

1 HB84
2 168098-2
3 By Representative Johnson (K)
4 RFD: Education Policy
5 First Read: 02-FEB-16

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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 Education
4 or 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 is:

9 a.1. The subject of an individual education plan or
10 504 accommodation that has been issued according to Section
11 504 of the Rehabilitation Act of 1973. This includes, but is
12 not limited to, a student who has an intellectual disability,
13 speech or language impaired, deaf, or hard of hearing,
14 visually impaired, dual sensory impaired, physically impaired,
15 emotionally handicapped, specific learning disabled, autistic,
16 or hospitalized or homebound because of illness or disability.

17 2. The child of a parent who is a member of the
18 Armed Forces of the United States and who is on active duty or
19 was killed in the line of duty. A child who meets the
20 requirements of this subparagraph is not subject to the
21 requirement of paragraph b. of this subdivision.

22 3. A foster child who has achieved permanency
23 through adoption or guardianship.

24 4. Is the sibling of a current program participant.

25 b. Except as provided in subparagraph 2., attended a
26 primary or secondary school in this state during the prior
27 school year.

1 (4) ORGANIZATION. An organization that administers
2 or is approved to administer an education savings account for
3 an eligible student.

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

7 (6) PARTICIPATING SCHOOL. A private school that
8 provides education to elementary or secondary students or both
9 and has notified the Department of Education of its intention
10 to participate in the program and comply with the requirements
11 of the program.

12 (7) PRIVATE TUTORING. Tutoring services provided by
13 tutors certified in Alabama or tutors accredited by a regional
14 or national accrediting organization.

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

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

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

24 (2) Not to enroll the eligible student in a charter
25 school.

26 (b) Each parent participating in the Education
27 Savings Account program shall agree to use the funds deposited

1 in his or her eligible student's accounts for the following
2 qualifying expenses to educate the eligible student:

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

4 (2) Textbooks required by a participating school.

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

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

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

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

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

22 (8) Educational services for pupils with
23 disabilities from a licensed or accredited practitioner or
24 provider.

25 (9) Tuition and fees at an eligible postsecondary
26 institution.

1 (10) Textbooks required for college or university
2 courses.

3 (11) Contracted services from a public school
4 district, including individual classes.

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

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

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

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

26 (g) The program created in this act shall be limited
27 to participation of 1,000 new eligible students each academic

1 year, beginning with the academic year immediately following
2 the passage of this act. Each application shall be approved on
3 a first come first serve basis.

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

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

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

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

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

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

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

26 (b) An organization may establish education savings
27 accounts for eligible students by:

1 (1) Receiving applications and determining student
2 eligibility in accordance with the requirements of this
3 section. When an application is received, the organization
4 must provide the department with information on the student to
5 enable the department to report the student for funding in
6 accordance with Section 5.

7 (2) Establishing and maintaining separate accounts
8 for each eligible student.

9 (3) Verifying qualifying expenditures pursuant to
10 this subsection.

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

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

16 (d) For purposes of continuity of educational
17 choice, the program payments made under this section shall
18 remain in force until a student participating in the program
19 participates in any of the prohibited activities specified in
20 this subsection, returns to a public school, graduates from
21 high school, or attains 22 years of age, whichever occurs
22 first. A participating student who enrolls in a public school
23 or public school program is considered to have returned to a
24 public school for the purpose of determining the end of the
25 program's term; provided, however, that purchasing contracted
26 services from a public school system in compliance with

1 subdivision (11) of subsection (b) of Section 3 does not
2 signify enrollment.

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

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

18 (2) The department shall receive an administrative
19 fee totaling one percent of total program funds.

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

23 Section 5. (a) The department shall ensure that
24 eligible students and their parents are informed annually of
25 which schools will be participating in the Education Savings
26 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, and
14 provide for value added assessment. Students with disabilities
15 for whom standardized testing is not appropriate are exempt
16 from this requirement.

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

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

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

26 (2) The state or an organization chosen by the state
27 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 Education Savings Account program
17 will be in effect beginning with the fall semester immediately
18 following its passage and approval by the Governor, or its
19 otherwise becoming law.