

1 SB140
2 214694-2
3 By Senators Marsh, McClendon, Allen, Stutts, Melson, Whatley,
4 Albritton and Barfoot
5 RFD: Education Policy
6 First Read: 01-FEB-22

SYNOPSIS: This bill would create the Parent's Choice Act.

This bill would create and provide for the Parent's Choice Program and the membership and duties of the Parent's Choice Board.

This bill would provide for the process for creating, funding, and utilizing education savings accounts.

This bill would specify which expenses are qualified expenses.

This bill would provide for the renewal and administration of education savings accounts.

This bill would provide for the auditing of the program and the suspension of education service providers.

This bill would also provide for the responsibilities of resident school districts.

A BILL
TO BE ENTITLED

1 AN ACT

2
3 To establish the Parent's Choice Act relating to
4 K-12 education; to create the Parent's Choice Program and
5 provide for the membership and duties of the Parent's Choice
6 Board; to provide definitions; to establish the framework and
7 guidelines for education savings accounts; to create and
8 provide for the membership and duties of the Parent's Choice
9 Board; to create a process for awarding education savings
10 accounts; to establish funding mechanisms; to specify
11 qualified expenses; to create a renewal and administration
12 process; to create requirements for education service
13 providers; to establish an auditing mechanism and potential
14 suspension system for education service providers; to
15 establish responsibilities of resident school districts; and
16 to provide for legal proceedings.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the Parent's Choice Act.

20 Section 2. For the purposes of this act, the
21 following terms shall have the following meanings:

22 (1) BOARD. The Parent's Choice Board.

23 (2) CURRICULUM. A complete course of study for a
24 particular content area or grade level, including any
25 supplemental materials required by the curriculum.

26 (3) DEPARTMENT. The State Department of Education.

1 (4) EDUCATION SAVINGS ACCOUNT. An account to which
2 funds are deposited by the treasurer to pay qualifying
3 education expenses of a participating student pursuant to this
4 act.

5 (5) EDUCATION SERVICE PROVIDER. An individual or
6 organization that receives payments from education savings
7 accounts to provide educational goods and services to
8 participating students.

9 (6) ELIGIBLE RECIPIENT. A student who is a resident
10 of this state and satisfies eligibility criteria provided in
11 this act.

12 (7) PARENT. The biological parent or parents,
13 grandparent or grandparents, legal guardian, custodian, or
14 other individual with legal authority to act on behalf of an
15 eligible recipient or participating student.

16 (8) PARTICIPATING SCHOOL. Any public or nonpublic
17 school that provides education to elementary or secondary
18 students, or both, has notified the treasurer of its intention
19 to participate in the program and comply with the requirements
20 of the program, and satisfies the requirements of this act.

21 (9) PARTICIPATING STUDENT. An elementary or
22 secondary school student who receives education savings
23 account funds pursuant to this act.

24 (10) PROGRAM. The Parent's Choice Program.

25 (11) RESIDENT SCHOOL DISTRICT. The county or city
26 school district in which the student resides.

27 (12) TREASURER. The State Treasurer.

1 Section 3. (a) The program shall be administered by
2 the Parent's Choice Board.

3 (b) The membership of the board shall consist of the
4 following members:

5 (1) The treasurer, or his or her designee.

6 (2) The State Finance Director, or his or her
7 designee.

8 (3) A representative of the Alabama Disabilities
9 Advocacy Program, appointed by the Governor, with the advice
10 and consent of the Senate, who shall serve a term of three
11 years.

12 (4) Four members appointed by the Governor, with the
13 advice and consent of the Senate, who are parents, as defined
14 by this act. The four shall be appointed to initial staggered
15 terms of one, two, or three years, with two being appointed to
16 three-year terms. Thereafter, these appointed members shall
17 serve three-year terms of office and shall be eligible for
18 reappointment.

19 (c) Each member of the board shall be a resident of
20 this state at the time of appointment and during his or her
21 entire term of office. The Governor shall coordinate his or
22 her appointments to assure the board membership is inclusive
23 and reflects the racial, gender, geographic, urban, rural, and
24 economic diversity of the state.

25 (d) A vacancy among appointed members shall be
26 filled by appointment of the Governor, with the advice and
27 consent of the Senate, for the unexpired term.

1 Appointments made at times when the Senate is not in regular
2 session shall be effective ad interim. Any appointment made by
3 the Governor while the Senate is in regular session shall be
4 submitted to the Senate not later than the third legislative
5 day following the date of the appointment;
6 any appointment made while the Senate is not in regular
7 session shall be submitted not later than the third
8 legislative day following the reconvening of the Legislature
9 in regular session. If the Senate fails to vote on the
10 confirmation of an appointee before adjourning sine die during
11 the regular session in which the name of the appointee
12 is submitted, the appointee is deemed to be confirmed. A
13 member shall serve until the later of the expiration of the
14 term for which he or she was appointed, or the appointment of
15 his or her successor.

16 (e) Members shall serve without compensation. The
17 treasurer may pay all reasonable and necessary expenses,
18 including actual travel expenses, incurred in the conduct of
19 official duties, from the Parent's Choice Program Expense Fund
20 at the same rate paid to state employees.

21 (f) The treasurer, or his or her designee, shall
22 serve as the chair and presiding officer of the board and may
23 provide office space and staff as requested by the board. A
24 vice chair shall be selected by the membership of the board
25 and shall preside over meetings in the absence of the chair.

26 (g) A majority of the members of the board shall
27 constitute a quorum for the transaction of business.

1 (h) The board shall be subject to the Alabama Open
2 Meetings Act, Chapter 25A of Title 36, Code of Alabama 1975,
3 and the open records law, Chapter 12 of Title 36, Code of
4 Alabama 1975.

5 Section 4. The board may take any action necessary
6 to effectuate this act and to successfully administer the
7 program, subject to applicable state and federal law
8 including, but not limited to, all of the following:

9 (1) Adopt and amend rules pursuant to the Alabama
10 Administrative Procedure Act.

11 (2) Execute contracts and other instruments for
12 necessary goods and services, employ necessary personnel, and
13 engage the services of private consultants, actuaries,
14 auditors, counsel, managers, trustees, and any other
15 contractor or professional needed for rendering professional
16 and technical assistance and advice.

17 (3) Implement the program through the use of
18 financial organizations as account depositories and managers.

19 (4) Develop and impose requirements, policies,
20 procedures, and guidelines to implement and manage the
21 program.

22 (5) Determine whether an expenditure of education
23 savings account funds is or was a qualifying expense to
24 educate a participating student pursuant to Section 8. The
25 board may approve or deny expenditures by a majority vote.

26 (6) Review any appeals made pursuant to subsections
27 (b) and (d) of Section 11.

1 (7) Establish the method by which funds shall be
2 allocated to pay for administrative costs and assess, collect,
3 and expend administrative fees, charges, and penalties.

4 (8) Authorize the assessment, collection, and
5 retention of fees and charges against the amounts paid into
6 and the earnings on the trust funds by a financial
7 institution, investment manager, fund manager, or other
8 professional managing or investing the trust funds and
9 accounts.

10 (9) Invest and reinvest any of the funds and
11 accounts under the treasurer and control of the board with a
12 financial institution, an investment manager, a fund manager,
13 or other professionals investing the funds and accounts.

14 (10) Solicit and accept gifts, including bequests
15 and other testamentary gifts made by will, trust, or other
16 disposition; grants; loans; aid; and property, real or
17 personal, of any nature and from any source, or participate in
18 any other way in any federal, state, or local governmental
19 programs in carrying out the purposes of this act. The
20 treasurer and board shall use the property received to
21 effectuate the desires of the donor, and shall convert the
22 property received into cash within 180 days after receipt.

23 Section 5. Notification to the treasurer of an
24 intention to participate in the program by a K-12 public
25 school or nonpublic school shall be submitted annually on or
26 before July 1, in writing, on a form provided by the

1 treasurer. The notification shall include all of the
2 following:

3 (1) A statement detailing the extent of the
4 participation of the public school or nonpublic school.

5 (2) The number of participating students the public
6 school or nonpublic school could accommodate for the
7 immediately succeeding school year.

8 (3) The nondiscriminatory process to be used by the
9 public school or nonpublic school for enrolling participating
10 students.

11 Section 6. (a) The program is established to provide
12 the option for a parent to better meet the individual
13 education needs of his or her eligible student. The program
14 shall be operational beginning as soon as possible, but no
15 later than July 1, 2022.

16 (1) Only students who are enrolled in and attending
17 a public school or being home schooled, or entering
18 kindergarten, may apply for participating student status for
19 the 2022-2023 school year.

20 (2) For the 2023-2024 school year, in addition to
21 those students enrolled in and attending public school, being
22 home schooled, or entering kindergarten, any otherwise
23 eligible student, who is enrolled in and attending a nonpublic
24 school and whose family had an adjusted gross income up to 200
25 percent of the federal poverty level for the preceding tax
26 year, may apply for participating student status for that
27 school year.

1 (3) Commencing with the 2024-2025 school year, and
2 thereafter, any student may apply for participating student
3 status for the immediately succeeding school year, regardless
4 of income.

5 (b) The board shall create a standard application
6 form that a parent may submit to the treasurer to establish
7 the eligibility of his or her student for the receipt of
8 education savings account funds, to be placed in a personal
9 education savings account to be used for qualifying education
10 expenses on behalf of the eligible recipient as provided for
11 in Section 8. Information about education savings account
12 funds and the application process shall be made available on
13 the website of the treasurer.

14 (c) The treasurer shall make applications available
15 no later than May 1, 2022, and shall begin accepting
16 applications immediately thereafter. The board may update the
17 application as needed. The board shall issue an award letter
18 to eligible recipients within 45 days after receipt of a
19 completed application and all required documentation.

20 (d) The board shall approve an application for an
21 education savings account if all of the following
22 circumstances are satisfied:

23 (1) The parent of the student submits an application
24 for an education savings account in accordance with the
25 procedures established by rule of the board.

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

1 (3) The parent signs an agreement with the board,
2 promising to do all of the following:

3 a. Provide an education for the eligible recipient
4 in at least the subjects of reading, language, mathematics,
5 science, and social studies.

6 b. Use education savings account funds exclusively
7 for qualifying expenses as provided for in Section 8.

8 c. Comply with the rules and requirements of the
9 program.

10 d. Afford the participating student opportunities
11 for educational enrichment including, but not limited to,
12 organized athletics, subject to the limitations in Section 14,
13 art, music, and literature.

14 (4) The treasurer has confirmed with the department
15 or participating nonpublic school that the student is an
16 eligible recipient. If the department or participating
17 nonpublic school does not respond to the confirmation request
18 of the treasurer within 30 calendar days after the date of
19 receipt, the treasurer shall consider the student an eligible
20 recipient.

21 (e) An application for an education savings account
22 is confidential and not a public record subject to release
23 pursuant to the open records law, Chapter 12 of Title 36, Code
24 of Alabama 1975.

25 (f) Participation and receipt of scholarship funds
26 pursuant to the Alabama Accountability Act of 2013, Chapter
27 6D, Title 16, Code of Alabama 1975, is supplemental to the

1 receipt of education savings account funds by a participating
2 student pursuant to this act.

3 Section 7. (a) There is created in the State
4 Treasury a special revenue fund designated and known as the
5 Parent's Choice Program Trust Fund. The fund shall be
6 administered by the treasurer and shall consist of funds
7 appropriated by the Legislature in accordance with subsection
8 (b). Any funds appropriated annually to the Parent's Choice
9 Program Trust Fund that remain unexpended on September 30 of
10 each fiscal year, shall be reappropriated annually and used
11 for the purposes authorized by this act.

12 (b) The amount of education savings account funding
13 granted to an eligible recipient on a yearly basis shall be
14 equal to 100 percent of the Education Trust Fund's share of
15 the prior year's Foundation Program Fund as provided in
16 Section 16-13-231(b)(2)g., Code of Alabama 1975, subject to
17 subsection (c). The amount of the funding to an eligible
18 recipient who is awarded funds from an education savings
19 account for less than a full fiscal year shall be prorated
20 based on the portion of the fiscal year the eligible recipient
21 receives funds from an education savings account.
22 Additionally, if sufficient funds are not available to provide
23 fully for all participating students pursuant to this act
24 during a school year, the treasurer shall prorate all funds on
25 a per capita basis among all participating students.

26 (c) Expenditures from the Parent's Choice Program
27 Trust Fund shall be limited to the purposes set forth in this

1 act. To cover the annual administrative costs of the program,
2 an amount not exceeding five percent of the fund shall be
3 transferred annually to the Parent's Choice Program Expense
4 Fund established in subsection (h). If the number of
5 participating students increases significantly after any
6 fiscal year, the treasurer may request an appropriation from
7 the Legislature to the Parent's Choice Program Expense Fund in
8 an amount equal to the increased administrative costs
9 associated with the increase in education savings accounts.

10 (d) The first deposit of education savings account
11 funds into an eligible recipient's education savings account
12 shall be subject to the execution of the parental agreement
13 required by Section 6. Upon execution of the required parental
14 agreement, and subject to Section 10, one half of the total
15 annually required deposit shall be made no later than August
16 15 of every year into the education savings account of an
17 eligible recipient, and one half of the total annually
18 required deposit shall be made no later than January 15 of
19 every year. Any funds remaining in an education savings
20 account at the end of a fiscal year may be carried over to the
21 next fiscal year upon successful renewal of the education
22 savings account.

23 (e) Funds deposited in the education savings account
24 of a student do not constitute taxable income to the parent or
25 the participating student.

26 (f) The treasurer shall continue to make deposits
27 into the education savings account of an eligible recipient in

1 accordance with this section unless, and until, any of the
2 following conditions have occurred:

3 (1) The parent of the eligible recipient fails to
4 renew the education savings account or withdraws from the
5 program.

6 (2) The board determines that the student is no
7 longer eligible for education savings account funds.

8 (3) The board suspends or revokes participation in
9 the program for failure to comply with this act.

10 (4) The participating student successfully completes
11 a secondary education program.

12 (5) The participating student reaches 21 years of
13 age.

14 (g) If any of the conditions in subsection (f)
15 occur, the board shall notify the parent that the education
16 savings account of the eligible recipient shall be closed in
17 45 calendar days. If a parent fails to adequately address the
18 condition or conditions upon which closure is based, or does
19 not respond within 30 calendar days after receipt of notice,
20 the board shall close the education savings account and any
21 remaining monies shall be returned to the state.

22 (h) (1) There is created in the State Treasury a
23 special revenue fund designated and known as the Parent's
24 Choice Program Expense Fund. The expense fund shall consist of
25 monies received pursuant to this section, or any governmental
26 or private grants and any state Education Trust Fund
27 appropriations, if any, for the program. Any funds

1 appropriated annually to the Parent's Choice Program Expense
2 Fund that remain unexpended on September 30 of each fiscal
3 year, shall be reappropriated annually and used for the
4 purposes authorized by this act.

5 (2) All expenses incurred by the treasurer or the
6 board in developing and administering the program shall be
7 payable from the Parent's Choice Program Expense Fund.

8 Section 8. (a) The parent of a participating student
9 shall agree to use the funds deposited in the education
10 savings account of his or her participating student only for
11 the following qualifying expenses to educate the student:

12 (1) Ongoing services provided by a public school
13 district pursuant to Section 9 including, but not limited to,
14 individual classes and extracurricular activities and
15 programs.

16 (2) Tuition or fees, or both, at a participating
17 school.

18 (3) Tutoring services provided by an individual or a
19 tutoring facility. Tutoring services may not be provided by an
20 immediate family member of the participating student.

21 (4) Fees for nationally standardized tests, advanced
22 placement examinations, any examinations related to college or
23 university admission, and tuition or fees, or both, for
24 preparatory courses for the assessments or exams in the same
25 manner as these fees are paid by the parents of
26 nonparticipating public school students.

1 (5) Tuition or fees, or both, for programs of study
2 or the curriculum of vocational courses, including, but not
3 limited to, courses that lead to an industry recognized
4 credential that satisfies a workforce need.

5 (6) Tuition or fees, or both, for nonpublic online
6 learning programs.

7 (7) Tuition or fees, or both, for alternative
8 education programs.

9 (8) Fees for after school or summer education
10 programs.

11 (9) Educational services and therapies including,
12 but not limited to, occupational, behavioral, physical,
13 speech-language, and audiology therapies.

14 (10) Curriculum.

15 (11) Any other qualified expenses approved by the
16 board.

17 (b) The funds in an education savings account may
18 only be used for educational purposes in accordance with
19 subsection (a). Nothing in this section shall require that a
20 participating student be enrolled in either a private school
21 or nonpublic online school.

22 (c) Education savings account funds may not be
23 refunded, rebated, or shared with a parent or student in any
24 manner. Any refund or rebate for goods or services purchased
25 with education savings account funds shall be credited
26 directly to the education savings account of a participating
27 student.

1 (d) Nothing in this section shall prohibit the
2 parent of a participating student from making payments for the
3 costs of educational goods and services not covered by the
4 funds in the education savings account of his or her student.
5 Personal deposits into an education savings account are
6 prohibited.

7 Section 9. (a) Before enrolling his or her child in
8 a kindergarten program, a parent may apply for an education
9 savings account on behalf of that child. Every year
10 thereafter, the parent may renew the enrollment of the child
11 in the program pursuant to this section.

12 (b) Annual renewal of the education savings account
13 of an eligible recipient shall be on a date, on or before July
14 15, as annually determined by the board. Notwithstanding any
15 changes in eligibility, a participating student who has
16 previously qualified for an education savings account remains
17 eligible to apply for renewal until one of the conditions
18 provided in subsection (f) of Section 7 occurs. The board
19 shall verify with the department and participating nonpublic
20 schools all of the following information by July 1 of each
21 year:

22 (1) A list of all active education savings accounts.

23 (2) The resident school district of each
24 participating student.

25 (3) For a participating student who chooses to
26 attend a participating school, annual confirmation of his or
27 her continued attendance at a nonpublic school that complies

1 with all requirements that other nonpublic school students are
2 required to satisfy.

3 (c) During the initial year of operation of the
4 program, on or before July 15, each local superintendent of
5 education shall submit the determinations reported to him or
6 her pursuant to subsection (b) to the department. During
7 subsequent years, the submission date shall be determined by
8 the board.

9 (d) If a parent fails to renew the education savings
10 account of an eligible recipient, the board shall notify the
11 parent that the education savings account of the eligible
12 recipient shall be closed in 45 calendar days. If a parent
13 chooses not to renew or does not respond within 30 calendar
14 days after receipt of notice, the board shall close the
15 education savings account and any remaining monies shall be
16 returned to the state.

17 (e) If an eligible recipient decides to return to
18 the program after failing to renew, he or she shall reapply.

19 (f) The board, in consultation with the State Board
20 of Education, may adopt rules and policies to provide the
21 least disruptive process for participating students who desire
22 to stop receiving education savings account payments and
23 return full-time to a public school. A participating student
24 may only opt into or out of a participating school program in
25 between semesters, unless the participating school undergoes a
26 substantial change in operation that results in a hardship to
27 the participating student or his or her parent. In the event

1 of a hardship, the parent may petition the board to transfer
2 the participating student to another participating school and
3 may request a refund of any unexpended or prorated monies. The
4 board shall act upon a petition submitted pursuant to this
5 subsection within 30 calendar days after receipt.

6 (g) The board, in consultation with the State Board
7 of Education, may adopt rules and policies for participating
8 students who want to continue to receive services provided by
9 a public school or school district, including individual
10 classes and extracurricular programs. The board, in
11 consultation with the department, shall ensure that any public
12 school or school district providing services receives the
13 appropriate pro rata share of the education savings account
14 funds of a student based on the percentage of total
15 instruction provided to the student by the public school or
16 school district. Local boards of education may charge tuition
17 to participating students who enroll for services in a public
18 school from outside of the student's resident school district.
19 Participating students who enroll for services part-time in a
20 public school shall not be included in the number of students
21 in average daily membership used to determine the cost of the
22 Foundation Program. Nothing in this subsection prohibits a
23 participating student from using the funds deposited in his or
24 her education savings account on both services provided by a
25 public school or school district and other qualifying expenses
26 as provided for in Section 8.

1 Section 10. In addition to the duties, obligations,
2 and authority provided by this act, the board has the
3 following duties, obligations, and authority with respect to
4 the administration of education savings accounts:

5 (1) To maintain an updated list of participating
6 schools and ensure that the list is publicly available through
7 various sources including, but not limited to, the Internet.

8 (2) To provide parents with a written explanation of
9 the allowable uses of education savings account funds, the
10 responsibilities of parents, the duties of the treasurer and
11 the board, and the role of any private financial management
12 firms or other private organizations that the board may
13 contract with to administer the program, or any aspect of the
14 program.

15 (3) To ensure that parents of students with a
16 disability receive notice, that participation in the program
17 is a parental placement under 20 U.S.C. § 1412 of the
18 Individuals with Disabilities Education Act, along with an
19 explanation of the rights that parentally placed students
20 possess under that act and any applicable state law.

21 (4) The board may contract with private
22 organizations to administer the program. This includes, but is
23 not limited to, private financial management firms to manage
24 education savings accounts.

25 (5) The board shall implement, or contract with a
26 private organization to implement, a commercially viable, cost
27 effective, and parent friendly system for payment for services

1 from education savings accounts to participating schools or
2 education service providers including, but not limited to, the
3 use of debit cards or other electronic or online fund
4 transfers. An education savings account may not be reduced for
5 debit card or electronic payment fees.

6 (6) The board shall seek to implement a commercially
7 viable, cost effective, and parent friendly system for
8 publicly rating, reviewing, and sharing information about
9 participating schools and education service providers, ideally
10 as part of the same system that facilitates the electronic or
11 online funds transfers so as to create a one-stop-shop for
12 parents and participating students.

13 (7) If an education service provider requires
14 partial payment of tuition or fees before the start of the
15 academic year to reserve space for a participating student
16 admitted to the education service provider, the partial
17 payment may be paid before the start of the school year in
18 which the education savings account funds are awarded, and
19 deducted in an equitable manner from subsequent education
20 savings account deposits to ensure adequate funds remain
21 available throughout the school year. If a participating
22 student decides not to use the education service provider, the
23 partial reservation payment shall be returned to the treasurer
24 by the education service provider and credited to the
25 education savings account of the student.

26 (8) The treasurer may accept gifts and grants from
27 any source to cover administrative costs, to inform the public

1 about the program, or to provide additional funding for
2 education savings accounts. These funds shall be deposited in
3 the Parent's Choice Program Expense Fund.

4 (9) The board may adopt rules, including emergency
5 rules if necessary, to meet timelines provided by this act,
6 that are not inconsistent with this act, and that are
7 necessary for the administration of this act including, but
8 not limited to, all of the following:

9 a. Establishing or contracting for the establishment
10 of a fraud reporting system.

11 b. Policies that require a surety bond for education
12 service providers receiving more than one hundred thousand
13 dollars (\$100,000) in education savings account funds.

14 c. Procedures for refunding payments from education
15 service providers back to education savings accounts.

16 d. Procedures for entering into reciprocal
17 agreements with other state education savings account agencies
18 or entities, whether public or private, to recognize and allow
19 education service providers approved in other states to
20 receive payments from education savings accounts under this
21 act.

22 (10) Any rules or policies adopted by the board
23 should avoid excessive bureaucracy and overly prescriptive
24 mandates and instead focus on easing parental involvement and
25 encouraging education service providers to provide parents and
26 participating students with a broad array of educational
27 options.

1 Section 11. (a) The board may adopt rules for the
2 auditing of individual education savings accounts and shall
3 conduct or contract for the random auditing of individual
4 education savings accounts as needed to ensure compliance with
5 this act and rules adopted pursuant to this act.

6 (b) As part of the auditing process, the board may
7 remove a parent or eligible recipient from the program and
8 close an education savings account for failure to comply with
9 the terms of the parental agreement, failure to comply with
10 applicable laws, failure of the student to remain eligible, or
11 intentional and fraudulent misuse of education savings account
12 funds. The board shall adopt procedures pursuant to the
13 Alabama Procedure Act, Chapter 22, Title 41, Code of Alabama
14 1975, to ensure that a fair process exists to determine the
15 removal of a parent or eligible recipient from the program and
16 provide for the appeal of an ineligibility determination to
17 the board.

18 (c) The board may conduct or contract for the audit
19 of education service providers accepting payments from
20 education savings accounts if the board determines that the
21 education service provider has done any of the following:

22 (1) Intentionally and substantially misrepresented
23 information or failed to refund any overpayments in a timely
24 manner.

25 (2) Routinely failed to provide students with
26 promised educational goods or services.

1 (d) If the board determines that an education
2 service provider has intentionally and substantially misused
3 education savings account funds, the board may bar the
4 education service provider from continuing to receive
5 payments. The board shall create procedures to ensure that a
6 fair process exists to determine whether an education service
7 provider should be barred from receiving payment from
8 education savings accounts and provide for the appeal of a
9 determination to bar the education service provider to the
10 board. If the board bars an education service provider from
11 receiving payments from education savings accounts, the board
12 shall notify parents and students of its decision as quickly
13 as possible.

14 (e) If the board obtains evidence of potential
15 fraudulent use of education savings account funds, the board
16 may refer suspected cases to the Attorney General for purposes
17 of investigation, collection, and potential criminal
18 investigation.

19 Section 12. (a) To be eligible to accept payments
20 from an education savings account, an education service
21 provider shall do all of the following:

22 (1) Submit a notice of intent to participate in the
23 program to the treasurer.

24 (2) Provide participating parents with a receipt for
25 all qualifying education expenses for a participating student.

26 (3) Agree not to refund, rebate, or share education
27 savings account funds with parents or students in any manner,

1 except that funds may be remitted or refunded to an education
2 savings account in accordance with Section 8.

3 (4) Certify that the education service provider will
4 not discriminate on any basis prohibited by 42 U.S.C. § 1981.

5 (5) Agree to require any employee who will have
6 contact with a participating student to submit to a criminal
7 history background check.

8 (6) In the case of a participating school, provide
9 notice of enrollment annually to the local superintendent of
10 education or participating nonpublic school of any student for
11 which tuition is being paid through the program.

12 (b) This act does not limit the independence or
13 autonomy of an education service provider or make the actions
14 of an education service provider the actions of the state.

15 (c) Education service providers shall be given
16 maximum freedom to provide for the educational needs of
17 participating students without governmental control.

18 (d) A participating school or education service
19 provider is not required to alter its creed, practices,
20 admission policy, tuition, fees, hiring policy, or curriculum
21 in order to accept eligible recipients whose parents pay
22 tuition or fees from an education savings account pursuant to
23 this act. Nothing in this act shall prohibit a participating
24 school from requesting additional funds from a parent to cover
25 ordinary student costs related to attendance at the
26 participating school.

1 (e) This act does not expand the regulatory
2 authority of the state, its officers, or any school district
3 to impose any additional regulation of education service
4 providers beyond those necessary to enforce the requirements
5 of the program.

6 Section 13. (a) The resident school district, school
7 district in which a participating student was last enrolled,
8 or participating nonpublic school, as applicable, shall
9 provide an education service provider that has enrolled the
10 student with a complete copy of the school records of the
11 student, while complying with the Family Educational Rights
12 and Privacy Act of 1974, 20 U.S.C. § 1232.

13 (b) A participating school district may refuse to
14 provide educational services to a participating student who
15 resides outside of the school district or may establish a
16 policy to provide educational services to nonresident students
17 under certain conditions including, but not limited to, the
18 payment of reasonable fees for attendance.

19 Section 14. Transferring participating students and
20 participating schools shall maintain compliance with the
21 constitution and bylaws established by the Alabama High School
22 Athletic Association member schools.

23 Section 15. (a) In any legal proceeding challenging
24 the application of this act to a participating education
25 service provider, the state bears the burden of establishing
26 that the challenged action, rule, or requirement is necessary

1 and does not impose any undue burden on education service
2 providers.

3 (b) No liability arises on the part of the board,
4 the state, or any local school district based on the award or
5 use of an education savings account pursuant to this act.

6 (c) If any part of this act is challenged in a state
7 court as violating either the state or federal constitution,
8 the parent of any eligible participating student may intervene
9 in the lawsuit for the purposes of defending the
10 constitutionality of this act. For the purposes of judicial
11 administration, a court may limit the number of parents
12 permitted to intervene or require that all parents file a
13 joint brief, so long as they are not required to join any
14 brief filed on behalf of any named state defendant.

15 Section 16. This act shall become effective on the
16 first day of the first month following its passage and
17 approval by the Governor, or its otherwise becoming law.