

HB129 INTRODUCED



1 HB129
2 UL5VGXD-1
3 By Representatives Garrett, Ledbetter, Collins
4 RFD: Ways and Means General Fund
5 First Read: 06-Feb-24

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SYNOPSIS:

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

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

The bill would establish a new fund in the State

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

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A BILL

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TO BE ENTITLED

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AN ACT

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45 Relating to education; to enact the CHOOSE Act; to
46 establish a refundable income tax credit to offset the cost of
47 qualifying educational expenses; to direct the Department of
48 Revenue to establish education savings accounts through which
49 parents can access funds to direct the education of
50 participating students through education service providers and
51 participating schools; to establish CHOOSE Act program
52 requirements for parents of participating students, education
53 service providers, and participating schools; to specify
54 powers and duties of the Department of Revenue in
55 administering the CHOOSE Act program; to prevent fraud or
56 other misuse of CHOOSE Act program funds; to establish the

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57 CHOOSE Act fund.

58 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

78 (5) ELIGIBLE STUDENT. A child aged 5 to 19 years who
79 resides in this state who has not graduated high school or a
80 child aged 5 to 21 years who resides in this state and has
81 an individual education plan or accommodation plan issued

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82 according to Section 504 of the Rehabilitation Act of 1973;
83 provided that a student receiving scholarship funds or a tax
84 credit under the Alabama Accountability Act of 2013, Chapter
85 6D of Title 16, Code of Alabama 1975, shall not be an
86 eligible student.

87 (6) PARENT. A resident of this state who is the parent,
88 guardian, custodian, or other individual with authority to
89 act on behalf of an eligible student.

90 (7) PARTICIPATING SCHOOL. An education service provider
91 that is an accredited public K-12 school or an accredited
92 private school, including church, parochial, or religious
93 school, that provides education to K-12 students and that is
94 approved by the department. The school must be accredited,
95 or in the process of obtaining accreditation as determined
96 by the department, by one of the six regional accrediting
97 agencies or the National Council for Private School
98 Accreditation, AdvancED, the American Association of
99 Christian Schools, or one of their partner accrediting
100 agencies.

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

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

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

110 a. Tuition and fees at a participating school.

111 b. Textbooks.

112 c. Fees for after-school or summer education programs
113 provided by a participating school.

114 d. Private tutoring.

115 e. Curricula or instructional materials.

116 f. Tuition and fees for nonpublic online learning
117 programs.

118 g. Educational software and applications.

119 h. Fees for standardized and nationally recognized
120 assessments, including college admissions tests and advanced
121 placement examinations and related preparatory courses.

122 i. Education services for students with disabilities
123 from a licensed or accredited practitioner or education
124 service provider.

125 j. Contracted services provided by a public school
126 district including specific classroom instruction.

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

129 (12) SPECIAL-NEEDS STUDENT. A student who has an
130 individual education plan or 504 accommodation issued
131 according to Section 504 of the Rehabilitation Act of 1973,
132 including, but not limited to, a student who has an
133 intellectual disability or is speech or language impaired,
134 deaf or hard of hearing, visually impaired, dual sensory
135 impaired, physically impaired, emotionally handicapped,
136 specific learning disabled, autistic, or hospitalized or
137 home bound because of illness or disability.

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

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

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150 (2) For the years beginning on or after January 1,
151 2027, the credit shall be available to any parent of an
152 eligible student. The credit shall be awarded in an amount
153 specified in subsection (c) and subject to the priorities
154 specified in subsection (d).

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

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

165 (d) In allocating the tax credits made available
166 pursuant to subsection (b), the department shall give
167 priority first to participating students and siblings of
168 participating students and then based on the family's
169 adjusted gross income as a percentage of the federal poverty
170 level; provided that the department shall reserve the first
171 500 tax credits for the parent of an eligible student who is
172 a special-needs student.

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173 (e) If the department awards a tax credit to a parent
174 for one eligible student, the department shall award
175 additional tax credits to the parent for any other eligible
176 student in the family who is a sibling of the eligible
177 student for whom a tax credit was previously awarded.
178 Nothing in this act shall be construed to authorize the
179 award of more than one tax credit per participating student.

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

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

188 (h) Participating students with disabilities who are
189 eligible to receive special education or similar services
190 from the local school system under federal or state law, and
191 who participate in the program, remain eligible to receive
192 those services from the local school system as provided by
193 federal or state law.

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

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

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

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

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

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

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

215 (b) Fulfillment of the agreements made pursuant to
216 subsection (a) is a requirement of continuing approval as a
217 participating student. Failure to fulfill the agreements
218 made pursuant to subsection (a) shall constitute grounds for
219 the department, in its discretion, to revoke, recover,

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220 suspend, or deny the credit otherwise made available
221 pursuant to this act.

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

224 (1) Submit to the department any information required by
225 the department for implementation of the program, including
226 its address, contact information, and a summary of each
227 program or service it proposes to provide to participating
228 students.

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

232 (3) Agree to submit quarterly reports to the department
233 concerning implementation of the program, including the
234 number of students participating, services provided, and
235 other similar information requested by the department.

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

238 (5) Agree to document amounts received for all
239 qualifying expenses in a manner prescribed by the
240 department.

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

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

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

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

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

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

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

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

269 (6) Inform the department of a participating student's
270 graduation, withdrawal from the school, misuse of program
271 funds, or other event affecting the student's eligibility
272 for the program.

273 (c) Fulfillment of the agreements made pursuant to
274 subsections (a) or (b) is a requirement of continuing
275 approval as an education service provider or participating
276 school. Failure to fulfill the agreements made pursuant to
277 subsections (a) or (b) shall constitute grounds for the
278 department, in its discretion, to suspend or disqualify the
279 education service provider or participating school from
280 receiving program funds.

281 (d) A public school that becomes an education service
282 provider under this act shall be given maximum flexibility
283 to accommodate participating students and may create a
284 process and establish requirements for accepting, selecting,
285 or limiting the number of allowable participating students
286 who are not assigned to that public school.

287 (e) No provision of this act shall be construed to
288 require any public school, school system, or school district
289 or any nonpublic school, school system, or school district
290 to enroll any student.

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291 (f) The Legislature finds and declares that education
292 service providers, including participating schools, that
293 accept program funds shall be given the maximum freedom
294 possible to provide for the educational needs of students,
295 consistent with state and federal law. To that end, unless
296 clear from the text of this act, no provision of this act
297 shall be construed to limit the independence or autonomy of
298 any education service provider; to act as a restriction,
299 direction, or mandate regarding instructional content or
300 curriculum provided by any education service provider; to
301 require an education service provider to alter its creed,
302 practices, admissions policies, hiring policies, codes of
303 conduct for employees or students, tuition, or fees; to
304 expand the regulatory authority of the state, its officers,
305 or any school district; or to otherwise deprive or diminish
306 the protections for nonpublic schools, including nonpublic
307 schools with a religious affiliation, available under any
308 source of existing law, including section 16-1-11.1 or
309 section 16-1-11.2, Code of Alabama 1975, or Executive Order
310 No. 733 issued by the Governor on January 20, 2023.

311 (g) A resident school district shall provide a
312 participating school or other education service provider
313 that has admitted an eligible student under the program with
314 the complete copy of the student's school records consistent

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315 with the Family Educational Rights and Privacy Act of 1974,
316 20 U.S.C. § 1232g.

317 Section 6. (a) It is the intent of the Legislature that
318 educational savings accounts be made available to parents of
319 participating students beginning with the 2025-2026 academic
320 year.

321 (b) The department shall administer the program with
322 respect to parents of eligible students by doing all of the
323 following:

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

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

328 (3) Receive applications and approve applications for
329 parents of eligible students to whom the department has
330 awarded a tax credit under section 3 of this act and who
331 meet the requirements of section 4(a) of this act.

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

335 (5) Establish a system by which a parent of a
336 participating student can make payments from ESAs to an
337 education service provider or participating school including
338 by electronic or online fund transfer. Nothing in this act

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339 shall be construed as authorizing the payment of program
340 funds directly to a participating student or his or her
341 parent.

342 (6) Provide to parents of participating students a
343 written explanation of qualifying expenses, their
344 responsibilities under the program, the duties and
345 responsibilities of the department, and the provisions of
346 this act related to misuse of program funds.

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

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

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

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

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

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

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

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

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

373 (e) The department shall adopt and enforce rules
374 necessary to implement this act subject to the Alabama
375 Administrative Procedure Act, Chapter 22, Title 41, Code of
376 Alabama 1975. Notwithstanding the Alabama Administrative
377 Procedure Act, the department shall adopt emergency rules
378 necessary to promptly and effectively begin administration
379 of the program. Any rule necessary for initial
380 implementation of the program may be adopted as an emergency
381 rule, which shall remain effective for as long as necessary
382 to facilitate initial implementation of the program.

383 (f) The department may enter into contracts for the
384 implementation of all or part of this act. Any procurement
385 necessary for the initial implementation of the program

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386 shall be considered a special procurement under Section 137,
387 Chapter 4, Title 41, Code of Alabama 1975.

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

391 (1) Conduct random financial audits of ESAs and
392 education service providers, including participating
393 schools. The random financial audits shall be conducted with
394 sufficient frequency to adequately deter misuse of program
395 funds.

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

399 (b) To address instances of suspected fraud or other
400 misuse of program funds, the department shall have all of
401 the following powers:

402 (1) The department may refer a case to local or state
403 law enforcement agencies for further investigation. The
404 program established by this act shall constitute a matter
405 arising under the state revenue laws, and an application to
406 participate in the program or a payment of qualifying
407 expenses shall constitute a claim or other document, for
408 purposes of the criminal prohibition against tax fraud in
409 section 40-29-115.

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410 (2) The department may stop making advance credit
411 payments into the ESA or otherwise reduce the amount of
412 money in an ESA of a parent of a participating student,
413 either temporarily or permanently.

414 (3) The department may suspend or disqualify an
415 education service provider. If an education service provider
416 is suspended or disqualified, the department shall notify
417 participating students and their parents of the decision as
418 soon as practicable. The department shall coordinate the
419 suspension or disqualification to coincide with the end of
420 the academic school year.

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

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

426 (1) Violation of the agreements made by a parent
427 pursuant to section 4(a), by an education service provider
428 pursuant to section 5(a), or by a participating school
429 pursuant to section 5(b).

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

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

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434 (4) The repeated and substantial failure to provide a
435 participating student with educational services promised in
436 exchange for program funds.

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

442 Section 8. (a) The CHOOSE Act Fund is created in the
443 State Treasury for the purpose of providing funding for the
444 tax credits authorized by this act. Notwithstanding any
445 other provisions of law to the contrary, the Legislature
446 shall appropriate not less than \$100 million to this fund
447 beginning with appropriations made for the fiscal year
448 ending September 30, 2026, and continuing annually
449 thereafter. Amounts in the CHOOSE Act Fund shall be budgeted
450 and allotted in accordance with Section 41-4-80 through
451 41-4-96 and Sections 41-19-1 through 41-19-12. All funds
452 received by the CHOOSE Act Fund shall remain in the CHOOSE
453 Act Fund and shall not revert or be expended for any purpose
454 other than the tax credits authorized by this act.

455 (b) It is not the intent of this act to make
456 appropriations, but any appropriations required by this act
457 shall be from revenue sources available for appropriation

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458 under the Constitution of Alabama of 2022 notwithstanding
459 any general law to the contrary.

460 Section 9. If any part of this act is challenged as
461 violating either the state or federal constitutions, parents
462 of eligible students and participating students shall be
463 permitted to intervene as of right in the lawsuit for the
464 purposes of defending the constitutionality of the program.

465 Section 10. This act shall become effective immediately
466 following its passage and approval by the Governor, or its
467 otherwise becoming law.