

HB129 ENGROSSED



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



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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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House of Representatives

Read for the first time and referred06-Feb-24
to the House of Representatives
committee on Ways and Means
Education
Read for the second time and placed22-Feb-24
on the calendar:
0 amendments
Read for the third time and passed27-Feb-24
as amended
Yeas 69
Nays 34
Abstains 0

John Treadwell
Clerk