

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

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:



HB129 Enrolled

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



HB129 Enrolled

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

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

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

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



HB129 Enrolled

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

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

- a. Tuition and fees at a participating school.
- b. Textbooks.
- c. Fees for after-school or summer education programs provided by a participating school.
- d. Private tutoring.
- e. Curricula or instructional materials.
- f. Tuition and fees for nonpublic online learning programs.
- g. Educational software and applications.
- h. Fees for standardized and nationally recognized assessments, including college admissions tests and advanced placement examinations and related preparatory courses.
- i. Education services for students with disabilities from a licensed or accredited practitioner or education service provider.
- j. Contracted services provided by a public school district including specific classroom instruction.



HB129 Enrolled

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

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

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

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

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

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



HB129 Enrolled

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.



HB129 Enrolled

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

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

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

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

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

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

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



HB129 Enrolled

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.



HB129 Enrolled

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.



HB129 Enrolled

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

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

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

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

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

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



HB129 Enrolled

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

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

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

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

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

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



HB129 Enrolled

(d) A public school that becomes an education service provider under this act 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.

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

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



HB129 Enrolled

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

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

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

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

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

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

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



HB129 Enrolled

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.



HB129 Enrolled

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

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

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

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

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

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

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

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



HB129 Enrolled

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

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

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

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

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



HB129 Enrolled

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



HB129 Enrolled

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

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

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

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

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

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

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

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



HB129 Enrolled

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

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

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

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



HB129 Enrolled

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

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

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

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



HB129 Enrolled

478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514

Speaker of the House of Representatives

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

Senate	06-Mar-24	Amended and Passed
House	06-Mar-24	Concurred in Senate Amendment