

1 SB38
2 160715-2
3 By Senators Brewbaker and Marsh
4 RFD: Education
5 First Read: 14-JAN-14
6 PFD: 11/07/2013

1 SB38

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4 ENROLLED, An Act,

5 To amend Sections 16-1-11, 16-28-1, 16-28-7,
6 16-46-1, 16-46-2, 16-46-3, 16-46-4, 16-46-5, 16-46-6, 16-46-7,
7 16-46-8, 16-46-9, and 16-46-10, Code of Alabama 1975, relating
8 to education; to clarify the autonomy of nonpublic schools,
9 including private, church, parochial, and religious schools,
10 offering educational instruction in grades K-12, as well as
11 home-schooled students, and otherwise establish that such
12 nonpublic schools are not subject to regulation by the State
13 Department of Education, the State Board of Education, and the
14 State Superintendent of Education, and are not subject to
15 regulation by the state or any political subdivision of the
16 state; to require nonpublic schools to comply with attendance
17 laws and perform criminal history background checks on
18 employees in accordance with state and federal law; to
19 prohibit any public two-year or four-year institution of
20 higher education from denying admittance to or otherwise
21 discriminating against an otherwise qualified student based on
22 the consideration, whether in whole or in part, that the
23 student attended a nonpublic school, including private,
24 church, parochial, and religious schools, or was home
25 schooled; and to prohibit the State Department of Education

1 from denying certification to an otherwise qualified person on
2 the basis that the person was employed by an elementary or
3 secondary nonpublic school, including private, church,
4 parochial, and religious schools.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. The Legislature finds and declares all of
7 the following:

8 (1) That a parent or guardian in Alabama has a
9 constitutional right to choose the type of K-12 education that
10 is best for his or her child, whether public or nonpublic,
11 religious or nonreligious, and including home-based education.

12 (2) That many parents choose to home school or
13 enroll their children in elementary and secondary nonpublic
14 schools, including private, church, parochial, or religious
15 schools, that are not subject to state regulation and do not
16 receive state or federal funds.

17 (3) That other than reporting on the enrollment of
18 students, these nonpublic K-12 schools have been primarily
19 exempt from state regulation and have only been required by
20 state law to report the enrollment of students.

21 (4) That there is no national or state
22 constitutional mandate that the government provide, license,
23 or regulate nonpublic education, including private, church,
24 parochial, and religious schools, or home-schooled students.

1 (5) That regulation by the state, including the
2 State Department of Education, the State Board of Education,
3 or the State Superintendent of Education, of any school with a
4 religious affiliation would be an unconstitutional burden on
5 religious activities in direct violation of the Alabama
6 Religious Freedom Amendment and the First Amendment to the
7 United States Constitution; and further that the State of
8 Alabama has no compelling interest to burden by license or
9 regulation nonpublic schools, which include private, church,
10 parochial, and religious schools offering educational
11 instruction in grades K-12, as well as home-based schools and
12 home-schooled students.

13 Section 2. (a) A parent or guardian shall have the
14 right to select the type school or method of his or her choice
15 for the K-12 education of his or her child, whether public or
16 nonpublic, religious or nonreligious, and including home-based
17 education.

18 (b) Nonpublic schools, including private, church,
19 parochial, and religious schools, offering educational
20 instruction in grades K-12, as well as home-schooled students,
21 are not subject to licensure or regulation by the state or any
22 political subdivision of the state, including the State
23 Department of Education. This section shall not be interpreted
24 or construed as preventing a nonpublic school from voluntarily
25 participating in state audits or other state administrative

1 oversight in order to comply with requirements of federal
2 grant provisions, except that any such voluntary participation
3 may be withdrawn by the nonpublic school at-will and
4 immediately.

5 Section 3. Each nonpublic school, including private,
6 church, parochial, and religious schools, offering educational
7 instruction in grades K-12, as well as home-schooling
8 entities, shall comply with the requirements of Chapter 28,
9 Title 16, Code of Alabama 1975, relating to school attendance;
10 Chapter 22A, Title 16, Code of Alabama 1975, the Alabama Child
11 Protection Act of 1999; and Chapter 7, Title 38, Code of
12 Alabama 1975, relating to criminal history background checks
13 on persons responsible for children, the elderly, and the
14 disabled.

15 Section 4. Sections 16-1-11, 16-28-1, and 16-28-7 of
16 the Code of Alabama 1975, are amended to read as follows:

17 "§16-1-11.

18 "All private schools or institutions of any kind
19 having a school in connection therewith, except church schools
20 as defined in Section 16-28-1, shall register annually on or
21 before October 10 with the Department of Education and shall
22 report on uniform blanks furnished by the ~~State Superintendent~~
23 Department of Education, giving such statistics as relate to
24 the number of pupils, the number of instructors, enrollment,
25 attendance, course of study, length of term, cost of tuition,

1 funds, value of property, and the general condition of the
 2 school. This section may not be interpreted or construed to
 3 authorize the Department of Education, the State Board of
 4 Education, or the State Superintendent of Education to license
 5 or regulate any private, nonpublic, or church school offering
 6 instruction in grades K-12, or any combination thereof.

7 "§16-28-1.

8 "For purposes of this article, the following words,
 9 terms and phrases shall have the following respective
 10 meanings, unless clearly indicated otherwise:

11 "(1) PRIVATE SCHOOL. Includes only such schools that
 12 are established, conducted, and supported by a nongovernmental
 13 entity or agency offering educational instruction in grades
 14 K-12, or any combination thereof, including preschool, through
 15 on-site or home programs. ~~as hold a certificate issued by the~~
 16 ~~State Superintendent of Education, showing that such school~~
 17 ~~conforms to the following requirements:~~

18 ~~"a. The instruction in such schools shall be by~~
 19 ~~persons holding certificates issued by the State~~
 20 ~~Superintendent of Education;~~

21 ~~"b. Instruction shall be offered in the several~~
 22 ~~branches of study required to be taught in the public schools~~
 23 ~~of this state;~~

24 ~~"c. The English language shall be used in giving~~
 25 ~~instruction;~~

1 ~~"d. A register of attendance shall be kept which~~
2 ~~clearly indicates every absence of each child from such school~~
3 ~~for a half day or more during each school day of the school~~
4 ~~year.~~

5 "(2) CHURCH SCHOOL. Includes only ~~such~~ schools that
6 ~~as~~ offer instruction in grades K-12, or any combination
7 thereof, ~~including the kindergarten, elementary, or secondary~~
8 ~~level~~ preschool, through on-site or home programs, and are
9 operated as a ministry of a local church, group of churches,
10 denomination, and/or association of churches ~~on a nonprofit~~
11 ~~basis~~ which do not receive any state or federal funding.

12 "§16-28-7.

13 "At the end of the fifth day from the opening of the
14 public school, the principal teacher of each public school,
15 private school, and each private tutor, but not church school,
16 shall report on forms prescribed by the State Superintendent
17 of Education to the county superintendent of education, in the
18 event the school is operated in territory under the control
19 and supervision of the county board of education, or to the
20 city superintendent of schools, in the event the school is
21 operated in territory under the control and supervision of a
22 city board of education, the names and addresses of all
23 children of mandatory school attendance age who have enrolled
24 in such schools; and thereafter, throughout the compulsory
25 attendance period, the principal teacher of each school and

1 private tutor shall report at least weekly the names and
2 addresses of all children of mandatory school attendance age
3 who enroll in the school or who, having enrolled, were absent
4 without being excused, or whose absence was not satisfactorily
5 explained by the parent, guardian, or other person having
6 control of the child. The enrollment and attendance of a child
7 in a church school shall be filed with the local public school
8 superintendent by the parent, guardian, or other person in
9 charge or control of the child on a form provided by the
10 superintendent or his or her agent which shall be
11 countersigned by the administrator of the church school and
12 returned to the public school superintendent by the parent.
13 Should the child cease attendance at a church school, the
14 parent, guardian, or other person in charge or control of the
15 child shall by prior consent at the time of enrollment direct
16 the church school to notify the local public school
17 superintendent or his or her agent that the child no longer is
18 in attendance at a church school. This section may not be
19 interpreted or construed as authorizing the Department of
20 Education, the State Board of Education, or the State
21 Superintendent of Education to license or regulate any
22 private, nonpublic, or church school offering instruction in
23 grades K-12, or any combination thereof."

24 Section 5. Sections 16-46-1, 16-46-2, 16-46-3,
25 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8, 16-46-9, and

1 16-46-10 of the Code of Alabama 1975, are amended to read as
2 follows:

3 "§16-46-1.

4 "For the purposes of this chapter, the following
5 words shall have the meanings respectively ascribed to them by
6 this section:

7 "(1) ACADEMIC FRAUD. Courses offered are
8 insufficient in quality, content, or administration to achieve
9 the stated or implied educational objective. Persons offering
10 such courses who know or reasonably should know that the
11 courses cannot achieve the stated or implied educational
12 objective shall be considered to be involved in academic
13 fraud.

14 "(2) AGENT or REPRESENTATIVE. Salesperson who
15 presents materials, sells courses, or solicits students for
16 enrollment of students in the state in person, by mail, by
17 correspondence, by telephone, online, by distance learning
18 education, or by any other method of advertising within the
19 state.

20 "~~(3) CHURCH SCHOOL. A school operated by a local~~
21 ~~church, group of churches, denomination, and/or association of~~
22 ~~churches on a nonprofit basis.~~

23 "(3) ~~(4)~~ COURSE. Any course, or portion of a plan or
24 program of instruction, whether conducted in person, by mail,

1 by correspondence, online, by distance learning education, or
2 by any other method.

3 "(4) ~~(5)~~ ECONOMIC FRAUD. The sale of courses or
4 programs of study which an institution is unable or unwilling
5 to provide as advertised or described because of inadequate
6 financial stability, facilities, instructional staff, or
7 commitment to honor written or verbal contracts made with
8 students. Included is the solicitation of students for
9 enrollment through intentional deception or misrepresentation
10 of fact and the use of advertising which is known to be false,
11 inaccurate, or misleading. Failure to properly administer
12 student cancellation and refund policies according to
13 appropriate regulations or agreements made with students shall
14 also constitute economic fraud.

15 "(5) ~~(6)~~ LICENSE. A ~~private school~~ license
16 identifying the name and location of the ~~school~~ private
17 postsecondary institution and establishing the courses which
18 may be offered thereunder.

19 "(6) ~~(7)~~ PERMIT. A pocket card issued to an agent or
20 representative providing identification as an authorized agent
21 of a ~~school~~ private postsecondary institution.

22 "(7) ~~(8)~~ PRINCIPAL BASE OF OPERATIONS. A ~~school~~
23 private postsecondary institution which has established a main
24 campus in Alabama. Administrative and managerial support and
25 physical plant facilities are maintained continuously in this

1 location. Franchises chartered independently of parent
2 corporations may be accorded this status provided they comply
3 with the residency requirements.

4 "(8) ~~(9)~~ PRIVATE SCHOOL POSTSECONDARY INSTITUTION.

5 Operation of either a for profit or nonprofit ~~entity~~
6 postsecondary school as opposed to publicly owned or operated
7 postsecondary schools. For the purposes of this subdivision, a
8 for profit ~~entity~~ postsecondary school is any postsecondary
9 school operated as a business corporation, partnership, or
10 proprietorship and a nonprofit ~~entity~~ postsecondary school is
11 any postsecondary school established by a nonprofit charter or
12 articles of incorporation with bylaws establishing a nonprofit
13 mode of operation that is determined by the Internal Revenue
14 Service to be eligible for tax deductible contributions in
15 accordance with 26 U.S.C. §501(c)(3).

16 "(9) ~~(10)~~ RESIDENT COURSE. Any course or sequence of
17 courses of instruction offered by a school which is domiciled
18 within Alabama and has established for a period of three years
19 permanent administrative and management facilities in this
20 state.

21 "(10) ~~(11)~~ SCHOOL. Any person, group of people,
22 institution, establishment, agency, or organization offering
23 or administering a plan, course, or program of instruction
24 whether conducted in person, by mail, by correspondence,
25 online, by distance learning education, or by any other method

1 except the teaching of private lessons of instruction on a
2 singular subject, unless otherwise provided by law.

3 "§16-46-2.

4 "It is hereby generally recognized that courses of
5 postsecondary instruction, whether given in residence, ~~or~~ by
6 mail, or electronically online, result in substantial benefits
7 for students pursuing such courses, provided that such courses
8 are designed and administered in accordance with recognized
9 educational standards and practices. It is also recognized
10 that persons taking such courses and postsecondary
11 institutions offering such courses should be afforded
12 additional protection under the laws of this state. It is the
13 purpose of this chapter to supplement the general law of fraud
14 of this state so as to provide for students, ~~educational~~
15 postsecondary institutions, and the general public such added
16 protection.

17 "§16-46-3.

18 "(a) This chapter shall not apply to any school
19 offering instruction in grades K-12, or any combination
20 thereof, including of the following schools nor to any person
21 in regard to the operation of such ~~schools, except for the~~
22 ~~conditions stated in this section:~~ K-12 school.

23 "(b) This chapter shall not apply to any of the
24 following private postsecondary institutions, including any

1 person in regard to the operation of such private
2 postsecondary institution:

3 "(1) Schools operated on a nonprofit basis offering
4 only courses or programs of study which do not lead to an
5 associate or baccalaureate degree and are limited in nature to
6 the performance of or preparation for the ministry of any
7 established church, denomination, or religion.

8 "(2) Courses conducted by employers exclusively for
9 their employees and courses conducted by labor unions
10 exclusively for their members.

11 ~~"(3) Schools offering instruction in grades K-12,~~
12 ~~including the kindergarten, elementary, or secondary level and~~
13 ~~operated by a parochial, denominational, or religious~~
14 ~~organization, and/or as a ministry of a local church or group~~
15 ~~of churches on a nonprofit basis.~~

16 ~~"(4) Schools offering instruction in grades K-12,~~
17 ~~including the kindergarten, elementary, or secondary level,~~
18 ~~and operated by a community, educational organization, or~~
19 ~~group of parents, organized as a nonprofit educational~~
20 ~~corporation with the expectation of establishing a more~~
21 ~~favorable environment for those in attendance.~~

22 ~~"(5)~~ (3) Schools, colleges, and universities
23 principally operated and supported by the State of Alabama or
24 its political subdivisions.

1 "~~(6)~~(4) Seminars and short courses sponsored or
2 offered by professional business, trade, or religious
3 organizations primarily for benefit of members thereof, or
4 similar public programs of training where the majority of the
5 students have at least half of their tuition and enrollment
6 fees paid by their employers, provided that evidence is
7 supplied supporting this exemption continuously over the
8 preceding five years.

9 "~~(7)~~(5) Any private ~~school~~ postsecondary institution
10 conducting resident courses whose principal base of operation
11 is within the State of Alabama which has been in continuous
12 operation for 20 years or more as of July 1, 2004, and that
13 held accreditation as of that date by an accrediting agency
14 recognized by the United States Department of Education.

15 "~~(8)~~(6) Programs of study regulated by other state
16 public boards, commissions, or agencies requiring school
17 licensure or performance bonding, or both, except where the
18 appropriate regulatory agency requires a license under this
19 chapter.

20 "~~(9)~~(7) Any private postsecondary institution
21 conducting resident courses that has been in operation within
22 Alabama for at least five years as of July 1, 2004, and that
23 is accredited by an accrediting agency recognized by the
24 United States Department of Education shall be accorded the
25 following provisions: Upon proof of such accreditation, such

1 private postsecondary schools shall be issued a license and
2 representative permits after required fees are paid to the
3 Alabama Department of Postsecondary Education. The requisite
4 accreditation shall satisfy the minimum standards of this
5 chapter.

6 ~~"(b)(c)~~ Any private ~~school~~ postsecondary institution
7 exempted in this section shall retain the exempted status as
8 long as the conditions of exemption remain valid. An
9 accredited private ~~school~~ postsecondary institution or program
10 of study not elsewhere exempted whose accreditation is
11 withdrawn, suspended, or revoked shall forfeit its exemption
12 status until the grant of accreditation is restored. Due
13 process of the accrediting agency shall be allowed prior to
14 withdrawal of an exemption. ~~Schools~~ Private postsecondary
15 institutions having accreditation withheld as a result of
16 transfer of ownership shall be allowed a period of time to
17 regain the grant in accordance with the appropriate
18 accrediting agency regulations.

19 ~~"(c)(d)~~ An exemption pursuant to this section shall
20 not be construed to constitute approval or endorsement by the
21 State of Alabama for any purpose.

22 ~~"(d)(e)~~ Exempted private ~~schools~~ postsecondary
23 institutions may voluntarily request to be licensed without
24 surety as described in Sections 16-46-5 and 16-46-6.

1 "~~(e)~~ (f) Private ~~schools~~ postsecondary institutions
 2 which cease operations shall place the student academic,
 3 attendance, and financial aid records in the office of the
 4 appropriate ~~school~~ institutional administrator where a
 5 repository shall exist to safeguard and to make available
 6 these records to authorized persons upon request as follows:

7 "(1) ~~Schools~~ Private postsecondary institutions
 8 which merge, consolidate, or undergo change of ownership shall
 9 deposit with the continuing school.

10 "(2) ~~Schools~~ Private postsecondary institutions
 11 which are a part of a system, organization, franchise, or a
 12 ministry of a local church or a group of churches shall
 13 deposit with the administrative office thereof if such is to
 14 remain in operation.

15 "~~(3) Elementary and secondary schools without system~~
 16 ~~support shall deposit with the superintendent of the public~~
 17 ~~county or city within whose district the school is located.~~

18 "(3) Other private postsecondary institutions ~~(4)~~
 19 ~~Postsecondary, higher, and others~~ not elsewhere designated
 20 shall deposit with the ~~Alabama~~ Department of Postsecondary
 21 Education.

22 "§16-46-4.

23 "No person shall do any of the following:

24 "(1) Make or cause to be made any statement or
 25 representation, oral, written, or visual, in connection with

1 the operation of a school or the offering of a course, if such
 2 person knows or reasonably should know the statement or
 3 representation to be false, inaccurate, or misleading~~7~~.

4 "(2) Promise or guarantee employment utilizing
 5 information, training, or skill purported to be provided or
 6 otherwise enhanced by a course or school, unless such person
 7 offers the student or prospective student a bona fide contract
 8 of employment agreeing to employ ~~said~~ the student or
 9 prospective student for a period of not less than six months
 10 in a business or other enterprise regularly conducted by him
 11 or her and in which such information, training, or skill is a
 12 normal condition of employment~~7~~~~or~~.

13 "(3) Do any act constituting part of the conduct of
 14 operating a school or administration of a course or the
 15 obtaining of students therefor if such person knows or
 16 reasonably should know that any phase or incident of the
 17 conduct or operation of the school or administration of the
 18 course is being carried on by the use of fraud, deception, or
 19 other misrepresentation or by a person or persons operating a
 20 school without a license or soliciting students without a
 21 permit provided for by this chapter.

22 "§16-46-5.

23 "(a) No ~~proprietary private~~ postsecondary ~~school~~
 24 institution, except those enumerated in Section 16-46-3, shall
 25 operate within this state unless the ~~school~~ private

1 postsecondary institution first secures a license from the
2 ~~Alabama~~ Department of Postsecondary Education, regardless of
3 whether the ~~school~~ private postsecondary institution enrolls
4 Alabama students or has a physical presence within the State
5 of Alabama. Procedures for licensing and bonding of ~~schools~~
6 private postsecondary institutions operating courses in
7 separate locations shall be established in the rules and
8 regulations pursuant to Section 16-46-7.

9 ~~"(b) No K-12 school, except those enumerated in~~
10 ~~Section 16-46-3, shall operate within this state unless the~~
11 ~~school first secures a license from the Alabama State~~
12 ~~Department of Education. Procedures for licensing and bonding~~
13 ~~of schools operating courses in separate locations shall be~~
14 ~~established in the rules and regulations pursuant to Section~~
15 ~~16-46-7.~~

16 "(b) For all applicable private postsecondary
17 schools or institutions that apply for a license and that meet
18 the criteria identified in this section, the ~~(c) Upon~~
19 ~~satisfactory review of a school, the Alabama State Department~~
20 ~~of Education or the Alabama~~ Department of Postsecondary
21 Education, ~~as appropriate,~~ shall issue a license to be
22 publicly displayed on the premises where the ~~school~~ private
23 postsecondary institution operates.

24 ~~"(c) (d) The application for a license for a K-12~~
25 ~~school shall be made on forms furnished by the Alabama State~~

1 ~~Department of Education. Application for a license for a~~
2 ~~proprietary private postsecondary institution shall be made on~~
3 ~~forms furnished by the ~~Alabama~~ Department of Postsecondary~~
4 ~~Education.~~

5 " ~~(d)~~ ~~(e)~~ The State Board of Education shall
6 promulgate a schedule of licensing fees, which may be revised
7 from time to time upon reasonable notice at the discretion of
8 the board. All licensing fees collected from private
9 postsecondary institutions shall be deposited in the State
10 Treasury to the credit of the private school licensing section
11 in the ~~Alabama~~ Department of Postsecondary Education.
12 ~~Licensing fees collected from Key schools shall be deposited~~
13 ~~in the State Treasury to the credit of the Alabama State~~
14 ~~Department of Education.~~

15 " ~~(e)~~ ~~(f)~~ All K-12 schools except those enumerated in
16 Section ~~16-46-3~~ shall be required to establish financial
17 stability by a surety acceptable to the Alabama State
18 Department of Education in the penal sum of not more than
19 \$10,000.00. The sum required to provide prepaid tuition
20 liability shall be established by the Alabama State Department
21 of Education by appropriate regulation pursuant to Section
22 ~~16-46-7~~. All proprietary private postsecondary institutions,
23 except those enumerated in Section 16-46-3, shall be required
24 to establish financial stability by surety acceptable to the
25 ~~Alabama~~ Department of Postsecondary Education in the penal sum

1 of not more than twenty thousand dollars (\$20,000). The sum
2 required to provide prepaid tuition liability shall be
3 established by the ~~Alabama~~ Department of Postsecondary
4 Education by appropriate regulation pursuant to Section
5 16-46-7. Financial stability for separate locations shall be
6 provided through the principal base of operations. Such surety
7 shall be continuous and shall be conditioned to provide
8 indemnification to any student suffering loss as a result of
9 any fraud or misrepresentation used in procuring his or her
10 enrollment in and/or administering a course covered by this
11 chapter for the purpose of assuring due and faithful
12 performance of agreements or contracts with students.

13 "(f) ~~(g)~~ A license under this chapter shall be valid
14 for two years from the date on which it was issued.

15 "(g) ~~(h)~~ Regardless of the number of years that a
16 surety is in force, the aggregate liability thereon shall in
17 no event exceed the penal sum of the surety accepted by ~~either~~
18 ~~the Alabama State Department of Education or the Alabama~~
19 ~~Department of Postsecondary Education, as appropriate.~~ The
20 surety may cancel the same upon giving 30 days' notice in
21 writing to the ~~Alabama State Department of Education or the~~
22 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~
23 and thereafter shall be relieved of liability for any breach
24 of condition occurring after the effective date of the
25 cancellation.

1 "(h) ~~(i)~~ Application for a license shall also be
2 accompanied by a financial statement acceptable to the ~~State~~
3 ~~Department of Education or the Alabama~~ Department of
4 Postsecondary Education, ~~as appropriate,~~ and a copy of the
5 current catalog, brochure, or bulletin of the ~~school~~ private
6 postsecondary institution, which shall include all of the
7 following:

8 "(1) Identifying data such as volume number, date,
9 and publication.

10 "(2) Name, address, and telephone of the ~~school~~
11 private postsecondary institution and its governing body,
12 officials, and faculty.

13 "(3) A clear and concise statement of the objectives
14 of the training given by the school.

15 "(4) The exact manner in which the stated objectives
16 are to be attained.

17 "(5) A tuition and refund policy which is in
18 compliance with the appropriate regulation pursuant to Section
19 16-46-7.

20 "(6) A grievance policy which directs aggrieved
21 students to first attempt to resolve complaints through the
22 appropriate ~~school~~ officials of the private postsecondary
23 institution. Student grievances not resolved by the ~~school~~
24 private postsecondary institution shall be referred to the

1 ~~Alabama State Department of Education or the Alabama~~
2 ~~Department of Postsecondary Education, as appropriate.~~

3 "(7) Such other reasonable information as the
4 ~~Alabama State Department of Education or the Alabama~~
5 ~~Department of Postsecondary Education, as appropriate,~~ may
6 impose.

7 "(i) ~~(j)~~ Upon receipt of the required information,
8 the ~~Alabama State Department of Education or the Alabama~~
9 ~~Department of Postsecondary Education, as appropriate,~~ may
10 issue a license provided the institution is complying with all
11 of the following standards:

12 "(1) The courses, curriculum, and instructions of
13 ~~such school~~ the private postsecondary institution are
14 consistent, in quality and content, with recognized
15 educational standards as determined by the ~~Alabama State~~
16 ~~Department of Education or the Alabama~~ Department of
17 Postsecondary Education, ~~as appropriate.~~

18 "(2) There is available to the ~~school~~ private
19 postsecondary institution adequate space, equipment,
20 instructional material, and instructor personnel to provide
21 training of good quality.

22 "(3) Adequate records as determined by the ~~Alabama~~
23 ~~State Department of Education or the Alabama~~ Department of
24 Postsecondary Education, ~~as appropriate,~~ are kept to show
25 attendance and student progress. Records shall be available

1 upon request of the student to be furnished prospective
2 employers and other interested parties.

3 "(4) The ~~school~~ private postsecondary institution is
4 financially sound and capable of fulfilling its commitments
5 for training.

6 "(5) ~~Schools~~ Private postsecondary institutions or
7 courses domiciled outside Alabama shall designate a state
8 agent who is a resident of this state to service all
9 complaints against the ~~school~~ institution.

10 "(6) A student enrollment agreement or contract
11 shall be utilized to set forth clearly all conditions for
12 enrollment in and completion of courses of instruction,
13 itemized course cost, terms of payment, and other conditions
14 the ~~school~~ private postsecondary institution may desire to
15 establish. Conditions for forced withdrawal for academic or
16 disciplinary reasons shall be stated. Contracts establishing
17 installment payments with interest charges shall be in
18 compliance with Alabama statutes regarding lending and usury
19 and shall be certified by the Alabama State Banking
20 Department.

21 "(7) The ~~school~~ private postsecondary institution
22 shall comply with all local, state, and federal laws and
23 regulations.

24 "(j) ~~(k)~~ Any license applied for pursuant to this
25 section shall be granted, deferred, or denied within 30 days

1 of the receipt of the application therefor by ~~either the~~
2 ~~Alabama State Department of Education or the Alabama~~
3 ~~Department of Postsecondary Education, as appropriate.~~

4 "(k) ~~(l)~~ The ~~Alabama State Department of Education~~
5 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~
6 ~~appropriate,~~ may invoke negative actions against any license
7 issued if the holder of the license solicits or enrolls
8 students or administers instructions through fraud, deception,
9 or misrepresentation. Negative actions shall include
10 probation, suspension, and/or revocation.

11 "(l) ~~(m)~~ The fact that a surety is in force pursuant
12 to this section shall not limit nor impair any right of
13 recovery otherwise available under law, nor shall the amount
14 of such surety be relevant in determining the amount of
15 damages or other relief to which any plaintiff may be
16 entitled.

17 "(m) ~~(n)~~ No recovery against any student shall be
18 had on any contract if such ~~school~~ private postsecondary
19 institution was not the holder of a license as required by
20 this section at the time that ~~such school~~ the institution or
21 its representative negotiated the contract for or sold such
22 course.

23 "(n) ~~(o)~~ Schools Private postsecondary institutions
24 which undergo transfer of ownership shall be reviewed to
25 determine that minimum standards remain in effect. The license

1 may not be transferred to new ownership. Financial stability
2 of the new ownership shall be established.

3 "(o) ~~(p)~~ The issuance of a license pursuant to this
4 section shall represent authority to operate an educational
5 institution in Alabama. Licensure may not be advertised as an
6 endorsement or recommendation, but it implies compliance with
7 the laws of Alabama. Advertising may indicate only that the
8 ~~school~~ private postsecondary institution is licensed by the
9 state.

10 "§16-46-6.

11 "(a) No person representing any ~~school~~ private
12 postsecondary institution or other individual or organization
13 offering courses in this state, or from a place of business in
14 this state, whether located within or outside this state,
15 shall sell any course or solicit students therefor in this
16 state for a consideration or remuneration unless a permit is
17 first secured from the ~~Alabama State Department of Education~~
18 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~
19 ~~appropriate~~, with the exception of agents representing schools
20 exempted under Section 16-46-3. If the agent represents more
21 than one school not exempted under Section 16-46-3, a separate
22 permit shall be obtained for each school represented. The
23 application for a permit shall be made on forms to be
24 furnished by ~~either the Alabama State Department of Education~~

1 ~~or Alabama~~ Department of Postsecondary Education, ~~as~~
2 ~~appropriate,~~ and shall be renewed every two years.

3 "(b) Upon satisfactory review of an agent, the
4 ~~Alabama State Department of Education or the Alabama~~
5 ~~Department of Postsecondary Education, as appropriate,~~ shall
6 issue a pocket card displaying the signature of the person,
7 facial photo, name and address, the name and address of the
8 employing ~~school~~ private postsecondary institution or virtual
9 school, and certifying that the person is an authorized agent
10 of the ~~school~~ entity. A permit shall be valid for two years
11 from the date on which it was issued. This permit shall be
12 carried on person when representing the ~~school~~ institution or
13 entity as an agent.

14 "(c) ~~Schools~~ Entities utilizing agents shall provide
15 indemnification to any student suffering loss as a result of
16 any fraud or misrepresentation used by the agents in procuring
17 enrollment. This subsection only applies to entities subject
18 to this section and not exempted under Section 16-46-3.

19 "(d) One complimentary agent's permit may be issued
20 to a designated owner, director, or managerial person of each
21 ~~licensed school~~ private postsecondary institution or other
22 entity subject to this section not exempted under Section
23 16-46-3, that is identified as a principal base of operation.

24 "(e) No person shall be issued a permit to represent
25 any ~~school~~ private postsecondary institution or other entity

1 subject to this section and not exempted under Section
2 16-46-3, whether located within or outside this state, until
3 it has been determined by the ~~Alabama State Department of~~
4 ~~Education or the Alabama~~ Department of Postsecondary
5 Education, ~~as appropriate,~~ that the ~~school~~ private
6 postsecondary institution or other entity has qualified under
7 the requirements of Section 16-46-5.

8 "(f) Any permit applied for pursuant to this section
9 shall be granted, deferred, or denied within 30 days of the
10 receipt of the application therefor by the ~~Alabama State~~
11 ~~Department of Education or the Alabama~~ Department of
12 Postsecondary Education, ~~as appropriate.~~

13 "(g) The ~~Alabama State Department of Education or~~
14 ~~the Alabama~~ Department of Postsecondary Education, ~~as~~
15 ~~appropriate,~~ may invoke negative actions against any permit
16 issued pursuant to this section if the holder of the permit
17 solicits or enrolls students through fraud, deception, or
18 misrepresentation or upon a finding that the license to
19 operate the ~~school~~ private postsecondary institution or entity
20 represented is revoked or it is determined by the ~~Alabama~~
21 ~~State Department of Education or the Alabama~~ Department of
22 Postsecondary Education, ~~as appropriate,~~ that the ~~school~~
23 private postsecondary institution or entity located outside of
24 the state which the holder of the permit represents does not

1 meet the requirements of Section 16-46-5. Negative actions
2 shall include probation, suspension, and/or revocation.

3 "(h) The fact that a surety is in force shall not
4 limit or impair any right of recovery otherwise available
5 under law, nor shall the amount of such bond be relevant in
6 determining the amount of damages or other relief to which any
7 plaintiff may be entitled.

8 "(i) No recovery shall be had on any contract for or
9 in connection with a course by any person selling or
10 administering such course if the representative soliciting the
11 students or selling the course was not the holder of a permit
12 as required by this section at the time that such
13 representative negotiated the contract for or sold such
14 course.

15 "(j) No recovery shall be had on any contract for or
16 in connection with a course by any person or institution
17 holding such a contract who is legally a third party or
18 holding agent for one of the other parties where the selling
19 of the course or the conduct or operation of the ~~school~~ entity
20 subject to this section or the administering of the course is
21 carried on by use of fraud, deception, or other
22 misrepresentation or if the person or persons operating the
23 ~~school~~ entity subject to this chapter, administering the
24 course, or soliciting students is without a license provided
25 by this chapter.

1 "(k) The issuance of a permit pursuant to this
2 section shall not be deemed to constitute endorsement of any
3 course, person, or institution offering, conducting, or
4 otherwise administering the same. Any representation contrary
5 to this subsection or tending to imply that a permit issued
6 pursuant to this section constitutes such endorsement shall be
7 a misrepresentation within the meaning of this chapter.
8 Permits to sell courses, solicit students, or otherwise
9 represent ~~a school~~ an entity subject to this section that is
10 located within this state may not be issued unless the ~~school~~
11 entity first obtained a license to operate under Section
12 16-46-5, nor may permits be issued to represent ~~schools~~
13 entities subject to this section that are located outside of
14 the state until it has been determined by the ~~Alabama State~~
15 ~~Department of Education or the Alabama~~ Department of
16 Postsecondary Education, ~~as appropriate,~~ that ~~such school~~ the
17 private postsecondary institution qualifies under the
18 requirements of Section 16-46-5.

19 "§16-46-7.

20 "The ~~Alabama~~ State Board of Education may adopt
21 rules and regulations for the administration and enforcement
22 of this chapter and shall require the Chancellor to establish
23 an advisory committee of owners or operators of ~~proprietary~~
24 private postsecondary institutions, and to which this chapter
25 applies, and of other persons with knowledge in the field to

1 which this chapter applies to advise the Chancellor in the
2 administration of this chapter relating to ~~proprietary~~ private
3 postsecondary institutions. The advisory committee may review
4 any action taken or policy established by the ~~Alabama~~
5 Department of Postsecondary Education, ~~as appropriate,~~ in the
6 administration of this chapter and may offer recommendations
7 to the Chancellor or State Board of Education. Reimbursement
8 for per diem and travel to advisory committee meetings shall
9 be authorized under this chapter and shall be expended by
10 voucher as required by the ~~Alabama~~ Department of Postsecondary
11 Education.

12 "§16-46-8.

13 "The ~~Alabama State Department of Education or the~~
14 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~
15 may institute such action of law or in equity as may be
16 necessary to enforce this chapter. In addition to any other
17 remedy under this chapter, the ~~Alabama State Department of~~
18 ~~Education or the Alabama~~ Department of Postsecondary
19 Education, ~~as appropriate,~~ may apply for relief by injunction,
20 mandamus, or any other appropriate remedy in equity without
21 being compelled to allege or prove that an adequate remedy at
22 law does not otherwise exist. The ~~Alabama State Department of~~
23 ~~Education and the Alabama~~ Department of Postsecondary
24 Education ~~are~~ is not required to give or post bond in any
25 action to which it is party, whether upon appeal or otherwise.

1 All legal actions shall be brought against the ~~Alabama State~~
2 ~~Department of Education or the Alabama~~ Department of
3 Postsecondary Education, ~~as appropriate,~~ in the name of the
4 ~~Alabama State Board of Education or the Alabama~~ Department of
5 Postsecondary Education, ~~as appropriate.~~ The ~~Alabama State~~
6 ~~Department of Education and the Alabama~~ Department of
7 Postsecondary Education, ~~as appropriate,~~ may institute an
8 action by its own attorney, but each shall have the right, if
9 it deems advisable, to call upon any assistant district
10 attorney or district attorney to represent it in the circuit
11 courts of this state or the Attorney General to represent it
12 on appeal in the appellate courts of this state.

13 "§16-46-9.

14 "Any person or school or private postsecondary
15 institution aggrieved by the actions of the ~~Alabama State~~
16 ~~Department of Education or the Alabama~~ Department of
17 Postsecondary Education with respect to exemption, issuance,
18 denial, deferral, probation, suspension, or revocation of a
19 license or permit provided for in Sections 16-46-3, 16-46-5,
20 and 16-46-6, may file within 30 days a petition for review by
21 the ~~Alabama~~ State Board of Education. The aggrieved person, or
22 school, or institution shall then be entitled to a hearing
23 before the ~~Alabama~~ State Board of Education. The person, or
24 school, or institution may be represented by counsel at the
25 hearing. The aggrieved person, or school, or institution may

1 adduce evidence, both oral and documentary, at such hearing
2 and on official record if such hearing shall be transcribed by
3 a qualified court reporter. After the ~~Alabama~~ State Board of
4 Education acts on the petition for review, any person, ~~or~~
5 school, or institution aggrieved by the ~~Alabama~~ State Board of
6 Education's actions ~~shall~~, within 30 days after receiving
7 notice of any such action, may have such action reviewed by a
8 writ of certiorari by filing in the Circuit Court of
9 Montgomery County, Alabama, a verified petition setting out
10 the specific action or actions of the ~~Alabama~~ State Board of
11 Education by which the person, ~~or~~ school, or institution is
12 aggrieved. The court shall consider only such matters as are
13 contained in the petition. Upon such petition being filed, a
14 writ of certiorari shall be issued out of the court directly
15 to the ~~Alabama~~ State Board of Education requiring it to file
16 with the court the records and transcript of testimony upon
17 which such action or order was made and requiring the board to
18 file an answer to the petition within 30 days of service of
19 the writ. Upon the board filing such answer, the issue shall
20 be joined thereon without further pleading and the case
21 considered on the petition, the records of the board, and the
22 answer filed by the board, but no new or additional evidence
23 shall be taken or heard by the court. If new or additional
24 evidence is discovered by any party ~~or school~~, after the
25 hearing of the ~~Alabama~~ State Board of Education, the evidence

1 may be made grounds for a motion for a new hearing before the
2 ~~Alabama~~ State Board of Education under the rules applicable to
3 similar laws for a new trial in the state courts of Alabama.
4 Such court may suspend or stay such actions of the ~~Alabama~~
5 State Board of Education complained of in such petition,
6 pending final hearing, only upon the petitioner executing a
7 bond in such amount as the court deems reasonably sufficient
8 to pay all costs of appeal if the petition is not sustained.
9 In no case shall the bond be less than the reasonable cost of
10 the transcript of the hearing before the ~~Alabama~~ State Board
11 of Education that is being appealed. Upon final hearing, the
12 court shall have jurisdiction to reverse, vacate, or modify
13 the action complained of if, upon the consideration of the
14 issues before the court, the court is of the opinion that the
15 action is unlawful.

16 "§16-46-10.

17 "It shall be unlawful for any person to violate ~~any~~
18 ~~provisions of~~ this chapter. Any person required by this
19 chapter to have a license or permit who shall do in this state
20 any business of the nature described in this chapter without
21 first obtaining such a license or permit as required of him or
22 her by this chapter shall be guilty of a misdemeanor and, upon
23 conviction, shall be punished by a fine of not more than five
24 hundred dollars (\$500) or a term of imprisonment not to exceed
25 six months, or both. Each day's violation of this chapter

1 shall constitute a separate offense. All fines shall be
2 deposited in the State Treasury to the credit of the ~~Alabama~~
3 ~~State Department of Education or the Alabama~~ Department of
4 Postsecondary Education, ~~as appropriate."~~

5 Section 6. Any provision of law to the contrary
6 notwithstanding, no public two-year or four-year institution
7 of higher education in the state may deny admission to or
8 otherwise discriminate against an otherwise qualified student
9 based on the consideration, whether in whole or in part, that
10 the student attended, graduated from, or is enrolled in a
11 nonpublic school, including private, church, parochial, and
12 religious schools, or was home schooled.

13 Section 7. Any provision of law to the contrary
14 notwithstanding, the State Department of Education's
15 requirements for teacher certification and recertification
16 shall be the same for any person who teaches in a public
17 school or a nonpublic school, whether accredited or not, and
18 without regard to whether the otherwise qualified person is or
19 was employed by a nonpublic K-12 private, church, parochial,
20 or religious school that is not subject to state regulation.

21 Section 8. All nonpublic schools which choose to
22 become members of the Alabama High School Athletic Association
23 shall be in compliance with the constitution and bylaws
24 established by Alabama High School Athletic Association member
25 schools.

1 Section 9. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 10. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB38
Senate 28-JAN-14
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Senate 19-MAR-14
I hereby certify that the within Act originated in and passed
the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives
Passed: 11-MAR-14, as amended
House of Representatives
Passed: 19-MAR-2014, as amended by Conference Committee
Report.

By: Senator Brewbaker