

**HB129 ENROLLED**



1 HB129  
2 AB9L77Q-3  
3 By Representatives Garrett, Ledbetter, Collins  
4 RFD: Ways and Means Education  
5 First Read: 06-Feb-24



## HB129 Enrolled

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A BILL  
TO BE ENTITLED  
AN ACT

Relating to education; to enact the CHOOSE Act; to establish a refundable income tax credit to offset the cost of qualifying educational expenses; to direct the Department of Revenue to establish education savings accounts through which parents can access funds to direct the education of participating students through education service providers and participating schools; to establish CHOOSE Act program requirements for parents of participating students, education service providers, and participating schools; to specify powers and duties of the Department of Revenue in administering the CHOOSE Act program; to prevent fraud or other misuse of CHOOSE Act program funds; to establish the CHOOSE Act fund.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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



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

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

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

36 (4) EDUCATION SERVICE PROVIDER. A school (including a  
37 participating school), organization, vendor, or individual  
38 other than the parent of the eligible student approved by  
39 the department to provide educational goods and services,  
40 including goods and services designed for use by homeschool  
41 students, to eligible students.

42 (5) ELIGIBLE STUDENT. A child aged 5 to 19 years who  
43 resides in this state and who has not graduated high school  
44 or a child aged 5 to 21 years who resides in this state and  
45 qualifies for services under the Individuals with  
46 Disabilities Education Act (IDEA) of 1975 or Section 504 of  
47 the Rehabilitation Act of 1973. The term does not include a  
48 student receiving scholarship funds or a tax credit under  
49 the Alabama Accountability Act of 2013, Chapter 6D of Title  
50 16, Code of Alabama 1975. The term does not include a child  
51 who is enrolled in a private school as defined in section  
52 16-28-1 that is not a participating school. The term does



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53 not include a child who is not lawfully present in the  
54 United States.

55 (6) PARENT. A resident of this state who is the parent,  
56 guardian, custodian, or other individual with authority to  
57 act on behalf of an eligible student. The term does not  
58 include an individual who is not lawfully present in the  
59 United States.

60 (7) PARTICIPATING SCHOOL. A state of Alabama education  
61 service provider that is an accredited public K-12 school or  
62 an accredited private school, including church, parochial,  
63 or religious school, that provides education to K-12  
64 students and that is approved by the department. The school  
65 must be accredited, or in the process of obtaining  
66 accreditation as determined by the department, by one of the  
67 six regional accrediting agencies and/or the National  
68 Council for Private School Accreditation, Cognia, the  
69 American Association of Christian Schools, the Alabama  
70 Christian Education Association, the Alabama Independent  
71 School Association, or one of their partner accrediting  
72 agencies.

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



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

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

82 a. Tuition and fees at a participating school.

83 b. Textbooks.

84 c. Fees for after-school or summer education programs  
85 provided by a participating school.

86 d. Private tutoring.

87 e. Curricula or instructional materials.

88 f. Tuition and fees for nonpublic online learning  
89 programs.

90 g. Educational software and applications.

91 h. Fees for standardized and nationally recognized  
92 assessments, including college admissions tests and advanced  
93 placement examinations and related preparatory courses.

94 i. Education services for students with disabilities  
95 from a licensed or accredited practitioner or education  
96 service provider.

97 j. Contracted services provided by a public school  
98 district including specific classroom instruction.



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

101 (12) SPECIAL-NEEDS STUDENT. A student who qualifies for  
102 services under the Individuals with Disabilities Education Act  
103 (IDEA) of 1975 or Section 504 of the Rehabilitation Act of  
104 1973.

105 Section 3. (a) To offset the cost of qualifying  
106 educational expenses, there is hereby established a  
107 refundable income tax credit subject to the provisions of  
108 this act and to the availability of monies in the CHOOSE Act  
109 Fund established pursuant to section 8 of this act.

110 (b) (1) For the years beginning on January 1, 2025, and  
111 January 1, 2026, the credit shall be available to the parent  
112 of an eligible student whose family had an adjusted gross  
113 income not exceeding 300 percent of the federal poverty  
114 level for the preceding tax year. The credit shall be  
115 awarded in an amount specified in subsection (c) and subject  
116 to the priorities specified in subsection (d).

117 (2) For the years beginning on or after January 1,  
118 2027, the credit shall be available to any parent of an  
119 eligible student. The credit shall be awarded in an amount  
120 specified in subsection (c) and subject to the priorities  
121 specified in subsection (d).

122 (c) (1) For participating students enrolled in a  
123 participating school, the annual amount of the credit shall



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124 be \$7,000 or the actual cost of the qualifying educational  
125 expenses, whichever is less.

126 (2) For participating students not enrolled in a  
127 participating school, the annual amount of the credit shall  
128 be \$2,000 or the actual cost of the qualifying educational  
129 expenses, whichever is less; provided that the aggregate  
130 amount of all credits awarded to a parent for such students  
131 shall not exceed \$4,000.

132 (d) In allocating the tax credits made available  
133 pursuant to subsection (b), the department shall give  
134 priority first to participating students and siblings of  
135 participating students, then to participating students who  
136 are dependents of active duty service members enrolled in or  
137 assigned to a priority school as defined in section 16-6D-4,  
138 and then based on the family's adjusted gross income as a  
139 percentage of the federal poverty level; provided that the  
140 department shall reserve the first 500 tax credits for the  
141 parent of an eligible student who is a special-needs  
142 student.

143 (e) If the department awards a tax credit to a parent  
144 for one eligible student, the department shall award  
145 additional tax credits to the parent for any other eligible  
146 student in the family who is a sibling of the eligible  
147 student for whom a tax credit was previously awarded.



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148 Nothing in this act shall be construed to authorize the  
149 award of more than one tax credit per participating student.

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

153 (g) Amounts received pursuant to this section do not  
154 constitute taxable income to the parent of a participating  
155 student or to the participating student. The refundable  
156 income tax credit provided under this section shall not be  
157 subject to offset or debt collection against any liability.

158 (h) A participating student who is a special-needs  
159 student remains eligible to receive special education or  
160 similar services from the resident school district as  
161 provided by federal or state law.

162 (i) Nothing in this act shall affect or change the  
163 athletic eligibility of student athletes governed by the  
164 Alabama High School Athletic Association or similar  
165 association.

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

168 (1) Submit to the department any information required  
169 by the department for implementation of the program,  
170 including the name of the eligible student.





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

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

176 (4) Agree not to claim the credit for an eligible  
177 student who enrolls as a full-time student in a public  
178 school district unless the public school is a participating  
179 school within the meaning of this act and the public school  
180 charges tuition for the participating student.

181 (5) Agree to assume the full financial responsibility  
182 for the education of the participating student, including  
183 the balance of any expense incurred at an education service  
184 provider.

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

187 (b) Fulfillment of the agreements made pursuant to  
188 subsection (a) is a requirement of continuing approval as a  
189 participating student. Failure to fulfill the agreements  
190 made pursuant to subsection (a) shall constitute grounds for  
191 the department, in its discretion, to revoke, recover,  
192 suspend, or deny the credit otherwise made available  
193 pursuant to this act.



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

196 (1) Submit to the department any information required by  
197 the department for implementation of the program, including  
198 its address, contact information, and a summary of each  
199 program or service it proposes to provide to participating  
200 students.

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

204 (3) Agree to submit annual reports to the department  
205 concerning implementation of the program, including the  
206 number of students participating, services provided, and  
207 other similar information requested by the department.

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

210 (5) Agree to document amounts received for all  
211 qualifying expenses in a manner prescribed by the  
212 department.

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

215 (7) Agree not to discriminate against participating  
216 students in setting tuition or fees.



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

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

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

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

226 (4) Provide financial statements that demonstrate, to  
227 the satisfaction of the department, the school's ability to  
228 adequately provide for participating students' continued  
229 receipt of educational services in the event the school  
230 suffers a financial failure. Alternatively, the school may  
231 file with the department a surety bond payable in an amount  
232 determined by the department to be equal to the aggregate  
233 amount of the program funds expected to be paid during the  
234 academic year from participating students enrolled at the  
235 participating school.

236 (5)a. Require all participating students receiving  
237 program funds to take a standardized assessment aligned to  
238 the curricula of the participating school, a nationally  
239 norm-referenced achievement assessment, or a nationally  
240 recognized aptitude assessment of the participating school's



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

243 b. Provide the parents of each participating student  
244 who was tested with a copy of the results of the tests on an  
245 annual basis, beginning with the first year of testing.

246 c. Provide the department with school-level test  
247 results for participating students, provided that no party  
248 shall disaggregate data to a level that could identify the  
249 academic level of individual students.

250 (6) Require participating students to make payments of  
251 tuition and other fees periodically on a schedule to be  
252 established by the department.

253 (7) Inform the department of a participating student's  
254 graduation, withdrawal from the school, misuse of program  
255 funds, or other event affecting the student's eligibility  
256 for the program.

257 (c) Fulfillment of the agreements made pursuant to  
258 subsections (a) or (b) is a requirement of continuing  
259 approval as an education service provider or participating  
260 school. Failure to fulfill the agreements made pursuant to  
261 subsections (a) or (b) shall constitute grounds for the  
262 department, in its discretion, to suspend or disqualify the  
263 education service provider or participating school from  
264 receiving program funds.



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265 (d) A public school that becomes an education service  
266 provider under this act shall be given maximum flexibility  
267 to accommodate participating students and may create a  
268 process and establish requirements for accepting, selecting,  
269 or limiting the number of allowable participating students  
270 who are not assigned to that public school.

271 (e) No provision of this act shall be construed to  
272 require any public school, school system, or school district  
273 or any nonpublic school, school system, or school district  
274 to enroll any student.

275 (f) The Legislature finds and declares that education  
276 service providers, including participating schools, that  
277 accept program funds shall be given the maximum freedom  
278 possible to provide for the educational needs of students,  
279 consistent with state and federal law. To that end, unless  
280 clear from the text of this act, no provision of this act  
281 shall be construed to limit the independence or autonomy of  
282 any education service provider; to act as a restriction,  
283 direction, or mandate regarding instructional content or  
284 curriculum provided by any education service provider; to  
285 require an education service provider to alter its creed,  
286 practices, admissions policies, hiring policies, codes of  
287 conduct for employees or students, tuition, or fees; to  
288 expand the regulatory authority of the state, its officers,



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289 or any school district; or to otherwise deprive or diminish  
290 the protections for nonpublic schools, including nonpublic  
291 schools with a religious affiliation, available under any  
292 source of existing law, including section 16-1-11.1 or  
293 section 16-1-11.2, Code of Alabama 1975, or Executive Order  
294 No. 733 issued by the Governor on January 20, 2023.

295 (g) A resident school district shall provide a  
296 participating school or other education service provider that  
297 has admitted an eligible student under the program with the  
298 complete copy of the student's school records consistent with  
299 the Family Educational Rights and Privacy Act of 1974, 20  
300 U.S.C. § 1232g.

301 Section 6. (a) It is the intent of the Legislature that  
302 educational savings accounts be made available to parents of  
303 participating students beginning with the 2025-2026 academic  
304 year.

305 (b) The department shall administer the program with  
306 respect to parents of eligible students by doing all of the  
307 following:

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

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

312 (3) Receive applications and approve applications for  
313 parents of eligible students to whom the department has



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314 awarded a tax credit under section 3 of this act and who  
315 meet the requirements of section 4(a) of this act.

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

319 (5) Establish a system by which a parent of a  
320 participating student can make periodic payments from ESAs  
321 to an education service provider or participating school  
322 including by electronic or online fund transfer. Nothing in  
323 this act shall be construed as authorizing the payment of  
324 program funds directly to a participating student or his or  
325 her parent.

326 (6) Provide to parents of participating students a  
327 written explanation of qualifying expenses, their  
328 responsibilities under the program, the duties and  
329 responsibilities of the department, and the provisions of  
330 this act related to misuse of program funds.

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

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



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

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

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

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

347 (4) Provide to education service providers and  
348 participating schools a written explanation of qualifying  
349 expenses, their responsibilities under the program, and the  
350 duties and responsibilities of the department.

351 (5) Maintain and routinely update the list of approved  
352 participating schools and education service providers on the  
353 department's website.

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

357 (e) The department shall adopt and enforce rules  
358 necessary to implement this act subject to the Alabama  
359 Administrative Procedure Act, Chapter 22, Title 41, Code of





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360 Alabama 1975. Notwithstanding the Alabama Administrative  
361 Procedure Act, the department shall adopt emergency rules  
362 necessary to promptly and effectively begin administration  
363 of the program. Any rule necessary for initial  
364 implementation of the program may be adopted as an emergency  
365 rule, which shall remain effective for as long as necessary  
366 to facilitate initial implementation of the program.

367 (f) The department may enter into contracts for the  
368 implementation of all or part of this act. Any procurement  
369 necessary for the initial implementation of the program  
370 shall be considered a special procurement under Section 137,  
371 Chapter 4, Title 41, Code of Alabama 1975.

372 (g) For purposes of administering the program, the  
373 department may seek federal verification of an individual's  
374 immigration status with the federal government pursuant to 8  
375 U.S.C. § 1373(c). The department shall not attempt to  
376 independently make a final determination of whether any  
377 individual is lawfully present in the United States.

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

381 (1) Conduct random financial audits of ESAs and  
382 education service providers, including participating  
383 schools. The random financial audits shall be conducted with



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384 sufficient frequency to adequately deter misuse of program  
385 funds.

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

389 (b) To address instances of suspected fraud or other  
390 misuse of program funds, the department shall have all of  
391 the following powers:

392 (1) The department may refer a case to local or state  
393 law enforcement agencies for further investigation. The  
394 program established by this act shall constitute a matter  
395 arising under the state revenue laws, and an application to  
396 participate in the program or a payment of qualifying  
397 expenses shall constitute a claim or other document, for  
398 purposes of the criminal prohibition against tax fraud in  
399 section 40-29-115.

400 (2) The department may stop making advance credit  
401 payments into the ESA or otherwise reduce the amount of  
402 money in an ESA of a parent of a participating student,  
403 either temporarily or permanently.

404 (3) The department may suspend or disqualify an  
405 education service provider. If an education service provider  
406 is suspended or disqualified, the department shall notify  
407 participating students and their parents of the decision as



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408 soon as practicable. The department shall coordinate the  
409 suspension or disqualification to coincide with the end of  
410 the academic school year.

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

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

416 (1) Violation of the agreements made by a parent  
417 pursuant to section 4(a), by an education service provider  
418 pursuant to section 5(a), or by a participating school  
419 pursuant to section 5(b).

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

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

424 (4) The repeated and substantial failure to provide a  
425 participating student with educational services promised in  
426 exchange for program funds.

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



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432           Section 8. (a) (1) The CHOOSE Act Fund is created in the  
433           State Treasury for the purpose of providing funding for the  
434           tax credits authorized by this act. Notwithstanding any  
435           other provisions of law to the contrary, the Legislature  
436           shall appropriate not less than \$100 million to this fund  
437           beginning with appropriations made for the fiscal year  
438           ending September 30, 2026, and continuing annually  
439           thereafter.

440           (2) In future fiscal years, it is the intent of the  
441           Legislature to increase appropriations to the CHOOSE Act  
442           Fund if the Commissioner of Revenue certifies that increased  
443           appropriations are necessary to satisfy consumer demand for  
444           the program based on prior-year participation in the program  
445           as reflected by the expenditure of ninety percent or more of  
446           the funds available in the CHOOSE Act Fund.

447           (b) Amounts in the CHOOSE Act Fund shall be budgeted  
448           and allotted in accordance with Sections 41-4-80 through  
449           41-4-96 and Sections 41-19-1 through 41-19-12; provided that  
450           neither the CHOOSE Act Fund nor individuals ESAs shall be  
451           subject to Section 41-4-90.

452           (c) All funds received by the CHOOSE Act Fund shall  
453           remain in the CHOOSE Act Fund and shall not revert or be  
454           expended for any purpose other than the tax credits  
455           authorized by this act; provided that in no circumstances



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456 shall more than \$500 million in excess, unused, accumulated  
457 funds be allowed to carry over in the CHOOSE Act Fund.  
458 Before the end of each year, the Commissioner of Revenue  
459 shall determine the amount of excess, unused, accumulated  
460 money in the Fund. If the amount of excess, unused,  
461 accumulated money in the Fund as determined by the  
462 Commissioner exceeds \$500 million, then such excess shall  
463 revert to the Education Trust Fund to become available for  
464 appropriation by the Legislature.

465 (d) It is not the intent of this act to make  
466 appropriations, but any appropriations required by this act  
467 shall be from revenue sources available for appropriation  
468 under the Constitution of Alabama of 2022 notwithstanding  
469 any general law to the contrary.

470 Section 9. If any part of this act is challenged as  
471 violating either the state or federal constitutions, parents  
472 of eligible students and participating students shall be  
473 permitted to intervene as of right in the lawsuit for the  
474 purposes of defending the constitutionality of the program.

475 Section 10. This act shall become effective immediately  
476 following its passage and approval by the Governor, or its  
477 otherwise becoming law.



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 27-Feb-24, as amended.

John Treadwell  
Clerk

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Senate	<b>06-Mar-24</b>	Amended and Passed
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House	<b>06-Mar-24</b>	Concurred in Senate Amendment
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