HB88

LDFRYAA-1

By Representative Yarbrough

RFD: Education Policy

First Read: 06-Feb-24

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SYNOPSIS:

This bill would create the True School Choice for Alabama Act.

This bill would secure the fundamental constitutional rights of parents to direct the education of their children in grades K-12 according to their faith, beliefs, values, and morals.

This bill would establish the roles and responsibilities of the Parent Advisory Board, the Commissioner of Revenue, and the Department of Revenue.

This bill would create and provide for the funding of the True School Choice ESA Fund and the True School Choice Administration Fund for the costs of administrating the True School Choice Program.

This bill would provide for the implementation and administration of the True School Choice Program and the use of education savings accounts.

This bill would specify the qualified expenses that may be paid from an education savings account.

This bill would retain the autonomy of nonpublic schools and prevent additional state control over or interference with nonpublic schools, their students, and families.

This bill would provide for the auditing, denials, and appeals of the True School Choice Program

and the suspension of parents, participating students, and education service providers.

This bill would also provide for legal remedies.

A BILL

TO BE ENTITLED

AN ACT

Relating to education; to establish the True School Choice for Alabama Act relating to K-12 education; to secure the fundamental constitutional rights of parents to direct the education of their children; to create the True School Choice Program; to provide definitions; to establish the roles and responsibilities of the Parent Advisory Board, the Commissioner of Revenue, and the Department of Revenue; to create a process for granting education savings accounts; to establish funding mechanisms for the costs of education savings accounts and the administration of the program; to specify qualified expenses; to create requirements for education service providers; to establish an auditing, denial, and appeal mechanism for expenses, parents, participating students, and education service providers; to provide safeguards against any additional state control over or interference with nonpublic schools, their students, and their families; and to provide for legal remedies.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the True School Choice for Alabama Act.

Section 2. The Legislature finds and declares all of the following:

(1) Because education is critical to the well-being of children, Alabama made the education of all school-age children residing in this state mandatory and parents responsible for the school attendance of their children.

(2) Parental involvement is essential for the academic success and healthy development of children, strong families, and a prosperous state. Parental involvement must therefore be strongly valued and supported in the education of their children. Parents generally know their children best, love their children most, and from time immemorial have traditionally been the primary advocates of the best interests of their children.

(3) Parents have a fundamental constitutional right to direct the upbringing and education of their children and to impart to their children their faith, beliefs, values, and morals through education and by choosing the type of education, including nonpublic schools, their children receive.

(4) If a state provides tuition assistance to parents of children for a nonpublic K-12 education, the state may not bar those parents from selecting religious schools due to their religious affiliation or the religious instruction they provide. Carson v. Makin, 142 S.Ct. 1987 (2022).

(5) A state education funding program that is neutral on its face and generally available, including religious schools, does not violate the Establishment Clause of the

First Amendment to the United States Constitution. Espinosa v. Montana Department of Revenue, 140 S.Ct. 2246 (2020).

(6) A state education funding program that prohibits parents from choosing religious schools, simply because they are religious, violates the rights of parents under the Free Exercise Clause of the First Amendment to the United States Constitution. Espinosa v. Montana Department of Revenue, 140 S.Ct. 2246 (2020).

(7) Section 16-1-11.1(5), Code of Alabama 1975, provides that "regulation by the state, including the State Department of Education, the State Board of Education, or the State Superintendent of Education, of any school with a religious affiliation would be an unconstitutional burden on religious activities in direct violation of the Alabama Religious Freedom Amendment and the First Amendment to the United States Constitution; and further that the State of Alabama has no compelling interest to burden by license or regulation nonpublic schools, which include private, church, parochial, and religious schools offering educational instruction in grades K-12, as well as home-based schools and home-schooled students."

(8) This act intends to prevent discrimination against parents who must pay both tuition and taxes if they choose a nonpublic education, or who are denied that right because of a lack of funds, and to prevent violations of the Alabama Religious Freedom Amendment and both the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

Section 3. For the purposes of this act, the following terms have the following meanings:

(1) ASSIGNED PUBLIC SCHOOL. The school to which an eligible recipient or participating student is assigned based on his or her Alabama residential address.

(2) BOARD. The Parent Advisory Board.

(3) COMMISSIONER. The Commissioner of Revenue.

(4) CURRICULUM. A course of study for content areas or grade levels, including any supplemental materials or resources required, recommended, or complementary to a course of study.

(5) DEPARTMENT. The Department of Revenue.

(6) EDUCATION SAVINGS ACCOUNT (ESA). An account in which funds are deposited by the department for the parent of a participating student to pay qualifying expenses.

(7) EDUCATION SERVICE PROVIDER. A public or nonpublic school, organization, vendor, or individual that provides educational goods and services to participating students.

(8) ELIGIBLE RECIPIENT. A student who is a resident of this state, a citizen of the United States, and eligible to enroll in his or her assigned public school.

(9) NONPUBLIC SCHOOL. A nongovernment K-12 school offering educational instruction. The term includes private religious, private nonreligious, parochial, virtual, microschools, and church schools, including home-based education programs.

(10) PARENT. The biological or adoptive parent, legal guardian, custodian, or other individual with legal authority

to act on behalf of an eligible recipient or participating student.

(11) PARTICIPATING STUDENT. A resident of this state and a citizen of the United States who is an elementary or secondary school student and uses ESA funds pursuant to this act.

(12) QUALIFYING EXPENSES. Educational expenses listed in Section 8(a) that may be paid for by a parent with ESA funds on behalf of a participating student.

(13) TRUE SCHOOL CHOICE PROGRAM. The program created by this act which provides funds for a participating student's ESA to pay for educational instructional goods and services.

Section 4. (a) The annual ESA amount for each participating student shall be six thousand nine hundred dollars ($6,900) for the 2024-2025 school year, and shall be adjusted annually by the department based on the percentage change of the Education Trust Fund's share of the Foundation Program from the prior year, if positive. The amount of funding for a participating student for less than a full fiscal year shall be prorated based on the portion of the fiscal year the student receives funds from an ESA.

(b) The True School Choice ESA Fund is created in the State Treasury to receive appropriations from the Legislature for the funding of ESAs as provided by this act. The Legislature shall make appropriations to this fund in amounts not to exceed four hundred million dollars ($400,000,000) for the initial year. In subsequent years, the Legislature shall make appropriations to this fund in amounts sufficient to

fully fund the projected amount of ESA deposits to be made the proceeding fiscal year. The projected amount of ESA deposits required shall be the total amount of appropriations required to fully fund every ESA account for all eligible applicants the preceding year, plus an additional 10 percent. Any monies remaining in the fund at the end of a fiscal year shall not revert but shall remain in the fund and are reappropriated for the purposes authorized by this act.

(c) Each school year the department shall make periodic deposits, equaling the total ESA amount, into the ESA of a participating student beginning no later than August 1. Any funds remaining in an ESA at the end of a fiscal year may be carried over to the next fiscal year upon successful renewal of the ESA or until any of the conditions in Section 6(b)(13) are met.

(d) The True School Choice Administration Fund is created in the State Treasury for the administration of the True School Choice Program by the department. The lesser of two million dollars ($2,000,000), or three percent of the amount appropriated each fiscal year to the True School Choice ESA Fund, shall be transferred each fiscal year from the True School Choice ESA Fund to the True School Choice Administration Fund. The expenses incurred by the department in carrying out this act shall be paid from monies in the True School Choice Administration Fund. The Legislature may make additional appropriations to the True School Choice Administration Fund upon a showing of the need for additional monies in the administration of the True School Choice

Program. Any monies remaining in the fund at the end of each fiscal year shall revert to the True School Choice ESA Fund.

(e) No monies shall be withdrawn or expended from the funds created in this section for any purpose unless the monies have been appropriated by the Legislature and allocated pursuant to this act. Any monies appropriated shall be budgeted and allotted pursuant to the Budget Management Act in accordance with Article 4, commencing with Section 41-4-80 of Chapter 4 of Title 41, Code of Alabama 1975, and only in the amounts provided by the Legislature in the general appropriations act or other appropriations act.

Section 5. (a) There is created the Parent Advisory Board. The board shall do all of the following:

(1) Consult with state departments or agencies, and parents or administrators from the categories of education options listed in subdivision (b)(4), as appropriate to carry out these responsibilities.

(2) Review and provide recommendations to the department on all of the following:

a. The implementation, administration, and improvement of the True School Choice Program policies, procedures, and systems.

b. The concerns and complaints of parents of participating students.

c. Questionable education service providers and other qualified expenses.

d. Appeals of denied expenses and the barring of parents and education service providers from the True School

Choice Program pursuant to Section 13.

(b) The membership of the board shall consist of the following members:

(1) The commissioner, or his or her designee, shall serve as chair of the board and shall be a nonvoting member unless there is a tie.

(2) The Governor, or his or her designee.

(3) The Lieutenant Governor, or his or her designee.

(4) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint four parents of eligible recipients intending to participate in the program or of participating students, one from each of the following four categories, as listed in Sections 16-1-11.2 and 16-1-11.3, Code of Alabama 1975:

a. Private nonreligious and religious schools.

b. Church schools.

c. Parochial schools.

d. Home-based education programs.

(5) The Minority Leader of the Senate and the Minority Leader of the House of Representatives shall each appoint one parent of an eligible recipient intending to participate in the program or of a participating student, which shall be from one of the four categories listed under subdivision (4).

(c) The appointed members, as provided in subdivisions (b)(4) and (b)(5), shall initially serve staggered terms of one, two, or three years as determined by the chair. An appointment to fill a vacancy shall be made from the corresponding category by the original appointing authority

for the remainder of the unexpired term. Board members may serve up to two additional three-year terms thereafter.

(d) A parent may not serve on the board if he or she is an employee or immediate relative of an employee of the State Department of Education or provides goods or services to the state to directly implement or administer the True School Choice Program.

(e) A board member shall recuse himself or herself from voting on any issue where he or she has a substantial financial interest, or other conflict of interest, excluding the receipt of an ESA for his or her participating student.

(f) A board member may be removed or replaced by the board at any time pursuant to a two-thirds majority vote of the membership of the board.

(g) All members of the board shall be citizens of the United States and legal residents of Alabama during his or her entire term. Board member designees and parent appointments shall be selected from qualified individuals who are well informed on nonpublic education options, acquainted with the True School Choice Program procedures, and in touch with other parents who will be using the program.

(h) Members shall serve without compensation. The department shall pay all reasonable and necessary expenses, including per diem or actual travel expenses incurred in the conduct of official duties, from the True School Choice Administration Fund at the same rate paid to state employees.

(i) The board shall meet in person at least quarterly. Additionally, at the request of any board member, the board

may meet in person or virtually to transact business at any time.

(j) A majority of the members of the board shall constitute a quorum for the transaction of business, unless otherwise provided in this section.

(k) A vice chair shall be selected by a majority of the entire membership of the board and shall preside over meetings in the absence of the chair.

(l) The board is subject to the Alabama Open Meetings Act, Chapter 25A of Title 36, Code of Alabama 1975, and the Open Records Law, Article 3, commencing with Section 36-12-40, of Chapter 12 of Title 36, Code of Alabama 1975.

Section 6. (a) Rules, policies, and procedures adopted by the department to implement and administer this act shall do all of the following:

(1) Avoid bureaucracy or prescriptive mandates and may not unnecessarily burden parents or education service providers offering educational instruction goods and services.

(2) Value, enable, and support parental involvement.

(3) Encourage education service providers offering educational instruction goods and services to provide parents and participating students with a broad array of educational instruction options.

(4) Not subject nonpublic schools to additional regulation or licensing.

(b) In addition to any other duty, obligation, or authority provided in this act, the department shall do all of the following:

(1) Execute contracts and other instruments for necessary goods, services, and office space, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, and other professionals or organizations as needed for the implementation and administration of the True School Choice Program.

(2) Contract with financial organizations as account depositories and managers.

(3) Not place True School Choice Program funds in high risk, long-term financial instruments. Any earned interest shall be returned to the ESA of the participating student.

(4) Implement a commercially viable, cost-effective, and parent friendly system for direct payments from and refunds to ESAs for qualified expenses by electronic or online funds transfer, which assist in the administering of the True School Choice Program, automate reconciliation, and provide easy access to data for audits while reducing the risk of fraud, waste, and abuse. An ESA may not be reduced for electronic payment fees or any other costs associated with the payment and refund system.

(5) Adopt a registration application and process for approving participating students and education service providers.

(6) Assist a participating student in the following manner: If an education service provider requires partial payment of tuition or fees before the start of the school year to reserve space for a participating student, the partial payment may be paid by the department before the start of the

school year in which the ESA is awarded and deducted from a subsequent ESA deposit. If a parent decides not to use the education service provider, the partial reservation payment shall be returned to the department and credited to the ESA of the participating student.

(7) Make periodic deposits, equaling the total ESA amount, into the ESA of a participating student pursuant to Section 4(c).

(8) Make information regarding the True School Choice Program readily available to the public on the website of the department. Information on the website may include the ESA application process, responsibilities of parents, qualifying expenses for ESA funds, updated lists of education service providers and their responsibilities, the registration process, duties of the department or other organizations that may assist in the administration of the True School Choice Program, and other pertinent information.

(9) Inform parents of eligible recipients of the existence of the True School Choice Program by January 1 of each year through a variety of means. In addition, a summary of the information provided online pursuant to subdivision (8) shall be mailed by January 1, for the first three years after October 1, 2024, and then mailed or emailed to all parents of eligible recipients who are not parents of a participating student in the True School Choice Program, by January 1 of each year thereafter.

(10) Provide a helpline and other means to answer questions, at a minimum, during normal weekday business hours.

(11) Adopt procedures to provide the least disruptive process for participating students to transfer between schools and to leave the True School Choice Program including, but not limited to, all of the following:

a. When a participating student enrolls as a full-time student in his or her assigned public school, payments into the ESA of the participating student shall immediately cease. However, for ESAs that have been open for at least one full school year, the ESA shall remain open and active for the parent to pay qualifying expenses to educate the student from funds remaining in the ESA. When no funds remain in the ESA of a student, or the student reaches 21 years of age, the department shall close the ESA and return any remaining funds to the True School Choice ESA Fund.

b. If an eligible recipient decides to return to the True School Choice Program, payments into the existing ESA of the student may resume if the ESA is still open and active. A new ESA may be established if the ESA of the student was closed.

c. A participating student may transfer between schools only between semesters, unless the school undergoes a substantial change in operation or the family of the participating student involuntarily suffers a substantial hardship, such as moving to another part of the state. In the event of a hardship, the parent may petition the department to transfer the participating student to another school and should request a prorated refund from the previous to be deposited back into the ESA of the participating student.

(12) Require a surety bond for education service providers receiving more than one hundred thousand dollars ($100,000) in ESA funds.

(13) Deposit funds into the ESA of a participating student pursuant to this act until any of the following occur:

a. The department determines that the participating student is no longer an eligible recipient.

b. The department determines that there was substantial and intentional misuse of the funds in the ESA for purposes other than those permitted by the True School Choice Program.

c. The parent or participating student, who is 18 years of age or older, withdraws from the True School Choice Program.

d. The participating student enrolls full-time in his or her assigned public school.

e. The participating student graduates from high school or ages out of his or her assigned public school.

(c) Any information provided to the department by a nonpublic school or a parent of a home-based student pursuant to this act shall be voluntary, may not be published by the department without the written permission of the parent or chief administrative officer of the nonpublic school, and no additional reporting requirements or regulations shall be added by this act in violation of Sections 16-1-11.1 through 16-1-11.3, Code of Alabama 1975.

Section 7. (a) A parent shall apply to the department to establish an ESA for an eligible recipient to participate in the True School Choice Program. The department shall accept

and approve applications year-round on a first come, first served basis, and shall establish procedures for approving applications and providing notice of approval to eligible recipients within 30 days after receipt of a completed application.

(b) The department shall create a standard application form for parents to submit to establish the eligibility of their student for the True School Choice Program and shall ensure that the application and all pertinent information is publicly available and may be submitted in writing or through other means, including the Internet.

(c) An application for an ESA is confidential and not a public record subject to release pursuant to the open records law.

(d) The department shall approve an ESA application if all of the following occur:

(1) The parent applies for an ESA in accordance with the application procedures established by the department.

(2) The student on whose behalf the parent is applying is an eligible recipient.

(3) The parent signs an agreement with the True School Choice Program committing to all of the following:

a. He or she has read and understands the information on the public website of the department, or a written copy regarding participation in the True School Choice Program as provided in Section 6(b)(8) and (b)(9), and will comply with the requirements of the True School Choice Program.

b. He or she will provide a challenging education for

the eligible recipient that is appropriate for his or her age and skill level.

c. He or she will only use the funds in the ESA for qualifying expenses, will provide accompanying receipts, and will ensure that all refunds received are credited to the ESA.

(e) The parent of a participating student shall submit an annual renewal application in accordance with procedures adopted by the department.

Section 8. (a) Parents of a participating student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses:

(1) Tuition, textbooks, and fees at education service providers and online learning programs.

(2) Curriculum, textbooks, fees, and other instructional and enrichment materials including, but not limited to, materials provided by vendors and associated online instruction or materials required by either an instructional program or education service provider.

(3) Services contracted for and provided by a public school, district school, charter school, or magnet school including, but not limited to, individual classes and extracurricular activities and programs.

(4) Extracurricular educational activities including, but not limited to, athletics, art, music, and literature.

(5) Tutoring services provided by an individual or tutoring business. Tutoring services may not be paid to an immediate family member of the participating student.

(6) Tuition, fees, textbooks, instructional materials,

and examination fees for vocational and GED courses at a career-technical school or alternative education program.

(7) Tuition, fees, and textbooks for summer education programs and specialized after school education programs, excluding after school childcare.

(8) Educational services and therapies including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies and braille translation.

(9) Tuition, fees, and textbooks for postsecondary education including, but not limited to, dual enrollment programs, college-level examination programs (CLEP), and postsecondary classes.

(10) Computer hardware and other technological devices that are used primarily to help meet the educational needs of a participating student.

(11) Educational software and applications.

(12) School uniforms.

(13) Tuition and fees for preparatory courses and for nationally standardized assessments, advanced placement examinations, and examinations related to college or university admission.

(14) Fees for transportation paid to a fee-for-service transportation provider for the participating student to travel to and from an individual providing qualifying educational services or an education service provider.

(15) Any other educational expense approved by the department.

(b) If a parent of a participating student submits an educational expense that is denied by the department, an appeal may be made pursuant to Section 13.

(c) Receipt of scholarship funds by the parent of an eligible student under the Alabama Accountability Act of 2013, Chapter 6D, Title 16, Code of Alabama 1975, does not impact the receipt of ESA funds by the parent of a participating student pursuant to this act. An adjustment, if any, of the Alabama Accountability Act scholarship funds awarded to a participating student may be made at the discretion of the scholarship granting organization under that act.

(d) ESA funds paid for goods and services shall not be refunded, rebated, or shared with a parent or participating student in any manner, but shall be credited directly to the ESA of the student.

(e) Nothing in this act shall prohibit an education service provider from requesting additional funds from a parent to cover ordinary student costs related to attendance at a public or nonpublic school.

(f) A parent may make payments for the costs of educational goods and services not covered by the funds in the ESA of his or her student. However, personal deposits into an ESA are not permitted.

(g) Funds deposited in the ESA of a participating student do not constitute taxable income to the parent or participating student.

Section 9. (a)(1) The department, by rule, may provide for the registration of certain education service providers

and may provide those registered education service providers with an expedited payment process.

(2) The department may contract with a third party to issue payments to an education service provider on behalf of a parent of a participating student. Registered education service providers may benefit from expedited payment.

(3) The department, by rule, may develop and maintain a system that allows a parent to use a debit card connected to an ESA account to make payments to an education service provider on behalf of a participating student.

(b) The department, by rule, shall develop and maintain a system that allows parents to submit invoices for payment or receipts for reimbursement for all qualifying expenses and shall also require parents to submit copies of receipts for all qualifying expenses paid with ESA funds on behalf of a participating student within 60 calendar days from the receipt of purchase. Failure to provide receipts as required by the department may result in the parent being responsible for the payment or disqualification of the student from participation in the True School Choice Program.

(c) An education service provider shall do both of the following:

(1) Agree not to refund, rebate, or share ESA funds with a parent or a participating student in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the department.

(2) Provide a parent of a participating student with a receipt for all educational qualifying expenses.

Section 10. (a) All public and nonpublic schools that receive ESA funds, except home-based education programs, shall provide parents with information to make informed decisions. The information shall be regularly updated at least annually before the beginning of each school year and shall be made available to parents on the school website or in writing. The information shall include all of the following:

(1) The mission statement, values, objectives, instructional programs, and organizational affiliations of the school.

(2) A comprehensive list of curricula by class and grade level.

(3) Any student testing requirements, including state and national testing and mental health or personality surveys or evaluations, by class and grade level.

(b) In addition to the information provided in subsection (a), all public and nonpublic schools that receive ESA funds may voluntarily provide parents with additional information including, but not limited to:

(1) Extracurricular activities including athletics, fine arts, field trips, and clubs.

(2) Crisis management safety plans.

(3) Any other additional information the school decides to provide.

(c) The information provided by a public or nonpublic school, that receives ESA funds, to parents pursuant to subsection (a) or subsection (b) is solely for the purpose of assisting parents to choose the best education option for

their children. This does not create a mandate or regulation by the state that would be in violation of Sections 16-1-11.1 through 16-11-11.3, Code of Alabama 1975.

(d) A public or nonpublic school that receives ESA funds may allow the department, but is not required, to publish information provided in this section on the True School Choice Program portion of the website of the department.

Section 11. (a) This act shall not be construed to interfere with or limit the teaching of religious instruction by any education service provider by regulating its creed, practices, admissions policy, hiring policy, code of conduct for employees or students, tuition, fees, curricula, or policies or practices of any description.

(b) All education service providers shall be given maximum freedom to provide for the educational needs of participating students without governmental control and participation in the program or receipt of payments from an ESA shall not limit the independence or autonomy of an education service provider, make it an agent of the state or federal government, or make its actions the actions of the state or federal government.

(c) Nothing in this act shall be construed to expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers.

(d) The receipt of ESA funds and participation in the True School Choice Program directly or indirectly by a parent

or participating student and by any education service provider that is a nonpublic school offering educational instruction in grades K-12 does not subject the school or individual to licensure or regulation by the state or any political subdivision of the state and does not modify or repeal other sections of state law, including Sections 16-1-11.1 through 16-1-11.3, Code of Alabama 1975, or otherwise affect the exemption of nonpublic schools from state regulation.

(e) The receipt of ESA funds or participation pursuant to this act does not change or remove the exemption and definition of a church school as provided in Section 16-28-1, Code of Alabama 1975.

Section 12. (a) A public school or school district that previously enrolled a participating student shall provide any education service provider that has enrolled a participating student with a complete copy of the participating student's school records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232.

(b) A public school or school district may refuse to provide educational services to a participating student who resides outside of the school district or may establish a policy to provide educational service options to out of district students under certain conditions including, but not limited to, the payment of reasonable fees for attendance.

(c) A public school shall be given maximum flexibility to accommodate participating students and may create a process and establish requirements for accepting, selecting, or limiting the number of allowable participating students who

are not assigned to that public School.

Section 13. (a) The department shall adopt procedures to ensure that fair processes exist to determine whether a misuse of the True School Choice Program has occurred.

(b) The department shall conduct or contract for the auditing of individual ESAs and, at a minimum, shall conduct random audits of ESAs on an annual basis. The department shall also conduct audits of individual ESAs where there is evidence of misuse or other violation of this act.

(c) The department may make any parent or participating student ineligible for the True School Choice Program if evidence of intentional and substantial misuse of ESA funds for purposes other than permitted by the True School Choice Program is discovered. If a participating student is free from personal misconduct, that student shall be eligible for an ESA in the future if placed with a different parent to act on behalf of the student.

(d) The department shall conduct or contract for audits of education service providers or any other recipients of ESA funds when the department has probable cause to believe, by a preponderance of the evidence, that ESA funds have been misused or other violations of this act have occurred. Audits shall be conducted at the expense of the department.

(e) The department may bar an education service provider or other recipient of ESA funds from accepting payments from any ESA if the department determines, by clear and convincing evidence, that the education service provider has done either of the following:

(1) Intentionally and substantially misrepresented information, obtained ESA funds by fraud, or failed to refund any overpayments in a timely manner.

(2) Routinely failed to provide students with promised educational goods or services.

(f) If the department bars an education service provider or other recipient of ESA funds from receiving payments from an ESA, the department shall timely notify each affected parent and participating student of that decision.

(g) A parent, participating student, education service provider, and other recipient of ESA funds may ask the department to reconsider its decision and appeal any final decision of the department administratively.

(h) The department may refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for the purpose of collection or criminal investigation, or both, if evidence of fraudulent use of ESA funds is discovered.

Section 14. Nothing in this act shall alter, amend, or limit the application of the Alabama High School Athletic Association constitution and bylaws to member schools.

Section 15. (a) A parent may bring suit for any violation of this act and may raise this act as a claim or defense in any judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state, a private individual, or any other party.

(b) Notwithstanding any other provision of law, an individual may bring a suit for an actual or threatened

violation of this act and relief may be granted in a judicial proceeding without regard to whether the individual commencing the action has sought or exhausted available administrative remedies.

(c) A prevailing party may recover appropriate relief including, but not limited to, declaratory or injunctive relief, compensatory damages, and reasonable attorney fees.

(d) The Attorney General may bring an action to enforce compliance with this act.

(e) Except as provided in Section 36-1-12, Code of Alabama 1975, no liability shall arise on the part of the department, the state, any school district or public school, or the board based on the deposit or use of an ESA pursuant to this act.

(f) Sovereign, governmental, state-agent, qualified immunities, or any immunities to suit from liability pursuant to the Constitution of Alabama of 2022, are waived and abolished to the extent of liability created by this act, and parties alleged to be responsible for any violation may be sued in their official capacities.

(g) If any part of this act is challenged in a state court as violating either the state or federal constitutions, parents of eligible recipients and participating students may intervene as of right in the lawsuit for the purposes of defending the constitutionality of the True School Choice Program.

Section 16. Any parent who chooses to educate his or her child outside of a public school and does not participate

in the True School Choice Program may be eligible for a refundable tax credit for each of those children. The tax credit shall be equal to half of the amount each child would be eligible to receive as a participating student under the True School Choice Program.

Section 17. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 18. This act shall become effective October 1, 2024.