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4 SYNOPSIS:

5 This bill would direct the Department of Revenue
6 to establish education savings accounts for the parent
7 of an approved, participating student to offset the
8 costs of qualifying educational expenses. The bill
9 would establish various program requirements, including
10 provisions to prevent fraud and other misuse of program
11 funds. The ESAs would first be available for the
12 2025-2026 academic year.

13 The ESAs would be funded through the proceeds of
14 a new, refundable income tax credit made available to
15 certain parents of an eligible student. For the years
16 beginning January 1, 2025, and January 1, 2026, the
17 parent of an eligible student could receive the credit
18 if his or her family had an adjusted gross income not
19 exceeding 300 percent of the federal poverty level for
20 the preceding year. For the years beginning on or after
21 January 1, 2027, the credit could be available to any
22 parent of an eligible student. The annual amount of the
23 credit would be capped at \$7,000 for participating
24 students enrolled in a participating school. For
25 participating students not enrolled in a participating
26 school, the annual amount of the credit would be capped
27 at \$2,000, with a cap of \$4,000 cap for the family.

28 The bill would establish a new fund in the State

Treasury to be known as the CHOOSE Act Fund. Annually, the bill would require the Legislature to appropriate to this fund not less than \$100 million. In allocating the newly established tax credits, the Department of Revenue would give priority to students already participating in the program and their siblings. The Department would also give priority based on the family's adjusted gross income as a percentage of the federal poverty level. The first 500 tax credits would be reserved for the parent of an eligible student who is a special-needs student.

A BILL

TO BE ENTITLED

AN ACT

Relating to education; to enact the CHOOSE Act; to establish a refundable income tax credit to offset the cost of paying educational expenses; to direct the Department of Education to establish education savings accounts through which students can access funds to direct the education of participating students through education service providers and participating schools; to establish CHOOSE Act program requirements for parents of participating students, education service providers, and participating schools; to specify the duties of the Department of Revenue in administering the CHOOSE Act program; to prevent fraud or

57 other misuse of CHOOSE Act program funds; to establish the
58 CHOOSE Act fund.

59 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

60 Section 1. This act shall be known as the Creating Hope
61 and Opportunity for Our Students' Education Act of 2024, or
62 the CHOOSE Act.

63 Section 2. As used in this act, unless otherwise
64 specified or unless the context requires otherwise, the
65 following terms shall have the following meanings:

66 (1) ACADEMIC YEAR. The 12-month period beginning on
67 July 1 and ending on the following June 30.

68 (2) DEPARTMENT. The Alabama Department of Revenue.

69 (3) EDUCATION SAVINGS ACCOUNT or ESA. An account in
70 which funds are deposited by the department for the parent
71 of a participating student to pay qualifying expenses to an
72 education service provider.

73 (4) EDUCATION SERVICE PROVIDER. A school (including a
74 participating school), organization, vendor, or individual
75 other than the parent of the eligible student approved by
76 the department to provide educational goods and services,
77 including goods and services designed for use by homeschool
78 students, to eligible students.

79 (5) ELIGIBLE STUDENT. A child aged 5 to 19 years who
80 resides in this state and who has not graduated high school
81 or a child aged 5 to 21 years who resides in this state and
82 qualifies for services under the Individuals with

83 Disabilities Education Act (IDEA) of 1975 or Section 504 of
84 the Rehabilitation Act of 1973. The term does not include a
85 student receiving scholarship funds or a tax credit under
86 the Alabama Accountability Act of 2013, Chapter 6D of Title
87 16, Code of Alabama 1975. The term does not include a child
88 who is enrolled in a private school as defined in section
89 16-28-1 that is not a participating school. The term does
90 not include a child who is not lawfully present in the
91 United States.

92 (6) PARENT. A resident of this state who is the parent,
93 guardian, custodian, or other individual with authority to
94 act on behalf of an eligible student. The term does not
95 include an individual who is not lawfully present in the
96 United States.

97 (7) PARTICIPATING SCHOOL. A state of Alabama education
98 service provider that is an accredited public K-12 school or
99 an accredited private school, including church, parochial,
100 or religious school, that provides education to K-12
101 students and that is approved by the department. The school
102 must be accredited, or in the process of obtaining
103 accreditation as determined by the department, by one of the
104 six regional accrediting agencies and/or the National
105 Council for Private School Accreditation, Cognia, the
106 American Association of Christian Schools, the Alabama

107 Christian Education Association, the Alabama Independent
108 School Association, or one of their partner accrediting
109 agencies.

110 (8) PARTICIPATING STUDENT. An eligible student who is
111 approved by the department to participate in the program and
112 receives services from an education service provider.

113 (9) PROGRAM. The Creating Hope and Opportunity for Our
114 Students' Education (CHOOSE) Act Tax Credit program
115 established by this act.

116 (10) QUALIFYING EDUCATIONAL EXPENSES. Expenses incurred
117 by a parent of an eligible student in one or more of the
118 following categories:

119 a. Tuition and fees at a participating school.
120 b. Textbooks.
121 c. Fees for after-school or summer education programs
122 provided by a participating school.

123 d. Private tutoring.
124 e. Curricula or instructional materials.
125 f. Tuition and fees for nonpublic online learning
126 programs.

127 g. Educational software and applications.
128 h. Fees for standardized and nationally recognized
129 assessments, including college admissions tests and advanced
130 placement examinations and related preparatory courses.

131 i. Education services for students with disabilities
132 from a licensed or accredited practitioner or education
133 service provider.

134 j. Contracted services provided by a public school
135 district including specific classroom instruction.

136 (11) RESIDENT SCHOOL DISTRICT. The public school
137 district in which an eligible student resides.

138 (12) SPECIAL-NEEDS STUDENT. A student who qualifies for
139 services under the Individuals with Disabilities Education Act
140 (IDEA) of 1975 or Section 504 of the Rehabilitation Act of
141 1973.

142 Section 3. (a) To offset the cost of qualifying
143 educational expenses, there is hereby established a
144 refundable income tax credit subject to the provisions of
145 this act and to the availability of monies in the CHOOSE Act
146 Fund established pursuant to section 8 of this act.

147 (b) (1) For the years beginning on January 1, 2025, and
148 January 1, 2026, the credit shall be available to the parent
149 of an eligible student whose family had an adjusted gross
150 income not exceeding 300 percent of the federal poverty
151 level for the preceding tax year. The credit shall be
152 awarded in an amount specified in subsection (c) and subject
153 to the priorities specified in subsection (d).

154 (2) For the years beginning on or after January 1,
155 2027, the credit shall be available to any parent of an

156 eligible student. The credit shall be awarded in an amount
157 specified in subsection (c) and subject to the priorities
158 specified in subsection (d).

159 (c) (1) For participating students enrolled in a
160 participating school, the annual amount of the credit shall
161 be \$7,000 or the actual cost of the qualifying educational
162 expenses, whichever is less.

163 (2) For participating students not enrolled in a
164 participating school, the annual amount of the credit shall
165 be \$2,000 or the actual cost of the qualifying educational
166 expenses, whichever is less; provided that the aggregate
167 amount of all credits awarded to a parent for such students
168 shall not exceed \$4,000.

169 (d) In allocating the tax credits made available
170 pursuant to subsection (b), the department shall give
171 priority first to participating students and siblings of
172 participating students, then to participating students who
173 are dependents of active duty service members enrolled in or
174 assigned to a priority school as defined in section 16-6D-4,
175 and then based on the family's adjusted gross income as a
176 percentage of the federal poverty level; provided that the
177 department shall reserve the first 500 tax credits for the
178 parent of an eligible student who is a special-needs
179 student.

(e) If the department awards a tax credit to a parent for one eligible student, the department shall award additional tax credits to the parent for any other eligible student in the family who is a sibling of the eligible student for whom a tax credit was previously awarded.

Nothing in this act shall be construed to authorize the award of more than one tax credit per participating student.

(f) Failure to provide required documentation for the tax credits provided in this section shall result in the automatic denial of the respective tax credit.

(g) Amounts received pursuant to this section do not constitute taxable income to the parent of a participating student or to the participating student. The refundable income tax credit provided under this section shall not be subject to offset or debt collection against any liability.

(h) A participating student who is a special-needs student remains eligible to receive special education or similar services from the resident school district as provided by federal or state law.

Section 4. (a) To participate in the program, a parent of an eligible student must do all of the following:

(1) Submit to the department any information required by the department for implementation of the program, including the name of the eligible student.

(2) Agree to claim the credit only for qualified expenses to provide an education for an eligible student.

(3) Agree that, to the best of the parent's knowledge, no other person is claiming a credit for the eligible student.

(4) Agree not to claim the credit for an eligible student who enrolls as a full-time student in a public school district unless the public school is a participating school within the meaning of this act and the public school charges tuition for the participating student.

(5) Agree to assume the full financial responsibility for the education of the participating student, including the balance of any expense incurred at an education service provider.

(6) Agree to comply with rules adopted by the department for the administration of the program.

(b) Fulfillment of the agreements made pursuant to subsection (a) is a requirement of continuing approval as a participating student. Failure to fulfill the agreements made pursuant to subsection (a) shall constitute grounds for the department, in its discretion, to revoke, recover, suspend, or deny the credit otherwise made available pursuant to this act.

227 Section 5. (a) To be approved by the department, an
228 education service provider must do all of the following:

229 (1) Submit to the department any information required by
230 the department for implementation of the program, including
231 its address, contact information, and a summary of each
232 program or service it proposes to provide to participating
233 students.

234 (2) Agree not to refund, rebate, or share any portion
235 of program funds with a parent or student in any manner.
236 Program funds may only be used for qualifying expenses.

237 (3) Agree to submit annual reports to the department
238 concerning implementation of the program, including the
239 number of students participating, services provided, and
240 other similar information requested by the department.

241 (4) Agree not to discriminate based on grounds of race,
242 color, or national origin in the provision of its services.

243 (5) Agree to document amounts received for all
244 qualifying expenses in a manner prescribed by the
245 department.

246 (6) Agree to comply with the Family Educational Rights
247 and Privacy Act, 20 U.S.C. § 1232g.

248 (7) Agree not to discriminate against participating
249 students in setting tuition or fees.

(b) To be approved by the department, a participating school must do all of the following, in addition to satisfying the requirements of subsection (a):

(1) Agree to comply with all applicable health and safety laws or codes.

(2) Hold a valid occupancy permit if required by the municipality where the school is located.

(3) Agree to comply with the Alabama Child Protection Act of 1999, Chapter 22A of Title 16, Code of Alabama 1975.

(4) Provide financial statements that demonstrate, to the satisfaction of the department, the school's ability to adequately provide for participating students' continued receipt of educational services in the event the school suffers a financial failure. Alternatively, the school may file with the department a surety bond payable in an amount determined by the department to be equal to the aggregate amount of the program funds expected to be paid during the academic year from participating students enrolled at the participating school.

(5)a. Require all participating students receiving program funds to take a standardized assessment aligned to the curricula of the participating school, a nationally norm-referenced achievement assessment, or a nationally recognized aptitude assessment of the participating school's

274 choice. Students with disabilities for whom testing is not
275 appropriate are exempt from this requirement.

276 b. Provide the parents of each participating student
277 who was tested with a copy of the results of the tests on an
278 annual basis, beginning with the first year of testing.

279 c. Provide the department with school-level test
280 results for participating students, provided that no party
281 shall disaggregate data to a level that could identify the
282 academic level of individual students.

283 (6) Require participating students to make payments of
284 tuition and other fees periodically on a schedule to be
285 established by the department.

286 (7) Inform the department of a participating student's
287 graduation, withdrawal from the school, misuse of program
288 funds, or other event affecting the student's eligibility
289 for the program.

290 (c) Fulfillment of the agreements made pursuant to
291 subsections (a) or (b) is a requirement of continuing
292 approval as an education service provider or participating
293 school. Failure to fulfill the agreements made pursuant to
294 subsections (a) or (b) shall constitute grounds for the
295 department, in its discretion, to suspend or disqualify the
296 education service provider or participating school from
297 receiving program funds.

298 (d) A public school that becomes an education service
299 provider under this act shall be given maximum flexibility
300 to accommodate participating students and may create a
301 process and establish requirements for accepting, selecting,
302 or limiting the number of allowable participating students
303 who are not assigned to that public school.

304 (e) No provision of this act shall be construed to
305 require any public school, school system, or school district
306 or any nonpublic school, school system, or school district
307 to enroll any student.

308 (f) The Legislature finds and declares that education
309 service providers, including participating schools, that
310 accept program funds shall be given the maximum freedom
311 possible to provide for the educational needs of students,
312 consistent with state and federal law. To that end, unless
313 clear from the text of this act, no provision of this act
314 shall be construed to limit the independence or autonomy of
315 any education service provider; to act as a restriction,
316 direction, or mandate regarding instructional content or
317 curriculum provided by any education service provider; to
318 require an education service provider to alter its creed,
319 practices, admissions policies, hiring policies, codes of
320 conduct for employees or students, tuition, or fees; to
321 expand the regulatory authority of the state, its officers,

322 or any school district; or to otherwise deprive or diminish
323 the protections for nonpublic schools, including nonpublic
324 schools with a religious affiliation, available under any
325 source of existing law, including section 16-1-11.1 or
326 section 16-1-11.2, Code of Alabama 1975, or Executive Order
327 No. 733 issued by the Governor on January 20, 2023.

328 (g) A resident school district shall provide a
329 participating school or other education service provider that
330 has admitted an eligible student under the program with the
331 complete copy of the student's school records consistent with
332 the Family Educational Rights and Privacy Act of 1974, 20
333 U.S.C. § 1232g.

334 Section 6. (a) It is the intent of the Legislature that
335 educational savings accounts be made available to parents of
336 participating students beginning with the 2025-2026 academic
337 year.

338 (b) The department shall administer the program with
339 respect to parents of eligible students by doing all of the
340 following:

341 (1) Create and disseminate a standard application form
342 for parents seeking to participate in the program.

343 (2) Establish and publicize a deadline by which
344 application forms must be submitted to the department.

345 (3) Receive applications and approve applications for
346 parents of eligible students to whom the department has

347 awarded a tax credit under section 3 of this act and who
348 meet the requirements of section 4(a) of this act.

349 (4) Create an ESA for the parent of the participating
350 student and make deposits of the amount of any tax credits
351 awarded under section 3.

352 (5) Establish a system by which a parent of a
353 participating student can make periodic payments from ESAs
354 to an education service provider or participating school
355 including by electronic or online fund transfer. Nothing in
356 this act shall be construed as authorizing the payment of
357 program funds directly to a participating student or his or
358 her parent.

359 (6) Provide to parents of participating students a
360 written explanation of qualifying expenses, their
361 responsibilities under the program, the duties and
362 responsibilities of the department, and the provisions of
363 this act related to misuse of program funds.

364 (7) At the expiration of an academic year, remit any
365 unused ESA funds to the Choose Act Fund established pursuant
366 to section 8 of this act.

367 (8) Comply with the Family Educational Rights and
368 Privacy Act, 20 U.S.C. § 1232g.

(c) The department shall administer the program with respect to participating schools and education service providers by doing all of the following:

(1) Create and disseminate a standard application form for a person or entity to establish eligibility as a participating school or education service provider.

(2) Establish and publicize a deadline by which application forms must be submitted to the department.

(3) Receive applications and approve applications for participating schools and education service providers that meet the requirements of section 5(a) or 5(b) of this act.

(4) Provide to education service providers and participating schools a written explanation of qualifying expenses, their responsibilities under the program, and the duties and responsibilities of the department.

(5) Maintain and routinely update the list of approved participating schools and education service providers on the department's website.

(d) The department shall make available on its website aggregate information regarding the number and amount of credits claimed each tax year pursuant to this act.

(e) The department shall adopt and enforce rules necessary to implement this act subject to the Alabama Administrative Procedure Act, Chapter 22, Title 41, Code of

393 Alabama 1975. Notwithstanding the Alabama Administrative
394 Procedure Act, the department shall adopt emergency rules
395 necessary to promptly and effectively begin administration
396 of the program. Any rule necessary for initial
397 implementation of the program may be adopted as an emergency
398 rule, which shall remain effective for as long as necessary
399 to facilitate initial implementation of the program.

400 (f) The department may enter into contracts for the
401 implementation of all or part of this act. Any procurement
402 necessary for the initial implementation of the program
403 shall be considered a special procurement under Section 137,
404 Chapter 4, Title 41, Code of Alabama 1975.

405 (g) For purposes of administering the program, the
406 department may seek federal verification of an individual's
407 immigration status with the federal government pursuant to 8
408 U.S.C. § 1373(c). The department shall not attempt to
409 independently make a final determination of whether any
410 individual is lawfully present in the United States.

411 Section 7. (a) To identify fraud or other potential
412 misuse of program funds, the department shall do all of the
413 following:

414 (1) Conduct random financial audits of ESAs and
415 education service providers, including participating
416 schools. The random financial audits shall be conducted with

417 sufficient frequency to adequately deter misuse of program
418 funds.

419 (2) Establish and publicize means for citizens to
420 report fraud or other potential misuse of program funds,
421 including websites and a toll-free phone number.

422 (b) To address instances of suspected fraud or other
423 misuse of program funds, the department shall have all of
424 the following powers:

425 (1) The department may refer a case to local or state
426 law enforcement agencies for further investigation. The
427 program established by this act shall constitute a matter
428 arising under the state revenue laws, and an application to
429 participate in the program or a payment of qualifying
430 expenses shall constitute a claim or other document, for
431 purposes of the criminal prohibition against tax fraud in
432 section 40-29-115.

433 (2) The department may stop making advance credit
434 payments into the ESA or otherwise reduce the amount of
435 money in an ESA of a parent of a participating student,
436 either temporarily or permanently.

437 (3) The department may suspend or disqualify an
438 education service provider. If an education service provider
439 is suspended or disqualified, the department shall notify
440 participating students and their parents of the decision as

441 soon as practicable. The department shall coordinate the
442 suspension or disqualification to coincide with the end of
443 the academic school year.

444 (4) The department may recapture misused program funds
445 from a parent, education service provider, or other person
446 responsible for the misuse of program funds.

447 (c) For purposes of this act, misuse of program funds
448 includes each of the following:

449 (1) Violation of the agreements made by a parent
450 pursuant to section 4(a), by an education service provider
451 pursuant to section 5(a), or by a participating school
452 pursuant to section 5(b).

453 (2) The misrepresentation of information provided to
454 the department in the course of implementing this act.

455 (3) The failure to return any misspent program funds
456 upon request of the department.

457 (4) The repeated and substantial failure to provide a
458 participating student with educational services promised in
459 exchange for program funds.

460 (d) A parent, participating student, education service
461 provider, or other recipient of a CHOOSE Act tax credit may
462 ask the department to reconsider its decision and appeal any
463 final decision of the department to the Alabama Tax Tribunal
464 under Chapter 2B, Title 40, Code of Alabama 1975.

465 Section 8. (a) (1) The CHOOSE Act Fund is created in the
466 State Treasury for the purpose of providing funding for the
467 tax credits authorized by this act. Notwithstanding any
468 other provisions of law to the contrary, the Legislature
469 shall appropriate not less than \$100 million to this fund
470 beginning with appropriations made for the fiscal year
471 ending September 30, 2026, and continuing annually
472 thereafter.

473 (2) In future fiscal years, it is the intent of the
474 Legislature to increase appropriations to the CHOOSE Act
475 Fund if the Commissioner of Revenue certifies that increased
476 appropriations are necessary to satisfy consumer demand for
477 the program based on prior-year participation in the program
478 as reflected by the expenditure of ninety percent or more of
479 the funds available in the CHOOSE Act Fund.

480 (b) Amounts in the CHOOSE Act Fund shall be budgeted
481 and allotted in accordance with Sections 41-4-80 through
482 41-4-96 and Sections 41-19-1 through 41-19-12; provided that
483 neither the CHOOSE Act Fund nor individuals ESAs shall be
484 subject to Section 41-4-90.

485 (c) All funds received by the CHOOSE Act Fund shall
486 remain in the CHOOSE Act Fund and shall not revert or be
487 expended for any purpose other than the tax credits
488 authorized by this act; provided that in no circumstances

489 shall more than \$500 million in excess, unused, accumulated
490 funds be allowed to carry over in the CHOOSE Act Fund.
491 Before the end of each year, the Commissioner of Revenue
492 shall determine the amount of excess, unused, accumulated
493 money in the Fund. If the amount of excess, unused,
494 accumulated money in the Fund as determined by the
495 Commissioner exceeds \$500 million, then such excess shall
496 revert to the Education Trust Fund to become available for
497 appropriation by the Legislature.

498 (d) It is not the intent of this act to make
499 appropriations, but any appropriations required by this act
500 shall be from revenue sources available for appropriation
501 under the Constitution of Alabama of 2022 notwithstanding
502 any general law to the contrary.

503 Section 9. If any part of this act is challenged as
504 violating either the state or federal constitutions, parents
505 of eligible students and participating students shall be
506 permitted to intervene as of right in the lawsuit for the
507 purposes of defending the constitutionality of the program.

508 Section 10. This act shall become effective immediately
509 following its passage and approval by the Governor, or its
510 otherwise becoming law.