

HB88 INTRODUCED



1 HB88
2 LDFRYAA-1
3 By Representative Yarbrough
4 RFD: Education Policy
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SYNOPSIS:

This bill would create the True School Choice for Alabama Act.

This bill would secure the fundamental constitutional rights of parents to direct the education of their children in grades K-12 according to their faith, beliefs, values, and morals.

This bill would establish the roles and responsibilities of the Parent Advisory Board, the Commissioner of Revenue, and the Department of Revenue.

This bill would create and provide for the funding of the True School Choice ESA Fund and the True School Choice Administration Fund for the costs of administering the True School Choice Program.

This bill would provide for the implementation and administration of the True School Choice Program and the use of education savings accounts.

This bill would specify the qualified expenses that may be paid from an education savings account.

This bill would retain the autonomy of nonpublic schools and prevent additional state control over or interference with nonpublic schools, their students, and families.

This bill would provide for the auditing, denials, and appeals of the True School Choice Program



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29 and the suspension of parents, participating students,
30 and education service providers.

31 This bill would also provide for legal remedies.

32

33 A BILL

34 TO BE ENTITLED

35 AN ACT

36

37 Relating to education; to establish the True School
38 Choice for Alabama Act relating to K-12 education; to secure
39 the fundamental constitutional rights of parents to direct the
40 education of their children; to create the True School Choice
41 Program; to provide definitions; to establish the roles and
42 responsibilities of the Parent Advisory Board, the
43 Commissioner of Revenue, and the Department of Revenue; to
44 create a process for granting education savings accounts; to
45 establish funding mechanisms for the costs of education
46 savings accounts and the administration of the program; to
47 specify qualified expenses; to create requirements for
48 education service providers; to establish an auditing, denial,
49 and appeal mechanism for expenses, parents, participating
50 students, and education service providers; to provide
51 safeguards against any additional state control over or
52 interference with nonpublic schools, their students, and their
53 families; and to provide for legal remedies.

54 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

55 Section 1. This act shall be known and may be cited as
56 the True School Choice for Alabama Act.



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57 Section 2. The Legislature finds and declares all of
58 the following:

59 (1) Because education is critical to the well-being of
60 children, Alabama made the education of all school-age
61 children residing in this state mandatory and parents
62 responsible for the school attendance of their children.

63 (2) Parental involvement is essential for the academic
64 success and healthy development of children, strong families,
65 and a prosperous state. Parental involvement must therefore be
66 strongly valued and supported in the education of their
67 children. Parents generally know their children best, love
68 their children most, and from time immemorial have
69 traditionally been the primary advocates of the best interests
70 of their children.

71 (3) Parents have a fundamental constitutional right to
72 direct the upbringing and education of their children and to
73 impart to their children their faith, beliefs, values, and
74 morals through education and by choosing the type of
75 education, including nonpublic schools, their children
76 receive.

77 (4) If a state provides tuition assistance to parents
78 of children for a nonpublic K-12 education, the state may not
79 bar those parents from selecting religious schools due to
80 their religious affiliation or the religious instruction they
81 provide. *Carson v. Makin*, 142 S.Ct. 1987 (2022).

82 (5) A state education funding program that is neutral
83 on its face and generally available, including religious
84 schools, does not violate the Establishment Clause of the



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85 First Amendment to the United States Constitution. *Espinosa v.*
86 *Montana Department of Revenue*, 140 S.Ct. 2246 (2020).

87 (6) A state education funding program that prohibits
88 parents from choosing religious schools, simply because they
89 are religious, violates the rights of parents under the Free
90 Exercise Clause of the First Amendment to the United States
91 Constitution. *Espinosa v. Montana Department of Revenue*, 140
92 S.Ct. 2246 (2020).

93 (7) Section 16-1-11.1(5), Code of Alabama 1975,
94 provides that "regulation by the state, including the State
95 Department of Education, the State Board of Education, or the
96 State Superintendent of Education, of any school with a
97 religious affiliation would be an unconstitutional burden on
98 religious activities in direct violation of the Alabama
99 Religious Freedom Amendment and the First Amendment to the
100 United States Constitution; and further that the State of
101 Alabama has no compelling interest to burden by license or
102 regulation nonpublic schools, which include private, church,
103 parochial, and religious schools offering educational
104 instruction in grades K-12, as well as home-based schools and
105 home-schooled students."

106 (8) This act intends to prevent discrimination against
107 parents who must pay both tuition and taxes if they choose a
108 nonpublic education, or who are denied that right because of a
109 lack of funds, and to prevent violations of the Alabama
110 Religious Freedom Amendment and both the Establishment Clause
111 and the Free Exercise Clause of the First Amendment to the
112 United States Constitution.



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113 Section 3. For the purposes of this act, the following
114 terms have the following meanings:

115 (1) ASSIGNED PUBLIC SCHOOL. The school to which an
116 eligible recipient or participating student is assigned based
117 on his or her Alabama residential address.

118 (2) BOARD. The Parent Advisory Board.

119 (3) COMMISSIONER. The Commissioner of Revenue.

120 (4) CURRICULUM. A course of study for content areas or
121 grade levels, including any supplemental materials or
122 resources required, recommended, or complementary to a course
123 of study.

124 (5) DEPARTMENT. The Department of Revenue.

125 (6) EDUCATION SAVINGS ACCOUNT (ESA). An account in
126 which funds are deposited by the department for the parent of
127 a participating student to pay qualifying expenses.

128 (7) EDUCATION SERVICE PROVIDER. A public or nonpublic
129 school, organization, vendor, or individual that provides
130 educational goods and services to participating students.

131 (8) ELIGIBLE RECIPIENT. A student who is a resident of
132 this state, a citizen of the United States, and eligible to
133 enroll in his or her assigned public school.

134 (9) NONPUBLIC SCHOOL. A nongovernment K-12 school
135 offering educational instruction. The term includes private
136 religious, private nonreligious, parochial, virtual,
137 microschoools, and church schools, including home-based
138 education programs.

139 (10) PARENT. The biological or adoptive parent, legal
140 guardian, custodian, or other individual with legal authority



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141 to act on behalf of an eligible recipient or participating
142 student.

143 (11) PARTICIPATING STUDENT. A resident of this state
144 and a citizen of the United States who is an elementary or
145 secondary school student and uses ESA funds pursuant to this
146 act.

147 (12) QUALIFYING EXPENSES. Educational expenses listed
148 in Section 8(a) that may be paid for by a parent with ESA
149 funds on behalf of a participating student.

150 (13) TRUE SCHOOL CHOICE PROGRAM. The program created by
151 this act which provides funds for a participating student's
152 ESA to pay for educational instructional goods and services.

153 Section 4. (a) The annual ESA amount for each
154 participating student shall be six thousand nine hundred
155 dollars (\$6,900) for the 2024-2025 school year, and shall be
156 adjusted annually by the department based on the percentage
157 change of the Education Trust Fund's share of the Foundation
158 Program from the prior year, if positive. The amount of
159 funding for a participating student for less than a full
160 fiscal year shall be prorated based on the portion of the
161 fiscal year the student receives funds from an ESA.

162 (b) The True School Choice ESA Fund is created in the
163 State Treasury to receive appropriations from the Legislature
164 for the funding of ESAs as provided by this act. The
165 Legislature shall make appropriations to this fund in amounts
166 not to exceed four hundred million dollars (\$400,000,000) for
167 the initial year. In subsequent years, the Legislature shall
168 make appropriations to this fund in amounts sufficient to



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169 fully fund the projected amount of ESA deposits to be made the
170 proceeding fiscal year. The projected amount of ESA deposits
171 required shall be the total amount of appropriations required
172 to fully fund every ESA account for all eligible applicants
173 the preceding year, plus an additional 10 percent. Any monies
174 remaining in the fund at the end of a fiscal year shall not
175 revert but shall remain in the fund and are reappropriated for
176 the purposes authorized by this act.

177 (c) Each school year the department shall make periodic
178 deposits, equaling the total ESA amount, into the ESA of a
179 participating student beginning no later than August 1. Any
180 funds remaining in an ESA at the end of a fiscal year may be
181 carried over to the next fiscal year upon successful renewal
182 of the ESA or until any of the conditions in Section 6(b)(13)
183 are met.

184 (d) The True School Choice Administration Fund is
185 created in the State Treasury for the administration of the
186 True School Choice Program by the department. The lesser of
187 two million dollars (\$2,000,000), or three percent of the
188 amount appropriated each fiscal year to the True School Choice
189 ESA Fund, shall be transferred each fiscal year from the True
190 School Choice ESA Fund to the True School Choice
191 Administration Fund. The expenses incurred by the department
192 in carrying out this act shall be paid from monies in the True
193 School Choice Administration Fund. The Legislature may make
194 additional appropriations to the True School Choice
195 Administration Fund upon a showing of the need for additional
196 monies in the administration of the True School Choice



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197 Program. Any monies remaining in the fund at the end of each
198 fiscal year shall revert to the True School Choice ESA Fund.

199 (e) No monies shall be withdrawn or expended from the
200 funds created in this section for any purpose unless the
201 monies have been appropriated by the Legislature and allocated
202 pursuant to this act. Any monies appropriated shall be
203 budgeted and allotted pursuant to the Budget Management Act in
204 accordance with Article 4, commencing with Section 41-4-80 of
205 Chapter 4 of Title 41, Code of Alabama 1975, and only in the
206 amounts provided by the Legislature in the general
207 appropriations act or other appropriations act.

208 Section 5. (a) There is created the Parent Advisory
209 Board. The board shall do all of the following:

210 (1) Consult with state departments or agencies, and
211 parents or administrators from the categories of education
212 options listed in subdivision (b)(4), as appropriate to carry
213 out these responsibilities.

214 (2) Review and provide recommendations to the
215 department on all of the following:

216 a. The implementation, administration, and improvement
217 of the True School Choice Program policies, procedures, and
218 systems.

219 b. The concerns and complaints of parents of
220 participating students.

221 c. Questionable education service providers and other
222 qualified expenses.

223 d. Appeals of denied expenses and the barring of
224 parents and education service providers from the True School



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225 Choice Program pursuant to Section 13.

226 (b) The membership of the board shall consist of the
227 following members:

228 (1) The commissioner, or his or her designee, shall
229 serve as chair of the board and shall be a nonvoting member
230 unless there is a tie.

231 (2) The Governor, or his or her designee.

232 (3) The Lieutenant Governor, or his or her designee.

233 (4) The President Pro Tempore of the Senate and the
234 Speaker of the House of Representatives shall each appoint
235 four parents of eligible recipients intending to participate
236 in the program or of participating students, one from each of
237 the following four categories, as listed in Sections 16-1-11.2
238 and 16-1-11.3, Code of Alabama 1975:

239 a. Private nonreligious and religious schools.

240 b. Church schools.

241 c. Parochial schools.

242 d. Home-based education programs.

243 (5) The Minority Leader of the Senate and the Minority
244 Leader of the House of Representatives shall each appoint one
245 parent of an eligible recipient intending to participate in
246 the program or of a participating student, which shall be from
247 one of the four categories listed under subdivision (4).

248 (c) The appointed members, as provided in subdivisions
249 (b) (4) and (b) (5), shall initially serve staggered terms of
250 one, two, or three years as determined by the chair. An
251 appointment to fill a vacancy shall be made from the
252 corresponding category by the original appointing authority



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253 for the remainder of the unexpired term. Board members may
254 serve up to two additional three-year terms thereafter.

255 (d) A parent may not serve on the board if he or she is
256 an employee or immediate relative of an employee of the State
257 Department of Education or provides goods or services to the
258 state to directly implement or administer the True School
259 Choice Program.

260 (e) A board member shall recuse himself or herself from
261 voting on any issue where he or she has a substantial
262 financial interest, or other conflict of interest, excluding
263 the receipt of an ESA for his or her participating student.

264 (f) A board member may be removed or replaced by the
265 board at any time pursuant to a two-thirds majority vote of
266 the membership of the board.

267 (g) All members of the board shall be citizens of the
268 United States and legal residents of Alabama during his or her
269 entire term. Board member designees and parent appointments
270 shall be selected from qualified individuals who are well
271 informed on nonpublic education options, acquainted with the
272 True School Choice Program procedures, and in touch with other
273 parents who will be using the program.

274 (h) Members shall serve without compensation. The
275 department shall pay all reasonable and necessary expenses,
276 including per diem or actual travel expenses incurred in the
277 conduct of official duties, from the True School Choice
278 Administration Fund at the same rate paid to state employees.

279 (i) The board shall meet in person at least quarterly.
280 Additionally, at the request of any board member, the board



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281 may meet in person or virtually to transact business at any
282 time.

283 (j) A majority of the members of the board shall
284 constitute a quorum for the transaction of business, unless
285 otherwise provided in this section.

286 (k) A vice chair shall be selected by a majority of the
287 entire membership of the board and shall preside over meetings
288 in the absence of the chair.

289 (l) The board is subject to the Alabama Open Meetings
290 Act, Chapter 25A of Title 36, Code of Alabama 1975, and the
291 Open Records Law, Article 3, commencing with Section 36-12-40,
292 of Chapter 12 of Title 36, Code of Alabama 1975.

293 Section 6. (a) Rules, policies, and procedures adopted
294 by the department to implement and administer this act shall
295 do all of the following:

296 (1) Avoid bureaucracy or prescriptive mandates and may
297 not unnecessarily burden parents or education service
298 providers offering educational instruction goods and services.

299 (2) Value, enable, and support parental involvement.

300 (3) Encourage education service providers offering
301 educational instruction goods and services to provide parents
302 and participating students with a broad array of educational
303 instruction options.

304 (4) Not subject nonpublic schools to additional
305 regulation or licensing.

306 (b) In addition to any other duty, obligation, or
307 authority provided in this act, the department shall do all of
308 the following:



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309 (1) Execute contracts and other instruments for
310 necessary goods, services, and office space, employ necessary
311 personnel, and engage the services of private consultants,
312 auditors, counsel, managers, and other professionals or
313 organizations as needed for the implementation and
314 administration of the True School Choice Program.

315 (2) Contract with financial organizations as account
316 depositories and managers.

317 (3) Not place True School Choice Program funds in high
318 risk, long-term financial instruments. Any earned interest
319 shall be returned to the ESA of the participating student.

320 (4) Implement a commercially viable, cost-effective,
321 and parent friendly system for direct payments from and
322 refunds to ESAs for qualified expenses by electronic or online
323 funds transfer, which assist in the administering of the True
324 School Choice Program, automate reconciliation, and provide
325 easy access to data for audits while reducing the risk of
326 fraud, waste, and abuse. An ESA may not be reduced for
327 electronic payment fees or any other costs associated with the
328 payment and refund system.

329 (5) Adopt a registration application and process for
330 approving participating students and education service
331 providers.

332 (6) Assist a participating student in the following
333 manner: If an education service provider requires partial
334 payment of tuition or fees before the start of the school year
335 to reserve space for a participating student, the partial
336 payment may be paid by the department before the start of the



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337 school year in which the ESA is awarded and deducted from a
338 subsequent ESA deposit. If a parent decides not to use the
339 education service provider, the partial reservation payment
340 shall be returned to the department and credited to the ESA of
341 the participating student.

342 (7) Make periodic deposits, equaling the total ESA
343 amount, into the ESA of a participating student pursuant to
344 Section 4(c).

345 (8) Make information regarding the True School Choice
346 Program readily available to the public on the website of the
347 department. Information on the website may include the ESA
348 application process, responsibilities of parents, qualifying
349 expenses for ESA funds, updated lists of education service
350 providers and their responsibilities, the registration
351 process, duties of the department or other organizations that
352 may assist in the administration of the True School Choice
353 Program, and other pertinent information.

354 (9) Inform parents of eligible recipients of the
355 existence of the True School Choice Program by January 1 of
356 each year through a variety of means. In addition, a summary
357 of the information provided online pursuant to subdivision (8)
358 shall be mailed by January 1, for the first three years after
359 October 1, 2024, and then mailed or emailed to all parents of
360 eligible recipients who are not parents of a participating
361 student in the True School Choice Program, by January 1 of
362 each year thereafter.

363 (10) Provide a helpline and other means to answer
364 questions, at a minimum, during normal weekday business hours.



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365 (11) Adopt procedures to provide the least disruptive
366 process for participating students to transfer between schools
367 and to leave the True School Choice Program including, but not
368 limited to, all of the following:

369 a. When a participating student enrolls as a full-time
370 student in his or her assigned public school, payments into
371 the ESA of the participating student shall immediately cease.
372 However, for ESAs that have been open for at least one full
373 school year, the ESA shall remain open and active for the
374 parent to pay qualifying expenses to educate the student from
375 funds remaining in the ESA. When no funds remain in the ESA of
376 a student, or the student reaches 21 years of age, the
377 department shall close the ESA and return any remaining funds
378 to the True School Choice ESA Fund.

379 b. If an eligible recipient decides to return to the
380 True School Choice Program, payments into the existing ESA of
381 the student may resume if the ESA is still open and active. A
382 new ESA may be established if the ESA of the student was
383 closed.

384 c. A participating student may transfer between schools
385 only between semesters, unless the school undergoes a
386 substantial change in operation or the family of the
387 participating student involuntarily suffers a substantial
388 hardship, such as moving to another part of the state. In the
389 event of a hardship, the parent may petition the department to
390 transfer the participating student to another school and
391 should request a prorated refund from the previous to be
392 deposited back into the ESA of the participating student.



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393 (12) Require a surety bond for education service
394 providers receiving more than one hundred thousand dollars
395 (\$100,000) in ESA funds.

396 (13) Deposit funds into the ESA of a participating
397 student pursuant to this act until any of the following occur:

398 a. The department determines that the participating
399 student is no longer an eligible recipient.

400 b. The department determines that there was substantial
401 and intentional misuse of the funds in the ESA for purposes
402 other than those permitted by the True School Choice Program.

403 c. The parent or participating student, who is 18 years
404 of age or older, withdraws from the True School Choice
405 Program.

406 d. The participating student enrolls full-time in his
407 or her assigned public school.

408 e. The participating student graduates from high school
409 or ages out of his or her assigned public school.

410 (c) Any information provided to the department by a
411 nonpublic school or a parent of a home-based student pursuant
412 to this act shall be voluntary, may not be published by the
413 department without the written permission of the parent or
414 chief administrative officer of the nonpublic school, and no
415 additional reporting requirements or regulations shall be
416 added by this act in violation of Sections 16-1-11.1 through
417 16-1-11.3, Code of Alabama 1975.

418 Section 7. (a) A parent shall apply to the department
419 to establish an ESA for an eligible recipient to participate
420 in the True School Choice Program. The department shall accept



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421 and approve applications year-round on a first come, first
422 served basis, and shall establish procedures for approving
423 applications and providing notice of approval to eligible
424 recipients within 30 days after receipt of a completed
425 application.

426 (b) The department shall create a standard application
427 form for parents to submit to establish the eligibility of
428 their student for the True School Choice Program and shall
429 ensure that the application and all pertinent information is
430 publicly available and may be submitted in writing or through
431 other means, including the Internet.

432 (c) An application for an ESA is confidential and not a
433 public record subject to release pursuant to the open records
434 law.

435 (d) The department shall approve an ESA application if
436 all of the following occur:

437 (1) The parent applies for an ESA in accordance with
438 the application procedures established by the department.

439 (2) The student on whose behalf the parent is applying
440 is an eligible recipient.

441 (3) The parent signs an agreement with the True School
442 Choice Program committing to all of the following:

443 a. He or she has read and understands the information
444 on the public website of the department, or a written copy
445 regarding participation in the True School Choice Program as
446 provided in Section 6(b)(8) and (b)(9), and will comply with
447 the requirements of the True School Choice Program.

448 b. He or she will provide a challenging education for



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449 the eligible recipient that is appropriate for his or her age
450 and skill level.

451 c. He or she will only use the funds in the ESA for
452 qualifying expenses, will provide accompanying receipts, and
453 will ensure that all refunds received are credited to the ESA.

454 (e) The parent of a participating student shall submit
455 an annual renewal application in accordance with procedures
456 adopted by the department.

457 Section 8. (a) Parents of a participating student shall
458 agree to use the funds deposited in their student's ESA only
459 for the following qualifying expenses:

460 (1) Tuition, textbooks, and fees at education service
461 providers and online learning programs.

462 (2) Curriculum, textbooks, fees, and other
463 instructional and enrichment materials including, but not
464 limited to, materials provided by vendors and associated
465 online instruction or materials required by either an
466 instructional program or education service provider.

467 (3) Services contracted for and provided by a public
468 school, district school, charter school, or magnet school
469 including, but not limited to, individual classes and
470 extracurricular activities and programs.

471 (4) Extracurricular educational activities including,
472 but not limited to, athletics, art, music, and literature.

473 (5) Tutoring services provided by an individual or
474 tutoring business. Tutoring services may not be paid to an
475 immediate family member of the participating student.

476 (6) Tuition, fees, textbooks, instructional materials,



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477 and examination fees for vocational and GED courses at a
478 career-technical school or alternative education program.

479 (7) Tuition, fees, and textbooks for summer education
480 programs and specialized after school education programs,
481 excluding after school childcare.

482 (8) Educational services and therapies including, but
483 not limited to, occupational, behavioral, physical,
484 speech-language, and audiology therapies and braille
485 translation.

486 (9) Tuition, fees, and textbooks for postsecondary
487 education including, but not limited to, dual enrollment
488 programs, college-level examination programs (CLEP), and
489 postsecondary classes.

490 (10) Computer hardware and other technological devices
491 that are used primarily to help meet the educational needs of
492 a participating student.

493 (11) Educational software and applications.

494 (12) School uniforms.

495 (13) Tuition and fees for preparatory courses and for
496 nationally standardized assessments, advanced placement
497 examinations, and examinations related to college or
498 university admission.

499 (14) Fees for transportation paid to a fee-for-service
500 transportation provider for the participating student to
501 travel to and from an individual providing qualifying
502 educational services or an education service provider.

503 (15) Any other educational expense approved by the
504 department.



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505 (b) If a parent of a participating student submits an
506 educational expense that is denied by the department, an
507 appeal may be made pursuant to Section 13.

508 (c) Receipt of scholarship funds by the parent of an
509 eligible student under the Alabama Accountability Act of 2013,
510 Chapter 6D, Title 16, Code of Alabama 1975, does not impact
511 the receipt of ESA funds by the parent of a participating
512 student pursuant to this act. An adjustment, if any, of the
513 Alabama Accountability Act scholarship funds awarded to a
514 participating student may be made at the discretion of the
515 scholarship granting organization under that act.

516 (d) ESA funds paid for goods and services shall not be
517 refunded, rebated, or shared with a parent or participating
518 student in any manner, but shall be credited directly to the
519 ESA of the student.

520 (e) Nothing in this act shall prohibit an education
521 service provider from requesting additional funds from a
522 parent to cover ordinary student costs related to attendance
523 at a public or nonpublic school.

524 (f) A parent may make payments for the costs of
525 educational goods and services not covered by the funds in the
526 ESA of his or her student. However, personal deposits into an
527 ESA are not permitted.

528 (g) Funds deposited in the ESA of a participating
529 student do not constitute taxable income to the parent or
530 participating student.

531 Section 9. (a) (1) The department, by rule, may provide
532 for the registration of certain education service providers



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533 and may provide those registered education service providers
534 with an expedited payment process.

535 (2) The department may contract with a third party to
536 issue payments to an education service provider on behalf of a
537 parent of a participating student. Registered education
538 service providers may benefit from expedited payment.

539 (3) The department, by rule, may develop and maintain a
540 system that allows a parent to use a debit card connected to
541 an ESA account to make payments to an education service
542 provider on behalf of a participating student.

543 (b) The department, by rule, shall develop and maintain
544 a system that allows parents to submit invoices for payment or
545 receipts for reimbursement for all qualifying expenses and
546 shall also require parents to submit copies of receipts for
547 all qualifying expenses paid with ESA funds on behalf of a
548 participating student within 60 calendar days from the receipt
549 of purchase. Failure to provide receipts as required by the
550 department may result in the parent being responsible for the
551 payment or disqualification of the student from participation
552 in the True School Choice Program.

553 (c) An education service provider shall do both of the
554 following:

555 (1) Agree not to refund, rebate, or share ESA funds
556 with a parent or a participating student in any manner, except
557 that funds may be remitted or refunded to an ESA in accordance
558 with procedures established by the department.

559 (2) Provide a parent of a participating student with a
560 receipt for all educational qualifying expenses.



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561 Section 10. (a) All public and nonpublic schools that
562 receive ESA funds, except home-based education programs, shall
563 provide parents with information to make informed decisions.
564 The information shall be regularly updated at least annually
565 before the beginning of each school year and shall be made
566 available to parents on the school website or in writing. The
567 information shall include all of the following:

568 (1) The mission statement, values, objectives,
569 instructional programs, and organizational affiliations of the
570 school.

571 (2) A comprehensive list of curricula by class and
572 grade level.

573 (3) Any student testing requirements, including state
574 and national testing and mental health or personality surveys
575 or evaluations, by class and grade level.

576 (b) In addition to the information provided in
577 subsection (a), all public and nonpublic schools that receive
578 ESA funds may voluntarily provide parents with additional
579 information including, but not limited to:

580 (1) Extracurricular activities including athletics,
581 fine arts, field trips, and clubs.

582 (2) Crisis management safety plans.

583 (3) Any other additional information the school decides
584 to provide.

585 (c) The information provided by a public or nonpublic
586 school, that receives ESA funds, to parents pursuant to
587 subsection (a) or subsection (b) is solely for the purpose of
588 assisting parents to choose the best education option for



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589 their children. This does not create a mandate or regulation
590 by the state that would be in violation of Sections 16-1-11.1
591 through 16-11-11.3, Code of Alabama 1975.

592 (d) A public or nonpublic school that receives ESA
593 funds may allow the department, but is not required, to
594 publish information provided in this section on the True
595 School Choice Program portion of the website of the
596 department.

597 Section 11. (a) This act shall not be construed to
598 interfere with or limit the teaching of religious instruction
599 by any education service provider by regulating its creed,
600 practices, admissions policy, hiring policy, code of conduct
601 for employees or students, tuition, fees, curricula, or
602 policies or practices of any description.

603 (b) All education service providers shall be given
604 maximum freedom to provide for the educational needs of
605 participating students without governmental control and
606 participation in the program or receipt of payments from an
607 ESA shall not limit the independence or autonomy of an
608 education service provider, make it an agent of the state or
609 federal government, or make its actions the actions of the
610 state or federal government.

611 (c) Nothing in this act shall be construed to expand
612 the regulatory authority of the state, its officers, or any
613 school district to impose any additional regulation of
614 education service providers.

615 (d) The receipt of ESA funds and participation in the
616 True School Choice Program directly or indirectly by a parent



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617 or participating student and by any education service provider
618 that is a nonpublic school offering educational instruction in
619 grades K-12 does not subject the school or individual to
620 licensure or regulation by the state or any political
621 subdivision of the state and does not modify or repeal other
622 sections of state law, including Sections 16-1-11.1 through
623 16-1-11.3, Code of Alabama 1975, or otherwise affect the
624 exemption of nonpublic schools from state regulation.

625 (e) The receipt of ESA funds or participation pursuant
626 to this act does not change or remove the exemption and
627 definition of a church school as provided in Section 16-28-1,
628 Code of Alabama 1975.

629 Section 12. (a) A public school or school district that
630 previously enrolled a participating student shall provide any
631 education service provider that has enrolled a participating
632 student with a complete copy of the participating student's
633 school records, while complying with the Family Educational
634 Rights and Privacy Act of 1974, 20 U.S.C. § 1232.

635 (b) A public school or school district may refuse to
636 provide educational services to a participating student who
637 resides outside of the school district or may establish a
638 policy to provide educational service options to out of
639 district students under certain conditions including, but not
640 limited to, the payment of reasonable fees for attendance.

641 (c) A public school shall be given maximum flexibility
642 to accommodate participating students and may create a process
643 and establish requirements for accepting, selecting, or
644 limiting the number of allowable participating students who



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645 are not assigned to that public School.

646 Section 13. (a) The department shall adopt procedures
647 to ensure that fair processes exist to determine whether a
648 misuse of the True School Choice Program has occurred.

649 (b) The department shall conduct or contract for the
650 auditing of individual ESAs and, at a minimum, shall conduct
651 random audits of ESAs on an annual basis. The department shall
652 also conduct audits of individual ESAs where there is evidence
653 of misuse or other violation of this act.

654 (c) The department may make any parent or participating
655 student ineligible for the True School Choice Program if
656 evidence of intentional and substantial misuse of ESA funds
657 for purposes other than permitted by the True School Choice
658 Program is discovered. If a participating student is free from
659 personal misconduct, that student shall be eligible for an ESA
660 in the future if placed with a different parent to act on
661 behalf of the student.

662 (d) The department shall conduct or contract for audits
663 of education service providers or any other recipients of ESA
664 funds when the department has probable cause to believe, by a
665 preponderance of the evidence, that ESA funds have been
666 misused or other violations of this act have occurred. Audits
667 shall be conducted at the expense of the department.

668 (e) The department may bar an education service
669 provider or other recipient of ESA funds from accepting
670 payments from any ESA if the department determines, by clear
671 and convincing evidence, that the education service provider
672 has done either of the following:



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673 (1) Intentionally and substantially misrepresented
674 information, obtained ESA funds by fraud, or failed to refund
675 any overpayments in a timely manner.

676 (2) Routinely failed to provide students with promised
677 educational goods or services.

678 (f) If the department bars an education service
679 provider or other recipient of ESA funds from receiving
680 payments from an ESA, the department shall timely notify each
681 affected parent and participating student of that decision.

682 (g) A parent, participating student, education service
683 provider, and other recipient of ESA funds may ask the
684 department to reconsider its decision and appeal any final
685 decision of the department administratively.

686 (h) The department may refer suspected cases of
687 intentional and substantial misuse of ESA funds to the
688 Attorney General for the purpose of collection or criminal
689 investigation, or both, if evidence of fraudulent use of ESA
690 funds is discovered.

691 Section 14. Nothing in this act shall alter, amend, or
692 limit the application of the Alabama High School Athletic
693 Association constitution and bylaws to member schools.

694 Section 15. (a) A parent may bring suit for any
695 violation of this act and may raise this act as a claim or
696 defense in any judicial or administrative proceeding without
697 regard to whether the proceeding is brought by or in the name
698 of the state, a private individual, or any other party.

699 (b) Notwithstanding any other provision of law, an
700 individual may bring a suit for an actual or threatened



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701 violation of this act and relief may be granted in a judicial
702 proceeding without regard to whether the individual commencing
703 the action has sought or exhausted available administrative
704 remedies.

705 (c) A prevailing party may recover appropriate relief
706 including, but not limited to, declaratory or injunctive
707 relief, compensatory damages, and reasonable attorney fees.

708 (d) The Attorney General may bring an action to enforce
709 compliance with this act.

710 (e) Except as provided in Section 36-1-12, Code of
711 Alabama 1975, no liability shall arise on the part of the
712 department, the state, any school district or public school,
713 or the board based on the deposit or use of an ESA pursuant to
714 this act.

715 (f) Sovereign, governmental, state-agent, qualified
716 immunities, or any immunities to suit from liability pursuant
717 to the Constitution of Alabama of 2022, are waived and
718 abolished to the extent of liability created by this act, and
719 parties alleged to be responsible for any violation may be
720 sued in their official capacities.

721 (g) If any part of this act is challenged in a state
722 court as violating either the state or federal constitutions,
723 parents of eligible recipients and participating students may
724 intervene as of right in the lawsuit for the purposes of
725 defending the constitutionality of the True School Choice
726 Program.

727 Section 16. Any parent who chooses to educate his or
728 her child outside of a public school and does not participate



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729 in the True School Choice Program may be eligible for a
730 refundable tax credit for each of those children. The tax
731 credit shall be equal to half of the amount each child would
732 be eligible to receive as a participating student under the
733 True School Choice Program.

734 Section 17. The provisions of this act are severable.
735 If any part of this act is declared invalid or
736 unconstitutional, that declaration shall not affect the part
737 which remains.

738 Section 18. This act shall become effective October 1,
739 2024.