6 commission shall present to the Legislature a report that
7 proposes a plan to make changes to this act if necessary.

8 Section 4. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB383

Senate 30-APR-15

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 28-MAY-15

Senate concurred in House amendment 28-MAY-15

By: Senator Brewbaker