

1 SB395
2 176699-1
3 By Senator Brewbaker
4 RFD: Education and Youth Affairs
5 First Read: 07-APR-16

2
3
4
5
6
7
8 SYNOPSIS: This bill would create the Education Savings
9 Account program which would allow parents to use
10 the funds in the account which would have been
11 allocated to their child at their resident school
12 district for an education program of the parents'
13 choosing.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to education; to create the Education
20 Savings Account program which would allow parents to use the
21 funds in the account which would have been allocated to their
22 child at their resident school district for an education
23 program of the parents' choosing.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known and may be cited
26 as the Education Savings Account Act.

1 Section 2. As used in this act, the following words
2 shall have the following meanings:

3 (1) DEPARTMENT. The Alabama Department of Revenue or
4 an organization chosen by the state.

5 (2) ELIGIBLE POSTSECONDARY INSTITUTION. A community
6 college, accredited university, or an accredited private
7 postsecondary institution.

8 (3) ELIGIBLE STUDENT. A student who satisfies all of
9 the following:

10 a. Is the subject of an individual education plan
11 issued by a public school. This includes, but is not limited
12 to, a student who has an intellectual disability, speech or
13 language impaired, deaf, or hard of hearing, visually
14 impaired, dual sensory impaired, physically impaired,
15 emotionally handicapped, specific learning disabled, autistic,
16 or hospitalized or homebound because of illness or disability.

17 b. Attended a primary or secondary school in this
18 state during the prior school year.

19 (4) ORGANIZATION. An organization that administers
20 or is approved to administer an education savings account for
21 an eligible student.

22 (5) PARENT. A resident of this state who is a
23 parent, guardian, custodian, or other person with the
24 authority to act on behalf of the child.

25 (6) PARTICIPATING SCHOOL. A private school that
26 provides education to elementary or secondary students or both
27 and has notified the Department of Education of its intention

1 to participate in the program and comply with the requirements
2 of the program.

3 (7) PRIVATE TUTORING. Tutoring services provided by
4 an individual who holds a teaching certificate from the State
5 of Alabama, has experience in teaching at a postsecondary
6 institution or an accreditation from a state, regional, or
7 national entity.

8 (8) RESIDENT SCHOOL DISTRICT. The public school
9 district in which the student resides.

10 Section 3. (a) A parent of an eligible student shall
11 qualify for the state to make a grant to his or her child's
12 education savings account if the parents sign an agreement to
13 do all of the following:

14 (1) To provide an education for the eligible student
15 in at least the subjects of reading, grammar, mathematics,
16 social studies, and science.

17 (2) Not to enroll the eligible student in a charter
18 school.

19 (3) Not to enroll in the Alabama Tax Credit
20 Scholarship Program.

21 (4) Not to enroll in a public school unless it is
22 for contracted services specified in subsection (b)(11).

23 (b) Each parent participating in the Education
24 Savings Account program shall agree to use the funds deposited
25 in his or her eligible student's accounts for the following
26 qualifying expenses to educate the eligible student:

27 (1) Tuition and fees at a participating school.

1 (2) Textbooks required by a participating school.

2 (3) Payment to a licensed or accredited tutor.

3 (4) Payment for purchase of curriculum or
4 instructional material.

5 (5) Tuition and fees for an approved nonpublic
6 online learning program.

7 (6) Fees for national norm-referenced examinations,
8 advanced placement examinations or similar courses, fees
9 associated with state-recognized industry examinations and any
10 examinations related to college or university admission.

11 (7) Contribution of not more than two thousand
12 dollars (\$2,000) per academic year to a Coverdell education
13 savings account established pursuant to 26 U.S.C. Section 530
14 or a qualified tuition program established pursuant to Section
15 26 U.S.C. Section 529 for the benefit of the eligible student,
16 except that money used for elementary or secondary education
17 expenses shall be used for expenses otherwise allowed under
18 this section.

19 (8) Educational services for pupils with
20 disabilities from a licensed or accredited practitioner or
21 provider.

22 (9) Tuition and fees at an eligible postsecondary
23 institution.

24 (10) Textbooks required for college or university
25 courses.

26 (11) Contracted services from a public school
27 district, including individual classes.

1 (12) Fees associated with the management of the
2 account by authorized financial firms.

3 (c) The amount the state shall deposit into an
4 education savings account for a participating eligible student
5 shall be equivalent to 90 percent of the calculated amount the
6 eligible student would have received in the district school to
7 which he or she would have been assigned. This equals the base
8 student allocation in the state funding formula multiplied by
9 the appropriate weights provided for the eligible students.

10 (d) A participating school, private tutor, eligible
11 postsecondary institution, or other educational provider may
12 not refund, rebate, or share a student's grant with a parent
13 or the student in any manner. The funds in an education
14 savings account may only be used for educational purposes.

15 (e) Parents shall be allowed to make payments for
16 the costs of educational programs and services not covered by
17 the funds in their accounts.

18 (f) A participating student shall be counted in the
19 enrollment figures for his or her resident school district for
20 the purposes of calculating state aid to the resident school
21 district. The funds needed for a grant to an education savings
22 account shall be subtracted from the state school aid payable
23 to the student's resident school district.

24 (g) The program created in this act shall be limited
25 to participation of 1,000 new eligible students each academic
26 year, beginning with the academic year immediately following

1 the passage of this act. Each application shall be approved on
2 a first come first serve basis.

3 (h) Funds received pursuant to this section may not
4 be construed as constituting taxable income to the parent.

5 (i) Eligible students previously enrolled in the
6 programs shall have priority renewal in the following years.

7 Section 4. (a) An organization wishing to administer
8 the program shall do the following:

9 (1) Notify the department of its intent to
10 administer education savings accounts for eligible students.

11 (2) Demonstrate to the department that the
12 organization has been granted exemption from the federal
13 income tax as an organization described in Section 501(c)(3)
14 of the Internal Revenue Code.

15 (3) Conduct criminal background checks on all of its
16 employees and board members and exclude from employment or
17 governance any individual who may reasonably pose a risk to
18 the appropriate use of funds.

19 (4) Publicly report by September 1 of each calendar
20 year information prepared by a certified public accountant
21 verifying that the organization has been in compliance with
22 all the requirements set forth in this act during the previous
23 academic year.

24 (b) An organization may establish education savings
25 accounts for eligible students by:

26 (1) Receiving applications and determining student
27 eligibility in accordance with the requirements of this

1 section. When an application is received, the organization
2 must provide the department with information on the student to
3 enable the department to report the student for funding in
4 accordance with Section 5.

5 (2) Establishing and maintaining separate accounts
6 for each eligible student.

7 (3) Verifying qualifying expenditures pursuant to
8 this subsection.

9 (4) Returning any unused funds to the department
10 when the student is no longer eligible for an education
11 savings account.

12 (c) The department shall make payments to eligible
13 students' education savings accounts on a quarterly basis.

14 (d) For purposes of continuity of educational
15 choice, the program payments made under this section shall
16 remain in force until a student participating in the program
17 participates in any of the prohibited activities specified in
18 this subsection, returns to a public school, graduates from
19 high school, or attains 22 years of age, whichever occurs
20 first. A participating student who enrolls in a public school
21 or public school program is considered to have returned to a
22 public school for the purpose of determining the end of the
23 program's term; provided, however, that purchasing contracted
24 services from a public school system in compliance with
25 subdivision (11) of subsection (b) of Section 3 does not
26 signify enrollment.

1 (e) The department shall provide funds for program
2 administration. These funds shall come from the remaining 10
3 percent of funds not deposited into an education savings
4 account pursuant to subsection (c) of Section 3, and may be
5 disbursed as follows:

6 (1) Each organization shall receive an
7 administrative fee based on the number of students
8 participating through such organizations. In the first three
9 years of an organization's participation in the program, the
10 department shall grant an amount equal to six percent of the
11 funds annually deposited into the accounts of eligible
12 students participating in the program through the organization
13 pursuant to subsection (c) of Section 3. In subsequent years,
14 the organization shall be granted an amount equal to four
15 percent of the funds.

16 (2) The department shall receive an administrative
17 fee totaling three percent of total program funds in the first
18 three years. In subsequent years, the department shall receive
19 an administrative fee totaling one percent of total program
20 funds.

21 (3) The department shall establish reasonable fees
22 for private financial management firms participating in the
23 program based upon market rates.

24 Section 5. (a) The department shall ensure that
25 eligible students and their parents are informed annually of
26 which schools will be participating in the Education Savings
27 Account program. Special attention shall be paid to ensuring

1 that lower-income families are made aware of the program and
2 their options.

3 (b) The department shall create a standard form that
4 parents of eligible students can submit to establish their
5 student's eligibility for the education savings account
6 program. The department shall ensure that the application is
7 readily available to interested families through various
8 sources, including the Internet.

9 (c) The department shall provide parents of
10 participating students with a written explanation of the
11 allowable uses of education savings accounts, the
12 responsibilities of parents, and the duties of the department.

13 (d) The department shall maintain a list of approved
14 providers.

15 (e) The department shall require quarterly reports
16 by a participating organization regarding the number of
17 students participating in the program, the providers of
18 services to students, and other information deemed necessary
19 by the department.

20 (f) The department shall compare the list of
21 students participating in the program with the public school
22 enrollment lists before each program payment to avoid
23 duplicate payments.

24 (g) The department may bar a participating school or
25 education provider from the Education Savings Account program
26 if the department establishes that the participating school or
27 education provider has:

1 (1) Routinely failed to comply with the
2 accountability standards established in this act

3 (2) Failed to provide the eligible student with the
4 educational services funded by the education savings account.

5 (h) If the department decides to bar a participating
6 school or education provider from the program, it shall notify
7 eligible students and their parents of this decision as soon
8 as practicable.

9 (i) The department may conduct or contract for the
10 auditing of accounts, and at a minimum, shall conduct random
11 audits of accounts on an annual basis. The department may make
12 any parent of an eligible student ineligible for the Education
13 Savings Account program in the event of substantial misuse of
14 the funds in the account.

15 (j) The department may refer cases of substantial
16 misuse of funds to law enforcement agencies for investigation
17 if evidence of fraudulent use of an account is obtained.

18 (k) The department shall qualify private financial
19 management firms to manage education savings accounts.

20 (l) The department shall adopt rules as necessary
21 for the administration of the Education Savings Account
22 program.

23 Section 6. (a) To ensure that each student is
24 treated fairly and kept safe, all participating private
25 schools shall do all of the following:

26 (1) Comply with all health and safety laws or codes
27 that apply to private schools.

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

3 (3) Certify that the school complies with the
4 nondiscrimination policies set forth in 42 U.S.C. 1981.

5 (4) Conduct criminal background checks on employees.
6 The participating school then shall:

7 a. Exclude from employment any person not permitted
8 by state law to work in a public or private school.

9 b. Exclude from employment any person that might
10 reasonably pose a threat to the safety of students.

11 (5) Comply with the Alabama Child Protection Act of
12 1999, Chapter 22A of Title 16, Code of Alabama 1975.

13 (b) To ensure that funds are spent appropriately,
14 all participating schools shall do the following:

15 (1) Provide parents with a receipt for all
16 qualifying expenses at the school.

17 (2) Demonstrate financial viability by showing that
18 any funds that might be provided from education savings
19 accounts can be repaid, if the school is to receive fifty
20 thousand dollars (\$50,000) or more during the school year, by:

21 a. Filing with the organization prior to the start
22 of the school year a surety bond payable to the state in an
23 amount equal to the aggregate amount of the funds from
24 education savings accounts expected to be paid during the
25 school year from eligible students admitted at the
26 participating school.

1 b. Filing with the organization prior to the start
2 of the school year financial information that demonstrates the
3 school has the ability to pay an aggregate amount equal to the
4 amount of the funds from education savings accounts expected
5 to be paid during the school year to eligible students
6 admitted to the participating school.

7 (c) In order to allow parents and taxpayers to
8 measure the achievements of the program, the following shall
9 occur:

10 (1) Parents shall ensure that:

11 a. Each year their eligible student takes either the
12 state achievement tests or nationally norm-referenced tests
13 that measure learning gains in math and language arts.
14 Students with disabilities for whom standardized testing is
15 not appropriate as outlined in their IEP are exempt from this
16 requirement.

17 b. The results of these tests are provided to the
18 department or an organization chosen by the department on an
19 annual basis, beginning with the first year of testing.

20 c. The student information is reported in a way that
21 would allow the department to aggregate data by grade level,
22 gender, family income level, and race.

23 d. The department or an organization chosen by the
24 department shall be informed of the eligible student's
25 graduation from high school.

26 (2) The department or an organization chosen by the
27 department shall:

1 a. Ensure compliance with all student privacy laws.

2 b. Collect test results.

3 c. Provide the test results, associated learning
4 gains, and graduation rates to the public via a state website
5 after the third year of test and graduation related data
6 collection. The findings shall be aggregated by the students'
7 grade level, gender, family income level, number of years of
8 participation in the program, and race.

9 d. Provide graduation rates to the public via a sate
10 website after the third year of test and test-related data
11 collection.

12 e. Administer an annual parental satisfaction survey
13 that shall ask parents of students receiving education savings
14 accounts to express:

15 1. Their satisfaction with the program.

16 2. Their opinions on other topics, items, or issues
17 that the state finds would elicit information about the
18 effectiveness of the Education Savings Accounts program and
19 the number of years their child has participated in the
20 program.

21 (d) A participating private school is autonomous and
22 not an agent of the state or federal government and therefore:

23 (1) The department or any other state agency may not
24 in any way regulate the educational program of a participating
25 private school or education provider that accepts funds from
26 an education savings account.

1 (2) The creation of the education savings account
2 program does not expand the regulatory authority of the state,
3 its officers, or any school district to impose any additional
4 regulation of private schools or education providers beyond
5 those necessary to enforce the requirements of the program.

6 (3) Participating private schools and education
7 providers shall be given the maximum freedom to provide for
8 the educational needs of their students without government
9 control.

10 Section 7. The resident school district shall
11 provide a participating school or education provider that has
12 admitted an eligible student under this program with a
13 complete copy of the student's school records, while complying
14 with the Family Educational Rights and Privacy Act of 1974, 20
15 U.S.C. Section 1232 g.

16 Section 8. The Alabama Department of Education shall
17 fully cooperate with the department for the proper
18 administration of this act, including, but not limited to,
19 responding to requests and providing all necessary information
20 the department may need.

21 Section 9. The Education Savings Account program
22 will be in effect beginning with the fall semester immediately
23 following its passage and approval by the Governor, or its
24 otherwise becoming law.