SB38
160715-2
By Senators Brewbaker and Marsh
RFD: Education
First Read: 14-JAN-14
PFD: 11/07/2013
ENROLLED, An Act,

To amend Sections 16-1-11, 16-28-1, 16-28-7, 16-46-1, 16-46-2, 16-46-3, 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8, 16-46-9, and 16-46-10, Code of Alabama 1975, relating to education; to clarify the autonomy of nonpublic schools, including private, church, parochial, and religious schools, offering educational instruction in grades K-12, as well as home-schooled students, and otherwise establish that such nonpublic schools are not subject to regulation by the State Department of Education, the State Board of Education, and the State Superintendent of Education, and are not subject to regulation by the state or any political subdivision of the state; to require nonpublic schools to comply with attendance laws and perform criminal history background checks on employees in accordance with state and federal law; to prohibit any public two-year or four-year institution of higher education from denying admittance to or otherwise discriminating against an otherwise qualified student based on the consideration, whether in whole or in part, that the student attended a nonpublic school, including private, church, parochial, and religious schools, or was home schooled; and to prohibit the State Department of Education
from denying certification to an otherwise qualified person on
the basis that the person was employed by an elementary or
secondary nonpublic school, including private, church,
parochial, and religious schools.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

(4) That there is no national or state
constitutional mandate that the government provide, license,
or regulate nonpublic education, including private, church,
parochial, and religious schools, or home-schooled students.
(5) 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.

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

(b) Nonpublic schools, including private, church, parochial, and religious schools, offering educational instruction in grades K-12, as well as home-schooled students, are not subject to licensure or regulation by the state or any political subdivision of the state, including the State Department of Education. This section shall not be interpreted or construed as preventing a nonpublic school from voluntarily participating in state audits or other state administrative
oversight in order to comply with requirements of federal
grant provisions, except that any such voluntary participation
may be withdrawn by the nonpublic school at-will and
immediately.

Section 3. Each nonpublic school, including private,
church, parochial, and religious schools, offering educational
instruction in grades K-12, as well as home-schooling
entities, shall comply with the requirements of Chapter 28,
Title 16, Code of Alabama 1975, relating to school attendance;
Chapter 22A, Title 16, Code of Alabama 1975, the Alabama Child
Protection Act of 1999; and Chapter 7, Title 38, Code of
Alabama 1975, relating to criminal history background checks
on persons responsible for children, the elderly, and the
disabled.

Section 4. Sections 16-1-11, 16-28-1, and 16-28-7 of
the Code of Alabama 1975, are amended to read as follows:
"§16-1-11.
"All private schools or institutions of any kind
having a school in connection therewith, except church schools
as defined in Section 16-28-1, shall register annually on or
before October 10 with the Department of Education and shall
report on uniform blanks furnished by the State Superintendent
Department of Education, giving such statistics as relate to
the number of pupils, the number of instructors, enrollment,
attendance, course of study, length of term, cost of tuition,
funds, value of property, and the general condition of the
school. This section may not be interpreted or construed to
authorize the Department of Education, the State Board of
Education, or the State Superintendent of Education to license
or regulate any private, nonpublic, or church school offering
instruction in grades K-12, or any combination thereof.

"§16-28-1.

"For purposes of this article, the following words,
terms and phrases shall have the following respective
meanings, unless clearly indicated otherwise:

"(1) PRIVATE SCHOOL. Includes only such schools that
are established, conducted, and supported by a nongovernmental
entity or agency offering educational instruction in grades
K-12, or any combination thereof, including preschool, through
on-site or home programs, as hold a certificate issued by the
State Superintendent of Education, showing that such school
conforms to the following requirements:

"a. The instruction in such schools shall be by
persons holding certificates issued by the State
Superintendent of Education;

"b. Instruction shall be offered in the several
branches of study required to be taught in the public schools
of this state;

"c. The English language shall be used in giving
instruction;
"d. A register of attendance shall be kept which clearly indicates every absence of each child from such school for a half day or more during each school day of the school year."

"(2) CHURCH SCHOOL. Includes only such schools that as offer instruction in grades K-12, or any combination thereof, including the kindergarten, elementary, or secondary level preschool, through on-site or home programs, and are operated as a ministry of a local church, group of churches, denomination, and/or association of churches on a nonprofit basis which do not receive any state or federal funding.

"§16-28-7.

"At the end of the fifth day from the opening of the public school, the principal teacher of each public school, private school, and each private tutor, but not church school, shall report on forms prescribed by the State Superintendent of Education to the county superintendent of education, in the event the school is operated in territory under the control and supervision of the county board of education, or to the city superintendent of schools, in the event the school is operated in territory under the control and supervision of a city board of education, the names and addresses of all children of mandatory school attendance age who have enrolled in such schools; and thereafter, throughout the compulsory attendance period, the principal teacher of each school and
private tutor shall report at least weekly the names and
addresses of all children of mandatory school attendance age
who enroll in the school or who, having enrolled, were absent
without being excused, or whose absence was not satisfactorily
explained by the parent, guardian, or other person having
control of the child. The enrollment and attendance of a child
in a church school shall be filed with the local public school
superintendent by the parent, guardian, or other person in
charge or control of the child on a form provided by the
superintendent or his or her agent which shall be
countersigned by the administrator of the church school and
returned to the public school superintendent by the parent.
Should the child cease attendance at a church school, the
parent, guardian, or other person in charge or control of the
child shall by prior consent at the time of enrollment direct
the church school to notify the local public school
superintendent or his or her agent that the child no longer is
in attendance at a church school. This section may not be
interpreted or construed as authorizing the Department of
Education, the State Board of Education, or the State
Superintendent of Education to license or regulate any
private, nonpublic, or church school offering instruction in
grades K-12, or any combination thereof."

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

"§16-46-1.

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

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

"(2) AGENT or REPRESENTATIVE. Salesperson who
presents materials, sells courses, or solicits students for
enrollment of students in the state in person, by mail, by
correspondence, by telephone, online, by distance learning
education, or by any other method of advertising within the
state.

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

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

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

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

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

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

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

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

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

"§16-46-2.

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

"§16-46-3.

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

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

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

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

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

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

"(5) Schools, colleges, and universities
principally operated and supported by the State of Alabama or
its political subdivisions.
"§6+(4) Seminars and short courses sponsored or
offered by professional business, trade, or religious
organizations primarily for benefit of members thereof, or
similar public programs of training where the majority of the
students have at least half of their tuition and enrollment
fees paid by their employers, provided that evidence is
supplied supporting this exemption continuously over the
preceding five years.

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

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

"§9+(7) Any private postsecondary institution
conducting resident courses that has been in operation within
Alabama for at least five years as of July 1, 2004, and that
is accredited by an accrediting agency recognized by the
United States Department of Education shall be accorded the
following provisions: Upon proof of such accreditation, such
private postsecondary schools shall be issued a license and representative permits after required fees are paid to the Alabama Department of Postsecondary Education. The requisite accreditation shall satisfy the minimum standards of this chapter.

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

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

"(d)(e) Exempted private schools postsecondary institutions may voluntarily request to be licensed without surety as described in Sections 16-46-5 and 16-46-6.
(e)(f) Private schools postsecondary institutions which cease operations shall place the student academic, attendance, and financial aid records in the office of the appropriate school institutional administrator where a repository shall exist to safeguard and to make available these records to authorized persons upon request as follows:

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

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

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

(4) Other private postsecondary institutions Postsecondary, higher, and others not elsewhere designated shall deposit with the Alabama Department of Postsecondary Education.

§16-46-4.

No person shall do any of the following:

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

"(2) Promise or guarantee employment utilizing
information, training, or skill purported to be provided or
otherwise enhanced by a course or school, unless such person
offers the student or prospective student a bona fide contract
of employment agreeing to employ said the student or
prospective student for a period of not less than six months
in a business or other enterprise regularly conducted by him
or her and in which such information, training, or skill is a
normal condition of employment; or

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

"§16-46-5.

"(a) No proprietary private postsecondary school
institution, except those enumerated in Section 16-46-3, shall
operate within this state unless the school private

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postsecondary institution first secures a license from the Alabama Department of Postsecondary Education, regardless of whether the school private postsecondary institution enrolls Alabama students or has a physical presence within the State of Alabama. Procedures for licensing and bonding of schools private postsecondary institutions operating courses in separate locations shall be established in the rules and regulations pursuant to Section 16-46-7.

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

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

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

"(d) (e) The State Board of Education shall
promulgate a schedule of licensing fees, which may be revised
from time to time upon reasonable notice at the discretion of
the board. All licensing fees collected from private
postsecondary institutions shall be deposited in the State
Treasury to the credit of the private school licensing section
in the Alabama Department of Postsecondary Education.
Licensing fees collected from Key schools shall be deposited
in the State Treasury to the credit of the Alabama State
Department of Education.

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

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

"(g) Regardless of the number of years that a surety is in force, the aggregate liability thereon shall in no event exceed the penal sum of the surety accepted by either the Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate. The surety may cancel the same upon giving 30 days' notice in writing to the Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.
"(h) (‡) Application for a license shall also be accompanied by a financial statement acceptable to the State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, and a copy of the current catalog, brochure, or bulletin of the school private postsecondary institution, which shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

"(6) A student enrollment agreement or contract
shall be utilized to set forth clearly all conditions for
enrollment in and completion of courses of instruction,
itemized course cost, terms of payment, and other conditions
the **school private postsecondary institution** may desire to
establish. Conditions for forced withdrawal for academic or
disciplinary reasons shall be stated. Contracts establishing
installment payments with interest charges shall be in
compliance with Alabama statutes regarding lending and usury
and shall be certified by the Alabama State Banking
Department.

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

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

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

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

"(m) (n) No recovery against any student shall be had on any contract if such school private postsecondary institution was not the holder of a license as required by this section at the time that such school the institution or its representative negotiated the contract for or sold such course.

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

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

"§16-46-6.

"(a) No person representing any school private
postsecondary institution or other individual or organization
offering courses in this state, or from a place of business in
this state, whether located within or outside this state,
shall sell any course or solicit students therefor in this
state for a consideration or remuneration unless a permit is
first secured from the Alabama State Department of Education
or the Alabama Department of Postsecondary Education, as
appropriate, with the exception of agents representing schools
exempted under Section 16-46-3. If the agent represents more
than one school not exempted under Section 16-46-3, a separate
permit shall be obtained for each school represented. The
application for a permit shall be made on forms to be
furnished by either the Alabama State Department of Education
of the Alabama Department of Postsecondary Education, as appropriate, and shall be renewed every two years.

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

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

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

"(e) No person shall be issued a permit to represent any school, private postsecondary institution or other entity
subject to this section and not exempted under Section 16-46-3, whether located within or outside this state, until it has been determined by the Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, that the school private postsecondary institution or other entity has qualified under the requirements of Section 16-46-5.

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

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

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

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

"(j) No recovery shall be had on any contract for or in connection with a course by any person or institution holding such a contract who is legally a third party or holding agent for one of the other parties where the selling of the course or the conduct or operation of the school entity subject to this section or the administering of the course is carried on by use of fraud, deception, or other misrepresentation or if the person or persons operating the school entity subject to this chapter, administering the course, or soliciting students is without a license provided by this chapter.
"(k) The issuance of a permit pursuant to this section shall not be deemed to constitute endorsement of any course, person, or institution offering, conducting, or otherwise administering the same. Any representation contrary to this subsection or tending to imply that a permit issued pursuant to this section constitutes such endorsement shall be a misrepresentation within the meaning of this chapter. Permits to sell courses, solicit students, or otherwise represent a school an entity subject to this section that is located within this state may not be issued unless the school entity first obtained a license to operate under Section 16-46-5, nor may permits be issued to represent schools entities subject to this section that are located outside of the state until it has been determined by the Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, that such school the private postsecondary institution qualifies under the requirements of Section 16-46-5.

"§16-46-7.

"The Alabama State Board of Education may adopt rules and regulations for the administration and enforcement of this chapter and shall require the Chancellor to establish an advisory committee of owners or operators of proprietary private postsecondary institutions to which this chapter applies and of other persons with knowledge in the field to
which this chapter applies to advise the Chancellor in the administration of this chapter relating to proprietary private postsecondary institutions. The advisory committee may review any action taken or policy established by the Alabama Department of Postsecondary Education, as appropriate, in the administration of this chapter and may offer recommendations to the Chancellor or State Board of Education. Reimbursement for per diem and travel to advisory committee meetings shall be authorized under this chapter and shall be expended by voucher as required by the Alabama Department of Postsecondary Education.

"§16-46-8.

"The Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, may institute such action of law or in equity as may be necessary to enforce this chapter. In addition to any other remedy under this chapter, the Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, may apply for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The Alabama State Department of Education and the Alabama Department of Postsecondary Education are not required to give or post bond in any action to which it is party, whether upon appeal or otherwise.
All legal actions shall be brought against the Alabama State Department of Education or the Alabama Department of Postsecondary Education, as appropriate, in the name of the Alabama State Board of Education or the Alabama Department of Postsecondary Education, as appropriate. The Alabama State Department of Education and the Alabama Department of Postsecondary Education, as appropriate, may institute an action by its own attorney, but each shall have the right, if it deems advisable, to call upon any assistant district attorney or district attorney to represent it in the circuit courts of this state or the Attorney General to represent it on appeal in the appellate courts of this state.

"§16-46-9.

"Any person or school or private postsecondary institution aggrieved by the actions of the Alabama State Department of Education or the Alabama Department of Postsecondary Education with respect to exemption, issuance, denial, deferral, probation, suspension, or revocation of a license or permit provided for in Sections 16-46-3, 16-46-5, and 16-46-6, may file within 30 days a petition for review by the Alabama State Board of Education. The aggrieved person, or school, or institution shall then be entitled to a hearing before the Alabama State Board of Education. The person, or school, or institution may be represented by counsel at the hearing. The aggrieved person, or school, or institution may
adduce evidence, both oral and documentary, at such hearing
and on official record if such hearing shall be transcribed by
a qualified court reporter. After the Alabama State Board of
Education acts on the petition for review, any person, or
school, or institution aggrieved by the Alabama State Board of
Education's actions shall, within 30 days after receiving
notice of any such action, may have such action reviewed by a
writ of certiorari by filing in the Circuit Court of
Montgomery County, Alabama, a verified petition setting out
the specific action or actions of the Alabama State Board of
Education by which the person, or school, or institution is
aggrieved. The court shall consider only such matters as are
contained in the petition. Upon such petition being filed, a
writ of certiorari shall be issued out of the court directly
to the Alabama State Board of Education requiring it to file
with the court the records and transcript of testimony upon
which such action or order was made and requiring the board to
file an answer to the petition within 30 days of service of
the writ. Upon the board filing such answer, the issue shall
be joined thereon without further pleading and the case
considered on the petition, the records of the board, and the
answer filed by the board, but no new or additional evidence
shall be taken or heard by the court. If new or additional
evidence is discovered by any party or school, after the
hearing of the Alabama State Board of Education, the evidence
may be made grounds for a motion for a new hearing before the
Alabama State Board of Education under the rules applicable to
similar laws for a new trial in the state courts of Alabama.
Such court may suspend or stay such actions of the Alabama
State Board of Education complained of in such petition,
pending final hearing, only upon the petitioner executing a
bond in such amount as the court deems reasonably sufficient
to pay all costs of appeal if the petition is not sustained.
In no case shall the bond be less than the reasonable cost of
the transcript of the hearing before the Alabama State Board
of Education that is being appealed. Upon final hearing, the
court shall have jurisdiction to reverse, vacate, or modify
the action complained of if, upon the consideration of the
issues before the court, the court is of the opinion that the
action is unlawful.

"§16-46-10.

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

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

Section 7. Any provision of law to the contrary
notwithstanding, the State Department of Education's
requirements for teacher certification and recertification
shall be the same for any person who teaches in a public
school or a nonpublic school, whether accredited or not, and
without regard to whether the otherwise qualified person is or
was employed by a nonpublic K-12 private, church, parochial,
or religious school that is not subject to state regulation.

Section 8. All nonpublic schools which choose to
become members of the Alabama High School Athletic Association
shall be in compliance with the constitution and bylaws
established by Alabama High School Athletic Association member
schools.
Section 9. All laws or parts of laws which conflict
with this act are repealed.

Section 10. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.
SB38

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB38
Senate 28-JAN-14
I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 19-MAR-14
I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives
Passed: 11-MAR-14, as amended

House of Representatives
Passed: 19-MAR-2014, as amended by Conference Committee Report.

APPROVED April 2, 2014

By: Senator Provensen

Robert Bentley
GOVERNOR

Alabama Secretary Of State
Act Num....: 2014-245
Bill Num....: S-38
Recvd 04/02/14 10:28amSLF