

1 SB38  
2 156515-3  
3 By Senators Brewbaker and Marsh  
4 RFD: Education  
5 First Read: 14-JAN-14  
6 PFD: 11/07/2013

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 16-1-11, 16-28-7, 16-46-1,  
12 16-46-2, 16-46-3, 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8,  
13 16-46-9, and 16-46-10, Code of Alabama 1975, relating to  
14 education; to clarify the autonomy of nonpublic schools,  
15 including private, church, parochial, and religious schools,  
16 offering educational instruction in grades K-12, as well as  
17 home-schooled students, and otherwise establish that such  
18 nonpublic schools are not subject to regulation by the State  
19 Department of Education, the State Board of Education, and the  
20 State Superintendent of Education, and are not subject to  
21 regulation by the state or any political subdivision of the  
22 state; to require nonpublic schools to comply with attendance  
23 laws and perform criminal history background checks on  
24 employees in accordance with state and federal law; to  
25 prohibit any public two-year or four-year institution of  
26 higher education from denying admittance to or otherwise  
27 discriminating against an otherwise qualified student based on

1 the consideration, whether in whole or in part, that the  
2 student attended a nonpublic school, including private,  
3 church, parochial, and religious schools, or was home  
4 schooled; and to prohibit the State Department of Education  
5 from denying certification to an otherwise qualified person on  
6 the basis that the person was employed by an elementary or  
7 secondary nonpublic school, including private, church,  
8 parochial, and religious schools.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. The Legislature finds and declares all of  
11 the following:

12 (1) That a parent or guardian in Alabama has a  
13 constitutional right to choose the type of K-12 education that  
14 is best for his or her child, whether public or nonpublic,  
15 religious or nonreligious, and including home-based education.

16 (2) That many parents choose to home school or  
17 enroll their children in elementary and secondary nonpublic  
18 schools, including private, church, parochial, or religious  
19 schools, that are not subject to state regulation and do not  
20 receive state or federal funds.

21 (3) That other than reporting on the enrollment of  
22 students, these nonpublic K-12 schools have been primarily  
23 exempt from state regulation and have only been required by  
24 state law to report the enrollment of students.

25 (4) That there is no national or state  
26 constitutional mandate that the government provide, license,

1 or regulate nonpublic education, including private, church,  
2 parochial, and religious schools, or home-schooled students.

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

15 Section 2. (a) A parent or guardian shall have the  
16 right to select the type school or method of his or her choice  
17 for the K-12 education of his or her child, whether public or  
18 nonpublic, religious or nonreligious, and including home-based  
19 education.

20 (b) Nonpublic schools, including private, church,  
21 parochial, and religious schools, offering educational  
22 instruction in grades K-12, as well as home-schooled students,  
23 are not subject to licensure or regulation by the state or any  
24 political subdivision of the state, including the State  
25 Department of Education.

26 Section 3. Each nonpublic school, including private,  
27 church, parochial, and religious schools, offering educational

1 instruction in grades K-12, as well as home-schooling  
2 entities, shall comply with the requirements of Chapter 28,  
3 Title 16, Code of Alabama 1975, relating to school attendance;  
4 Chapter 22A, Title 16, Code of Alabama 1975, the Alabama Child  
5 Protection Act of 1999; and Chapter 7, Title 38, Code of  
6 Alabama 1975, relating to criminal history background checks  
7 on persons responsible for children, the elderly, and the  
8 disabled.

9 Section 4. Sections 16-1-11 and 16-28-7 of the Code  
10 of Alabama 1975, are amended to read as follows:

11 "§16-1-11.

12 "All private schools or institutions of any kind  
13 having a school in connection therewith, except church schools  
14 as defined in Section 16-28-1, shall register annually on or  
15 before October 10 with the Department of Education and shall  
16 report on uniform blanks furnished by the ~~State Superintendent~~  
17 Department of Education, giving such statistics as relate to  
18 the number of pupils, the number of instructors, enrollment,  
19 attendance, course of study, length of term, cost of tuition,  
20 funds, value of property, and the general condition of the  
21 school. This section may not be interpreted or construed to  
22 authorize the Department of Education, the State Board of  
23 Education, or the State Superintendent of Education to license  
24 or regulate any private, nonpublic, or church school offering  
25 instruction in grades K-12, or any combination thereof.

26 "§16-28-7.

1           "At the end of the fifth day from the opening of the  
2 public school, the principal teacher of each public school,  
3 private school, and each private tutor, but not church school,  
4 shall report on forms prescribed by the State Superintendent  
5 of Education to the county superintendent of education, in the  
6 event the school is operated in territory under the control  
7 and supervision of the county board of education, or to the  
8 city superintendent of schools, in the event the school is  
9 operated in territory under the control and supervision of a  
10 city board of education, the names and addresses of all  
11 children of mandatory school attendance age who have enrolled  
12 in such schools; and thereafter, throughout the compulsory  
13 attendance period, the principal teacher of each school and  
14 private tutor shall report at least weekly the names and  
15 addresses of all children of mandatory school attendance age  
16 who enroll in the school or who, having enrolled, were absent  
17 without being excused, or whose absence was not satisfactorily  
18 explained by the parent, guardian, or other person having  
19 control of the child. The enrollment and attendance of a child  
20 in a church school shall be filed with the local public school  
21 superintendent by the parent, guardian, or other person in  
22 charge or control of the child on a form provided by the  
23 superintendent or his or her agent which shall be  
24 countersigned by the administrator of the church school and  
25 returned to the public school superintendent by the parent.  
26 Should the child cease attendance at a church school, the  
27 parent, guardian, or other person in charge or control of the

1 child shall by prior consent at the time of enrollment direct  
2 the church school to notify the local public school  
3 superintendent or his or her agent that the child no longer is  
4 in attendance at a church school. This section may not be  
5 interpreted or construed as authorizing the Department of  
6 Education, the State Board of Education, or the State  
7 Superintendent of Education to license or regulate any  
8 private, nonpublic, or church school offering instruction in  
9 grades K-12, or any combination thereof."

10 Section 5. Sections 16-46-1, 16-46-2, 16-46-3,  
11 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8, 16-46-9, and  
12 16-46-10 of the Code of Alabama 1975, are amended to read as  
13 follows:

14 "§16-46-1.

15 "For the purposes of this chapter, the following  
16 words shall have the meanings respectively ascribed to them by  
17 this section:

18 "(1) ACADEMIC FRAUD. Courses offered are  
19 insufficient in quality, content, or administration to achieve  
20 the stated or implied educational objective. Persons offering  
21 such courses who know or reasonably should know that the  
22 courses cannot achieve the stated or implied educational  
23 objective shall be considered to be involved in academic  
24 fraud.

25 "(2) AGENT or REPRESENTATIVE. Salesperson who  
26 presents materials, sells courses, or solicits students for  
27 enrollment of students in the state in person, by mail, by

1 correspondence, by telephone, online, by distance learning  
2 education, or by any other method of advertising within the  
3 state.

4 "~~(3) CHURCH SCHOOL. A school operated by a local~~  
5 ~~church, group of churches, denomination, and/or association of~~  
6 ~~churches on a nonprofit basis.~~

7 "(3) ~~(4)~~ COURSE. Any course, or portion of a plan or  
8 program of instruction, whether conducted in person, by mail,  
9 by correspondence, online, by distance learning education, or  
10 by any other method.

11 "(4) ~~(5)~~ ECONOMIC FRAUD. The sale of courses or  
12 programs of study which an institution is unable or unwilling  
13 to provide as advertised or described because of inadequate  
14 financial stability, facilities, instructional staff, or  
15 commitment to honor written or verbal contracts made with  
16 students. Included is the solicitation of students for  
17 enrollment through intentional deception or misrepresentation  
18 of fact and the use of advertising which is known to be false,  
19 inaccurate, or misleading. Failure to properly administer  
20 student cancellation and refund policies according to  
21 appropriate regulations or agreements made with students shall  
22 also constitute economic fraud.

23 "(5) ~~(6)~~ LICENSE. A ~~private school~~ license  
24 identifying the name and location of the ~~school~~ private  
25 postsecondary institution and establishing the courses which  
26 may be offered thereunder.



1           "(6) ~~(7)~~ PERMIT. A pocket card issued to an agent or  
2 representative providing identification as an authorized agent  
3 of a ~~school~~ private postsecondary institution.

4           "(7) ~~(8)~~ PRINCIPAL BASE OF OPERATIONS. A ~~school~~  
5 private postsecondary institution which has established a main  
6 campus in Alabama. Administrative and managerial support and  
7 physical plant facilities are maintained continuously in this  
8 location. Franchises chartered independently of parent  
9 corporations may be accorded this status provided they comply  
10 with the residency requirements.

11           "(8) ~~(9)~~ PRIVATE ~~SCHOOL~~ POSTSECONDARY INSTITUTION.  
12 Operation of either a for profit or nonprofit ~~entity~~  
13 postsecondary school as opposed to publicly owned or operated  
14 postsecondary schools. For the purposes of this subdivision, a  
15 for profit ~~entity~~ postsecondary school is any postsecondary  
16 school operated as a business corporation, partnership, or  
17 proprietorship and a nonprofit ~~entity~~ postsecondary school is  
18 any postsecondary school established by a nonprofit charter or  
19 articles of incorporation with bylaws establishing a nonprofit  
20 mode of operation that is determined by the Internal Revenue  
21 Service to be eligible for tax deductible contributions in  
22 accordance with 26 U.S.C. §501(c)(3).

23           "(9) ~~(10)~~ RESIDENT COURSE. Any course or sequence of  
24 courses of instruction offered by a school which is domiciled  
25 within Alabama and has established for a period of three years  
26 permanent administrative and management facilities in this  
27 state.

1           "(10) ~~(11)~~ SCHOOL. Any person, group of people,  
2 institution, establishment, agency, or organization offering  
3 or administering a plan, course, or program of instruction  
4 whether conducted in person, by mail, by correspondence,  
5 online, by distance learning education, or by any other method  
6 except the teaching of private lessons of instruction on a  
7 singular subject, unless otherwise provided by law.

8           "§16-46-2.

9           "It is hereby generally recognized that courses of  
10 postsecondary instruction, whether given in residence, ~~or~~ by  
11 mail, or electronically online, result in substantial benefits  
12 for students pursuing such courses, provided that such courses  
13 are designed and administered in accordance with recognized  
14 educational standards and practices. It is also recognized  
15 that persons taking such courses and postsecondary  
16 institutions offering such courses should be afforded  
17 additional protection under the laws of this state. It is the  
18 purpose of this chapter to supplement the general law of fraud  
19 of this state so as to provide for students, ~~educational~~  
20 postsecondary institutions, and the general public such added  
21 protection.

22           "§16-46-3.

23           "(a) This chapter shall not apply to any school  
24 offering instruction in grades K-12, or any combination  
25 thereof, including of the following schools nor to any person  
26 in regard to the operation of such ~~schools, except for the~~  
27 ~~conditions stated in this section:~~ K-12 school.

1           "(b) This chapter shall not apply to any of the  
2 following private postsecondary institutions, including any  
3 person in regard to the operation of such private  
4 postsecondary institution:

5           "(1) Schools operated on a nonprofit basis offering  
6 only courses or programs of study which do not lead to an  
7 associate or baccalaureate degree and are limited in nature to  
8 the performance of or preparation for the ministry of any  
9 established church, denomination, or religion.

10           "(2) Courses conducted by employers exclusively for  
11 their employees and courses conducted by labor unions  
12 exclusively for their members.

13           "~~(3) Schools offering instruction in grades K-12,~~  
14 ~~including the kindergarten, elementary, or secondary level and~~  
15 ~~operated by a parochial, denominational, or religious~~  
16 ~~organization, and/or as a ministry of a local church or group~~  
17 ~~of churches on a nonprofit basis.~~

18           "~~(4) Schools offering instruction in grades K-12,~~  
19 ~~including the kindergarten, elementary, or secondary level,~~  
20 ~~and operated by a community, educational organization, or~~  
21 ~~group of parents, organized as a nonprofit educational~~  
22 ~~corporation with the expectation of establishing a more~~  
23 ~~favorable environment for those in attendance.~~

24           "~~(5)~~ (3) Schools, colleges, and universities  
25 principally operated and supported by the State of Alabama or  
26 its political subdivisions.

1           "~~(6)~~(4) Seminars and short courses sponsored or  
2 offered by professional business, trade, or religious  
3 organizations primarily for benefit of members thereof, or  
4 similar public programs of training where the majority of the  
5 students have at least half of their tuition and enrollment  
6 fees paid by their employers, provided that evidence is  
7 supplied supporting this exemption continuously over the  
8 preceding five years.

9           "~~(7)~~(5) Any private ~~school~~ postsecondary institution  
10 conducting resident courses whose principal base of operation  
11 is within the State of Alabama which has been in continuous  
12 operation for 20 years or more as of July 1, 2004, and that  
13 held accreditation as of that date by an accrediting agency  
14 recognized by the United States Department of Education.

15           "~~(8)~~(6) Programs of study regulated by other state  
16 public boards, commissions, or agencies requiring school  
17 licensure or performance bonding, or both, except where the  
18 appropriate regulatory agency requires a license under this  
19 chapter.

20           "~~(9)~~(7) Any private postsecondary institution  
21 conducting resident courses that has been in operation within  
22 Alabama for at least five years as of July 1, 2004, and that  
23 is accredited by an accrediting agency recognized by the  
24 United States Department of Education shall be accorded the  
25 following provisions: Upon proof of such accreditation, such  
26 private postsecondary schools shall be issued a license and  
27 representative permits after required fees are paid to the

1 Alabama Department of Postsecondary Education. The requisite  
2 accreditation shall satisfy the minimum standards of this  
3 chapter.

4 ~~"(b)(c)~~ Any private ~~school~~ postsecondary institution  
5 exempted in this section shall retain the exempted status as  
6 long as the conditions of exemption remain valid. An  
7 accredited private ~~school~~ postsecondary institution or program  
8 of study not elsewhere exempted whose accreditation is  
9 withdrawn, suspended, or revoked shall forfeit its exemption  
10 status until the grant of accreditation is restored. Due  
11 process of the accrediting agency shall be allowed prior to  
12 withdrawal of an exemption. ~~Schools~~ Private postsecondary  
13 institutions having accreditation withheld as a result of  
14 transfer of ownership shall be allowed a period of time to  
15 regain the grant in accordance with the appropriate  
16 accrediting agency regulations.

17 ~~"(c)(d)~~ An exemption pursuant to this section shall  
18 not be construed to constitute approval or endorsement by the  
19 State of Alabama for any purpose.

20 ~~"(d)(e)~~ Exempted private ~~schools~~ postsecondary  
21 institutions may voluntarily request to be licensed without  
22 surety as described in Sections 16-46-5 and 16-46-6.

23 ~~"(e)(f)~~ Private ~~schools~~ postsecondary institutions  
24 which cease operations shall place the student academic,  
25 attendance, and financial aid records in the office of the  
26 appropriate ~~school~~ institutional administrator where a

1 repository shall exist to safeguard and to make available  
2 these records to authorized persons upon request as follows:

3           "~~(1) Schools~~ Private postsecondary institutions  
4 which merge, consolidate, or undergo change of ownership shall  
5 deposit with the continuing school.

6           "~~(2) Schools~~ Private postsecondary institutions  
7 which are a part of a system, organization, franchise, or a  
8 ministry of a local church or a group of churches shall  
9 deposit with the administrative office thereof if such is to  
10 remain in operation.

11           "~~(3) Elementary and secondary schools without system~~  
12 ~~support shall deposit with the superintendent of the public~~  
13 ~~county or city within whose district the school is located.~~

14           "(3) Other private postsecondary institutions ~~(4)~~  
15 ~~Postsecondary, higher, and others~~ not elsewhere designated  
16 shall deposit with the ~~Alabama~~ Department of Postsecondary  
17 Education.

18           "§16-46-4.

19           "No person shall do any of the following:

20           "(1) Make or cause to be made any statement or  
21 representation, oral, written, or visual, in connection with  
22 the operation of a school or the offering of a course, if such  
23 person knows or reasonably should know the statement or  
24 representation to be false, inaccurate, or misleading~~7~~.

25           "(2) Promise or guarantee employment utilizing  
26 information, training, or skill purported to be provided or  
27 otherwise enhanced by a course or school, unless such person

1 offers the student or prospective student a bona fide contract  
2 of employment agreeing to employ ~~said~~ the student or  
3 prospective student for a period of not less than six months  
4 in a business or other enterprise regularly conducted by him  
5 or her and in which such information, training, or skill is a  
6 normal condition of employment; ~~or.~~

7 "(3) Do any act constituting part of the conduct of  
8 operating a school or administration of a course or the  
9 obtaining of students therefor if such person knows or  
10 reasonably should know that any phase or incident of the  
11 conduct or operation of the school or administration of the  
12 course is being carried on by the use of fraud, deception, or  
13 other misrepresentation or by a person or persons operating a  
14 school without a license or soliciting students without a  
15 permit provided for by this chapter.

16 "§16-46-5.

17 "(a) No ~~proprietary private~~ postsecondary school  
18 institution, except those enumerated in Section 16-46-3, shall  
19 operate within this state unless the ~~school~~ private  
20 postsecondary institution first secures a license from the  
21 ~~Alabama~~ Department of Postsecondary Education, regardless of  
22 whether the ~~school~~ private postsecondary institution enrolls  
23 Alabama students or has a physical presence within the State  
24 of Alabama. Procedures for licensing and bonding of ~~schools~~  
25 private postsecondary institutions operating courses in  
26 separate locations shall be established in the rules and  
27 regulations pursuant to Section 16-46-7.

1           "~~(b) No K-12 school, except those enumerated in~~  
2           ~~Section 16-46-3, shall operate within this state unless the~~  
3           ~~school first secures a license from the Alabama State~~  
4           ~~Department of Education. Procedures for licensing and bonding~~  
5           ~~of schools operating courses in separate locations shall be~~  
6           ~~established in the rules and regulations pursuant to Section~~  
7           ~~16-46-7.~~

8           "(b) For all applicable private postsecondary  
9           schools or institutions that apply for a license and that meet  
10           the criteria identified in this section, the ~~(c) Upon~~  
11           ~~satisfactory review of a school, the Alabama State Department~~  
12           ~~of Education or the Alabama Department of Postsecondary~~  
13           ~~Education, as appropriate, shall issue a license to be~~  
14           publicly displayed on the premises where the ~~school~~ private  
15           postsecondary institution operates.

16           "(c) ~~(d)~~ The application for a license for a K-12  
17           ~~school shall be made on forms furnished by the Alabama State~~  
18           ~~Department of Education. Application for a license for a~~  
19           ~~proprietary~~ private postsecondary institution shall be made on  
20           forms furnished by the ~~Alabama~~ Department of Postsecondary  
21           Education.

22           "(d) ~~(e)~~ The State Board of Education shall  
23           promulgate a schedule of licensing fees, which may be revised  
24           from time to time upon reasonable notice at the discretion of  
25           the board. All licensing fees collected from private  
26           postsecondary institutions shall be deposited in the State  
27           Treasury to the credit of the private school licensing section



1 in the ~~Alabama~~ Department of Postsecondary Education.  
2 ~~Licensing fees collected from Key schools shall be deposited~~  
3 ~~in the State Treasury to the credit of the Alabama State~~  
4 ~~Department of Education.~~

5 " ~~(e)~~ (f) ~~All K-12 schools except those enumerated in~~  
6 ~~Section 16-46-3 shall be required to establish financial~~  
7 ~~stability by a surety acceptable to the Alabama State~~  
8 ~~Department of Education in the penal sum of not more than~~  
9 ~~\$10,000.00. The sum required to provide prepaid tuition~~  
10 ~~liability shall be established by the Alabama State Department~~  
11 ~~of Education by appropriate regulation pursuant to Section~~  
12 ~~16-46-7. All proprietary private postsecondary institutions,~~  
13 ~~except those enumerated in Section 16-46-3, shall be required~~  
14 ~~to establish financial stability by surety acceptable to the~~  
15 ~~Alabama~~ Department of Postsecondary Education in the penal sum  
16 of not more than twenty thousand dollars (\$20,000). The sum  
17 required to provide prepaid tuition liability shall be  
18 established by the ~~Alabama~~ Department of Postsecondary  
19 Education by appropriate regulation pursuant to Section  
20 16-46-7. Financial stability for separate locations shall be  
21 provided through the principal base of operations. Such surety  
22 shall be continuous and shall be conditioned to provide  
23 indemnification to any student suffering loss as a result of  
24 any fraud or misrepresentation used in procuring his or her  
25 enrollment in and/or administering a course covered by this  
26 chapter for the purpose of assuring due and faithful  
27 performance of agreements or contracts with students.

1           "(f) ~~(g)~~ A license under this chapter shall be valid  
2 for two years from the date on which it was issued.

3           "(g) ~~(h)~~ Regardless of the number of years that a  
4 surety is in force, the aggregate liability thereon shall in  
5 no event exceed the penal sum of the surety accepted by ~~either~~  
6 ~~the Alabama State Department of Education or the Alabama~~  
7 Department of Postsecondary Education, ~~as appropriate~~. The  
8 surety may cancel the same upon giving 30 days' notice in  
9 writing to the ~~Alabama State Department of Education or the~~  
10 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate~~,  
11 and thereafter shall be relieved of liability for any breach  
12 of condition occurring after the effective date of the  
13 cancellation.

14           "(h) ~~(i)~~ Application for a license shall also be  
15 accompanied by a financial statement acceptable to the ~~State~~  
16 ~~Department of Education or the Alabama~~ Department of  
17 Postsecondary Education, ~~as appropriate~~, and a copy of the  
18 current catalog, brochure, or bulletin of the ~~school~~ private  
19 postsecondary institution, which shall include all of the  
20 following:

21           "(1) Identifying data such as volume number, date,  
22 and publication.

23           "(2) Name, address, and telephone of the ~~school~~  
24 private postsecondary institution and its governing body,  
25 officials, and faculty.

26           "(3) A clear and concise statement of the objectives  
27 of the training given by the school.

1           "(4) The exact manner in which the stated objectives  
2 are to be attained.

3           "(5) A tuition and refund policy which is in  
4 compliance with the appropriate regulation pursuant to Section  
5 16-46-7.

6           "(6) A grievance policy which directs aggrieved  
7 students to first attempt to resolve complaints through the  
8 appropriate ~~school~~ officials of the private postsecondary  
9 institution. Student grievances not resolved by the ~~school~~  
10 private postsecondary institution shall be referred to the  
11 ~~Alabama State Department of Education or the Alabama~~  
12 ~~Department of Postsecondary Education, as appropriate.~~

13           "(7) Such other reasonable information as the  
14 ~~Alabama State Department of Education or the Alabama~~  
15 ~~Department of Postsecondary Education, as appropriate,~~ may  
16 impose.

17           "(i) ~~(j)~~ Upon receipt of the required information,  
18 the ~~Alabama State Department of Education or the Alabama~~  
19 ~~Department of Postsecondary Education, as appropriate,~~ may  
20 issue a license provided the institution is complying with all  
21 of the following standards:

22           "(1) The courses, curriculum, and instructions of  
23 ~~such school~~ the private postsecondary institution are  
24 consistent, in quality and content, with recognized  
25 educational standards as determined by the ~~Alabama State~~  
26 ~~Department of Education or the Alabama~~ Department of  
27 Postsecondary Education, ~~as appropriate.~~

1           "(2) There is available to the ~~school~~ private  
2 postsecondary institution adequate space, equipment,  
3 instructional material, and instructor personnel to provide  
4 training of good quality.

5           "(3) Adequate records as determined by the ~~Alabama~~  
6 ~~State Department of Education or the Alabama~~ Department of  
7 Postsecondary Education, ~~as appropriate,~~ are kept to show  
8 attendance and student progress. Records shall be available  
9 upon request of the student to be furnished prospective  
10 employers and other interested parties.

11           "(4) The ~~school~~ private postsecondary institution is  
12 financially sound and capable of fulfilling its commitments  
13 for training.

14           "(5) ~~Schools~~ Private postsecondary institutions or  
15 courses domiciled outside Alabama shall designate a state  
16 agent who is a resident of this state to service all  
17 complaints against the ~~school~~ institution.

18           "(6) A student enrollment agreement or contract  
19 shall be utilized to set forth clearly all conditions for  
20 enrollment in and completion of courses of instruction,  
21 itemized course cost, terms of payment, and other conditions  
22 the ~~school~~ private postsecondary institution may desire to  
23 establish. Conditions for forced withdrawal for academic or  
24 disciplinary reasons shall be stated. Contracts establishing  
25 installment payments with interest charges shall be in  
26 compliance with Alabama statutes regarding lending and usury

1 and shall be certified by the Alabama State Banking  
2 Department.

3 "(7) The ~~school~~ private postsecondary institution  
4 shall comply with all local, state, and federal laws and  
5 regulations.

6 "(j) ~~(k)~~ Any license applied for pursuant to this  
7 section shall be granted, deferred, or denied within 30 days  
8 of the receipt of the application therefor by ~~either the~~  
9 ~~Alabama State Department of Education or the Alabama~~  
10 ~~Department of Postsecondary Education, as appropriate.~~

11 "(k) ~~(l)~~ The ~~Alabama State Department of Education~~  
12 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~  
13 ~~appropriate,~~ may invoke negative actions against any license  
14 issued if the holder of the license solicits or enrolls  
15 students or administers instructions through fraud, deception,  
16 or misrepresentation. Negative actions shall include  
17 probation, suspension, and/or revocation.

18 "(l) ~~(m)~~ The fact that a surety is in force pursuant  
19 to this section shall not limit nor impair any right of  
20 recovery otherwise available under law, nor shall the amount  
21 of such surety be relevant in determining the amount of  
22 damages or other relief to which any plaintiff may be  
23 entitled.

24 "(m) ~~(n)~~ No recovery against any student shall be  
25 had on any contract if such ~~school~~ private postsecondary  
26 institution was not the holder of a license as required by  
27 this section at the time that ~~such school~~ the institution or

1 its representative negotiated the contract for or sold such  
2 course.

3 "(n) ~~(o) Schools~~ Private postsecondary institutions  
4 which undergo transfer of ownership shall be reviewed to  
5 determine that minimum standards remain in effect. The license  
6 may not be transferred to new ownership. Financial stability  
7 of the new ownership shall be established.

8 "(o) ~~(p)~~ The issuance of a license pursuant to this  
9 section shall represent authority to operate an educational  
10 institution in Alabama. Licensure may not be advertised as an  
11 endorsement or recommendation, but it implies compliance with  
12 the laws of Alabama. Advertising may indicate only that the  
13 ~~school~~ private postsecondary institution is licensed by the  
14 state.

15 "§16-46-6.

16 "(a) No person representing any ~~school~~ private  
17 postsecondary institution or other individual or organization  
18 offering courses in this state, or from a place of business in  
19 this state, whether located within or outside this state,  
20 shall sell any course or solicit students therefor in this  
21 state for a consideration or remuneration unless a permit is  
22 first secured from the ~~Alabama State Department of Education~~  
23 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~  
24 ~~appropriate~~, with the exception of agents representing schools  
25 exempted under Section 16-46-3. If the agent represents more  
26 than one school not exempted under Section 16-46-3, a separate  
27 permit shall be obtained for each school represented. The

1 application for a permit shall be made on forms to be  
2 furnished by ~~either the Alabama State Department of Education~~  
3 ~~or Alabama~~ Department of Postsecondary Education, ~~as~~  
4 ~~appropriate~~, and shall be renewed every two years.

5 "(b) Upon satisfactory review of an agent, the  
6 ~~Alabama State Department of Education or the Alabama~~  
7 ~~Department of Postsecondary Education, as appropriate,~~ shall  
8 issue a pocket card displaying the signature of the person,  
9 facial photo, name and address, the name and address of the  
10 employing ~~school~~ private postsecondary institution or virtual  
11 school, and certifying that the person is an authorized agent  
12 of the ~~school~~ entity. A permit shall be valid for two years  
13 from the date on which it was issued. This permit shall be  
14 carried on person when representing the ~~school~~ institution or  
15 entity as an agent.

16 "(c) ~~Schools~~ Entities utilizing agents shall provide  
17 indemnification to any student suffering loss as a result of  
18 any fraud or misrepresentation used by the agents in procuring  
19 enrollment. This subsection only applies to entities subject  
20 to this section and not exempted under Section 16-46-3.

21 "(d) One complimentary agent's permit may be issued  
22 to a designated owner, director, or managerial person of each  
23 ~~licensed school~~ private postsecondary institution or other  
24 entity subject to this section not exempted under Section  
25 16-46-3, that is identified as a principal base of operation.

26 "(e) No person shall be issued a permit to represent  
27 any ~~school~~ private postsecondary institution or other entity

1 subject to this section and not exempted under Section  
2 16-46-3, whether located within or outside this state, until  
3 it has been determined by the ~~Alabama State Department of~~  
4 ~~Education or the Alabama~~ Department of Postsecondary  
5 Education, ~~as appropriate,~~ that the ~~school~~ private  
6 postsecondary institution or other entity has qualified under  
7 the requirements of Section 16-46-5.

8 "(f) Any permit applied for pursuant to this section  
9 shall be granted, deferred, or denied within 30 days of the  
10 receipt of the application therefor by the ~~Alabama State~~  
11 ~~Department of Education or the Alabama~~ Department of  
12 Postsecondary Education, ~~as appropriate.~~

13 "(g) The ~~Alabama State Department of Education or~~  
14 ~~the Alabama~~ Department of Postsecondary Education, ~~as~~  
15 ~~appropriate,~~ may invoke negative actions against any permit  
16 issued pursuant to this section if the holder of the permit  
17 solicits or enrolls students through fraud, deception, or  
18 misrepresentation or upon a finding that the license to  
19 operate the ~~school~~ private postsecondary institution or entity  
20 represented is revoked or it is determined by the ~~Alabama~~  
21 ~~State Department of Education or the Alabama~~ Department of  
22 Postsecondary Education, ~~as appropriate,~~ that the ~~school~~  
23 private postsecondary institution or entity located outside of  
24 the state which the holder of the permit represents does not  
25 meet the requirements of Section 16-46-5. Negative actions  
26 shall include probation, suspension, and/or revocation.



1           "(h) The fact that a surety is in force shall not  
2 limit or impair any right of recovery otherwise available  
3 under law, nor shall the amount of such bond be relevant in  
4 determining the amount of damages or other relief to which any  
5 plaintiff may be entitled.

6           "(i) No recovery shall be had on any contract for or  
7 in connection with a course by any person selling or  
8 administering such course if the representative soliciting the  
9 students or selling the course was not the holder of a permit  
10 as required by this section at the time that such  
11 representative negotiated the contract for or sold such  
12 course.

13           "(j) No recovery shall be had on any contract for or  
14 in connection with a course by any person or institution  
15 holding such a contract who is legally a third party or  
16 holding agent for one of the other parties where the selling  
17 of the course or the conduct or operation of the ~~school~~ entity  
18 subject to this section or the administering of the course is  
19 carried on by use of fraud, deception, or other  
20 misrepresentation or if the person or persons operating the  
21 ~~school~~ entity subject to this chapter, administering the  
22 course, or soliciting students is without a license provided  
23 by this chapter.

24           "(k) The issuance of a permit pursuant to this  
25 section shall not be deemed to constitute endorsement of any  
26 course, person, or institution offering, conducting, or  
27 otherwise administering the same. Any representation contrary

1 to this subsection or tending to imply that a permit issued  
2 pursuant to this section constitutes such endorsement shall be  
3 a misrepresentation within the meaning of this chapter.  
4 Permits to sell courses, solicit students, or otherwise  
5 represent ~~a school~~ an entity subject to this section that is  
6 located within this state may not be issued unless the ~~school~~  
7 entity first obtained a license to operate under Section  
8 16-46-5, nor may permits be issued to represent ~~schools~~  
9 entities subject to this section that are located outside of  
10 the state until it has been determined by the ~~Alabama State~~  
11 ~~Department of Education or the Alabama~~ Department of  
12 Postsecondary Education, ~~as appropriate,~~ that ~~such school~~ the  
13 private postsecondary institution qualifies under the  
14 requirements of Section 16-46-5.

15 "§16-46-7.

16 "The ~~Alabama~~ State Board of Education may adopt  
17 rules and regulations for the administration and enforcement  
18 of this chapter and shall require the Chancellor to establish  
19 an advisory committee of owners or operators of proprietary  
20 private postsecondary institutions, to which this chapter  
21 applies, and of other persons with knowledge in the field to  
22 which this chapter applies to advise the Chancellor in the  
23 administration of this chapter relating to proprietary private  
24 postsecondary institutions. The advisory committee may review  
25 any action taken or policy established by the ~~Alabama~~  
26 Department of Postsecondary Education, ~~as appropriate,~~ in the  
27 administration of this chapter and may offer recommendations

1 to the Chancellor or State Board of Education. Reimbursement  
2 for per diem and travel to advisory committee meetings shall  
3 be authorized under this chapter and shall be expended by  
4 voucher as required by the ~~Alabama~~ Department of Postsecondary  
5 Education.

6 "§16-46-8.

7 ~~"The Alabama State Department of Education or the~~  
8 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~  
9 may institute such action of law or in equity as may be  
10 necessary to enforce this chapter. In addition to any other  
11 remedy under this chapter, the ~~Alabama State Department of~~  
12 ~~Education or the Alabama~~ Department of Postsecondary  
13 Education, ~~as appropriate,~~ may apply for relief by injunction,  
14 mandamus, or any other appropriate remedy in equity without  
15 being compelled to allege or prove that an adequate remedy at  
16 law does not otherwise exist. The ~~Alabama State Department of~~  
17 ~~Education and the Alabama~~ Department of Postsecondary  
18 Education ~~are~~ is not required to give or post bond in any  
19 action to which it is party, whether upon appeal or otherwise.  
20 All legal actions shall be brought against the ~~Alabama State~~  
21 ~~Department of Education or the Alabama~~ Department of  
22 Postsecondary Education, ~~as appropriate,~~ in the name of the  
23 ~~Alabama State Board of Education or the Alabama~~ Department of  
24 Postsecondary Education, ~~as appropriate.~~ The ~~Alabama State~~  
25 ~~Department of Education and the Alabama~~ Department of  
26 Postsecondary Education, ~~as appropriate,~~ may institute an  
27 action by its own attorney, but ~~each~~ shall have the right, if

1 it deems advisable, to call upon any assistant district  
2 attorney or district attorney to represent it in the circuit  
3 courts of this state or the Attorney General to represent it  
4 on appeal in the appellate courts of this state.

5 "§16-46-9.

6 "Any person or school or private postsecondary  
7 institution aggrieved by the actions of the ~~Alabama State~~  
8 ~~Department of Education or the Alabama~~ Department of  
9 Postsecondary Education with respect to exemption, issuance,  
10 denial, deferral, probation, suspension, or revocation of a  
11 license or permit provided for in Sections 16-46-3, 16-46-5,  
12 and 16-46-6, may file within 30 days a petition for review by  
13 the ~~Alabama~~ State Board of Education. The aggrieved person, or  
14 school, or institution shall then be entitled to a hearing  
15 before the ~~Alabama~~ State Board of Education. The person, or  
16 school, or institution may be represented by counsel at the  
17 hearing. The aggrieved person, or school, or institution may  
18 adduce evidence, both oral and documentary, at such hearing  
19 and on official record if such hearing shall be transcribed by  
20 a qualified court reporter. After the ~~Alabama~~ State Board of  
21 Education acts on the petition for review, any person, or  
22 school, or institution aggrieved by the ~~Alabama~~ State Board of  
23 Education's actions ~~shall~~, within 30 days after receiving  
24 notice of any such action, may have such action reviewed by a  
25 writ of certiorari by filing in the Circuit Court of  
26 Montgomery County, Alabama, a verified petition setting out  
27 the specific action or actions of the ~~Alabama~~ State Board of

1 Education by which the person, ~~or school,~~ or institution is  
2 aggrieved. The court shall consider only such matters as are  
3 contained in the petition. Upon such petition being filed, a  
4 writ of certiorari shall be issued out of the court directly  
5 to the ~~Alabama~~ State Board of Education requiring it to file  
6 with the court the records and transcript of testimony upon  
7 which such action or order was made and requiring the board to  
8 file an answer to the petition within 30 days of service of  
9 the writ. Upon the board filing such answer, the issue shall  
10 be joined thereon without further pleading and the case  
11 considered on the petition, the records of the board, and the  
12 answer filed by the board, but no new or additional evidence  
13 shall be taken or heard by the court. If new or additional  
14 evidence is discovered by any party ~~or school,~~ after the  
15 hearing of the ~~Alabama~~ State Board of Education, the evidence  
16 may be made grounds for a motion for a new hearing before the  
17 ~~Alabama~~ State Board of Education under the rules applicable to  
18 similar laws for a new trial in the state courts of Alabama.  
19 Such court may suspend or stay such actions of the ~~Alabama~~  
20 State Board of Education complained of in such petition,  
21 pending final hearing, only upon the petitioner executing a  
22 bond in such amount as the court deems reasonably sufficient  
23 to pay all costs of appeal if the petition is not sustained.  
24 In no case shall the bond be less than the reasonable cost of  
25 the transcript of the hearing before the ~~Alabama~~ State Board  
26 of Education that is being appealed. Upon final hearing, the  
27 court shall have jurisdiction to reverse, vacate, or modify

1 the action complained of if, upon the consideration of the  
2 issues before the court, the court is of the opinion that the  
3 action is unlawful.

4 "§16-46-10.

5 "It shall be unlawful for any person to violate ~~any~~  
6 ~~provisions of~~ this chapter. Any person required by this  
7 chapter to have a license or permit who shall do in this state  
8 any business of the nature described in this chapter without  
9 first obtaining such a license or permit as required of him or  
10 her by this chapter shall be guilty of a misdemeanor and, upon  
11 conviction, shall be punished by a fine of not more than five  
12 hundred dollars (\$500) or a term of imprisonment not to exceed  
13 six months, or both. Each day's violation of this chapter  
14 shall constitute a separate offense. All fines shall be  
15 deposited in the State Treasury to the credit of the ~~Alabama~~  
16 ~~State Department of Education or the Alabama~~ Department of  
17 Postsecondary Education, ~~as appropriate.~~"

18 Section 6. Any provision of law to the contrary  
19 notwithstanding, no public two-year or four-year institution  
20 of higher education in the state may deny admission to or  
21 otherwise discriminate against an otherwise qualified student  
22 based on the consideration, whether in whole or in part, that  
23 the student attended, graduated from, or is enrolled in a  
24 nonpublic school, including private, church, parochial, and  
25 religious schools, or was home schooled.

26 Section 7. Any provision of law to the contrary  
27 notwithstanding, the State Department of Education may not

1 deny teacher certification or recertification to an otherwise  
2 qualified person based on the consideration, whether in whole  
3 or in part, that the person is or was employed by a nonpublic  
4 K-12 school that is not subject to state regulation, including  
5 private, church, parochial, and religious schools. The  
6 requirements for teacher certification and recertification  
7 shall be the same for any person who teaches in a public  
8 school or a nonpublic school, whether accredited or not. This  
9 section shall not apply to a person who teaches in a home  
10 school.

11 Section 8. All nonpublic schools which choose to  
12 become members of the Alabama High School Athletic Association  
13 shall be in compliance with the constitution and bylaws  
14 established by Alabama High School Athletic Association member  
15 schools.

16 Section 9. All laws or parts of laws which conflict  
17 with this act are repealed.

18 Section 10. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Education..... 14-JAN-14

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 15-JAN-14

Read for the third time and passed as amended .... 28-JAN-14

Yeas 21  
Nays 0

Patrick Harris  
Secretary