

ACT #2014-245

1 SB38  
2 160715-2  
3 By Senators Brewbaker and Marsh  
4 RFD: Education  
5 First Read: 14-JAN-14  
6 PFD: 11/07/2013



1 SB38

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3  
4 ENROLLED, An Act,

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

1 from denying certification to an otherwise qualified person on  
2 the basis that the person was employed by an elementary or  
3 secondary nonpublic school, including private, church,  
4 parochial, and religious schools.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

18           (b) Nonpublic schools, including private, church,  
19 parochial, and religious schools, offering educational  
20 instruction in grades K-12, as well as home-schooled students,  
21 are not subject to licensure or regulation by the state or any  
22 political subdivision of the state, including the State  
23 Department of Education. This section shall not be interpreted  
24 or construed as preventing a nonpublic school from voluntarily  
25 participating in state audits or other state administrative

1 oversight in order to comply with requirements of federal  
2 grant provisions, except that any such voluntary participation  
3 may be withdrawn by the nonpublic school at-will and  
4 immediately.

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

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

17 "§16-1-11.

18 "All private schools or institutions of any kind  
19 having a school in connection therewith, except church schools  
20 as defined in Section 16-28-1, shall register annually on or  
21 before October 10 with the Department of Education and shall  
22 report on uniform blanks furnished by the ~~State Superintendent~~  
23 Department of Education, giving such statistics as relate to  
24 the number of pupils, the number of instructors, enrollment,  
25 attendance, course of study, length of term, cost of tuition,

1 funds, value of property, and the general condition of the  
2 school. This section may not be interpreted or construed to  
3 authorize the Department of Education, the State Board of  
4 Education, or the State Superintendent of Education to license  
5 or regulate any private, nonpublic, or church school offering  
6 instruction in grades K-12, or any combination thereof.

7 "§16-28-1.

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

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

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

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

24 ~~"c. The English language shall be used in giving~~  
25 ~~instruction;~~

1           ~~"d. A register of attendance shall be kept which~~  
2           ~~clearly indicates every absence of each child from such school~~  
3           ~~for a half day or more during each school day of the school~~  
4           ~~year.~~

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

12           "§16-28-7.

13           "At the end of the fifth day from the opening of the  
14          public school, the principal teacher of each public school,  
15          private school, and each private tutor, but not church school,  
16          shall report on forms prescribed by the State Superintendent  
17          of Education to the county superintendent of education, in the  
18          event the school is operated in territory under the control  
19          and supervision of the county board of education, or to the  
20          city superintendent of schools, in the event the school is  
21          operated in territory under the control and supervision of a  
22          city board of education, the names and addresses of all  
23          children of mandatory school attendance age who have enrolled  
24          in such schools; and thereafter, throughout the compulsory  
25          attendance period, the principal teacher of each school and

1 private tutor shall report at least weekly the names and  
2 addresses of all children of mandatory school attendance age  
3 who enroll in the school or who, having enrolled, were absent  
4 without being excused, or whose absence was not satisfactorily  
5 explained by the parent, guardian, or other person having  
6 control of the child. The enrollment and attendance of a child  
7 in a church school shall be filed with the local public school  
8 superintendent by the parent, guardian, or other person in  
9 charge or control of the child on a form provided by the  
10 superintendent or his or her agent which shall be  
11 countersigned by the administrator of the church school and  
12 returned to the public school superintendent by the parent.  
13 Should the child cease attendance at a church school, the  
14 parent, guardian, or other person in charge or control of the  
15 child shall by prior consent at the time of enrollment direct  
16 the church school to notify the local public school  
17 superintendent or his or her agent that the child no longer is  
18 in attendance at a church school. This section may not be  
19 interpreted or construed as authorizing the Department of  
20 Education, the State Board of Education, or the State  
21 Superintendent of Education to license or regulate any  
22 private, nonpublic, or church school offering instruction in  
23 grades K-12, or any combination thereof."

24 Section 5. Sections 16-46-1, 16-46-2, 16-46-3,  
25 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8, 16-46-9, and



1 16-46-10 of the Code of Alabama 1975, are amended to read as  
2 follows:

3 "§16-46-1.

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

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

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

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

23 "(3) ~~(4)~~ COURSE. Any course, or portion of a plan or  
24 program of instruction, whether conducted in person, by mail,

1 by correspondence, online, by distance learning education, or  
2 by any other method.

3 "(4) ~~(5)~~ ECONOMIC FRAUD. The sale of courses or  
4 programs of study which an institution is unable or unwilling  
5 to provide as advertised or described because of inadequate  
6 financial stability, facilities, instructional staff, or  
7 commitment to honor written or verbal contracts made with  
8 students. Included is the solicitation of students for  
9 enrollment through intentional deception or misrepresentation  
10 of fact and the use of advertising which is known to be false,  
11 inaccurate, or misleading. Failure to properly administer  
12 student cancellation and refund policies according to  
13 appropriate regulations or agreements made with students shall  
14 also constitute economic fraud.

15 "(5) ~~(6)~~ LICENSE. A ~~private school~~ license  
16 identifying the name and location of the ~~school~~ private  
17 postsecondary institution and establishing the courses which  
18 may be offered thereunder.

19 "(6) ~~(7)~~ PERMIT. A pocket card issued to an agent or  
20 representative providing identification as an authorized agent  
21 of a ~~school~~ private postsecondary institution.

22 "(7) ~~(8)~~ PRINCIPAL BASE OF OPERATIONS. A ~~school~~  
23 private postsecondary institution which has established a main  
24 campus in Alabama. Administrative and managerial support and  
25 physical plant facilities are maintained continuously in this

1 location. Franchises chartered independently of parent  
2 corporations may be accorded this status provided they comply  
3 with the residency requirements.

4 "(8) ~~(9)~~ PRIVATE ~~SCHOOL~~ POSTSECONDARY INSTITUTION.

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

16 "(9) ~~(10)~~ RESIDENT COURSE. Any course or sequence of  
17 courses of instruction offered by a school which is domiciled  
18 within Alabama and has established for a period of three years  
19 permanent administrative and management facilities in this  
20 state.

21 "(10) ~~(11)~~ SCHOOL. Any person, group of people,  
22 institution, establishment, agency, or organization offering  
23 or administering a plan, course, or program of instruction  
24 whether conducted in person, by mail, by correspondence,  
25 online, by distance learning education, or by any other method

1       except the teaching of private lessons of instruction on a  
2       singular subject, unless otherwise provided by law.

3               "§16-46-2.

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

17              "§16-46-3.

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

23              "(b) This chapter shall not apply to any of the  
24       following private postsecondary institutions, including any

1 person in regard to the operation of such private  
2 postsecondary institution:

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

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

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

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

22           "~~(5)~~ (3) Schools, colleges, and universities  
23 principally operated and supported by the State of Alabama or  
24 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

1 private postsecondary schools shall be issued a license and  
2 representative permits after required fees are paid to the  
3 Alabama Department of Postsecondary Education. The requisite  
4 accreditation shall satisfy the minimum standards of this  
5 chapter.

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

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

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

1           "~~(e)~~(f) Private schools postsecondary institutions  
 2           which cease operations shall place the student academic,  
 3           attendance, and financial aid records in the office of the  
 4           appropriate ~~school~~ institutional administrator where a  
 5           repository shall exist to safeguard and to make available  
 6           these records to authorized persons upon request as follows:

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

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

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

18           "(3) Other private postsecondary institutions ~~(4)~~  
 19           ~~Postsecondary, higher, and others~~ not elsewhere designated  
 20           shall deposit with the ~~Alabama~~ Department of Postsecondary  
 21           Education.

22           "§16-46-4.

23           "No person shall do any of the following:

24           "(1) Make or cause to be made any statement or  
 25           representation, oral, written, or visual, in connection with



1 the operation of a school or the offering of a course, if such  
2 person knows or reasonably should know the statement or  
3 representation to be false, inaccurate, or misleading~~7~~.

4 "(2) Promise or guarantee employment utilizing  
5 information, training, or skill purported to be provided or  
6 otherwise enhanced by a course or school, unless such person  
7 offers the student or prospective student a bona fide contract  
8 of employment agreeing to employ ~~said~~ the student or  
9 prospective student for a period of not less than six months  
10 in a business or other enterprise regularly conducted by him  
11 or her and in which such information, training, or skill is a  
12 normal condition of employment~~7~~or.

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

22 "§16-46-5.

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

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

9 ~~"(b) No K-12 school, except those enumerated in~~  
10 ~~Section 16-46-3, shall operate within this state unless the~~  
11 ~~school first secures a license from the Alabama State~~  
12 ~~Department of Education. Procedures for licensing and bonding~~  
13 ~~of schools operating courses in separate locations shall be~~  
14 ~~established in the rules and regulations pursuant to Section~~  
15 ~~16-46-7.~~

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

24 ~~"(c) (d) The application for a license for a K-12~~  
25 ~~school shall be made on forms furnished by the Alabama State~~

1 ~~Department of Education. Application for a license for a~~  
2 ~~proprietary private~~ postsecondary institution shall be made on  
3 forms furnished by the ~~Alabama~~ Department of Postsecondary  
4 Education.

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

15 "~~(e) (f)~~ All ~~K-12~~ schools ~~except those enumerated in~~  
16 ~~Section 16-46-3~~ shall be required to establish financial  
17 stability by a surety acceptable to the ~~Alabama State~~  
18 ~~Department of Education in the penal sum of not more than~~  
19 ~~\$10,000.00. The sum required to provide prepaid tuition~~  
20 ~~liability shall be established by the Alabama State Department~~  
21 ~~of Education by appropriate regulation pursuant to Section~~  
22 ~~16-46-7.~~ All proprietary private postsecondary institutions,  
23 except those enumerated in Section 16-46-3, shall be required  
24 to establish financial stability by surety acceptable to the  
25 ~~Alabama~~ Department of Postsecondary Education in the penal sum

1 of not more than twenty thousand dollars (\$20,000). The sum  
2 required to provide prepaid tuition liability shall be  
3 established by the ~~Alabama~~ Department of Postsecondary  
4 Education by appropriate regulation pursuant to Section  
5 16-46-7. Financial stability for separate locations shall be  
6 provided through the principal base of operations. Such surety  
7 shall be continuous and shall be conditioned to provide  
8 indemnification to any student suffering loss as a result of  
9 any fraud or misrepresentation used in procuring his or her  
10 enrollment in and/or administering a course covered by this  
11 chapter for the purpose of assuring due and faithful  
12 performance of agreements or contracts with students.

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

15 "(g) ~~(h)~~ Regardless of the number of years that a  
16 surety is in force, the aggregate liability thereon shall in  
17 no event exceed the penal sum of the surety accepted by ~~either~~  
18 ~~the Alabama State Department of Education or the Alabama~~  
19 ~~Department of Postsecondary Education, as appropriate.~~ The  
20 surety may cancel the same upon giving 30 days' notice in  
21 writing to the ~~Alabama State Department of Education or the~~  
22 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~  
23 and thereafter shall be relieved of liability for any breach  
24 of condition occurring after the effective date of the  
25 cancellation.

1           "(h) ~~(i)~~ Application for a license shall also be  
2 accompanied by a financial statement acceptable to the ~~State~~  
3 ~~Department of Education or the Alabama~~ Department of  
4 Postsecondary Education, ~~as appropriate,~~ and a copy of the  
5 current catalog, brochure, or bulletin of the ~~school~~ private  
6 postsecondary institution, which shall include all of the  
7 following:

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

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

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

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

17           "(5) A tuition and refund policy which is in  
18 compliance with the appropriate regulation pursuant to Section  
19 16-46-7.

20           "(6) A grievance policy which directs aggrieved  
21 students to first attempt to resolve complaints through the  
22 appropriate ~~school~~ officials of the private postsecondary  
23 institution. Student grievances not resolved by the ~~school~~  
24 private postsecondary institution shall be referred to the

1 ~~Alabama State Department of Education or the Alabama~~  
2 ~~Department of Postsecondary Education, as appropriate.~~

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

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

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

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

22 " (3) Adequate records as determined by the ~~Alabama~~  
23 ~~State Department of Education or the Alabama~~ Department of  
24 Postsecondary Education, ~~as appropriate,~~ are kept to show  
25 attendance and student progress. Records shall be available

1 upon request of the student to be furnished prospective  
 2 employers and other interested parties.

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

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

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

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

24 "(j) ~~(k)~~ Any license applied for pursuant to this  
 25 section shall be granted, deferred, or denied within 30 days

1 of the receipt of the application therefor by ~~either the~~  
 2 ~~Alabama State Department of Education or the Alabama~~  
 3 Department of Postsecondary Education, ~~as appropriate.~~

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

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

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

23 "(n) ~~(o)~~ Schools Private postsecondary institutions  
 24 which undergo transfer of ownership shall be reviewed to  
 25 determine that minimum standards remain in effect. The license



1 may not be transferred to new ownership. Financial stability  
2 of the new ownership shall be established.

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

10 "§16-46-6.

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

1 ~~or Alabama~~ Department of Postsecondary Education, ~~as~~  
2 ~~appropriate,~~ and shall be renewed every two years.

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

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

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

24 " (e) No person shall be issued a permit to represent  
25 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

1 meet the requirements of Section 16-46-5. Negative actions  
2 shall include probation, suspension, and/or revocation.

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

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

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

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

19           "§16-46-7.

20           "The ~~Alabama~~ State Board of Education may adopt  
21 rules and regulations for the administration and enforcement  
22 of this chapter and shall require the Chancellor to establish  
23 an advisory committee of owners or operators of ~~proprietary~~  
24 private postsecondary institutions, to which this chapter  
25 applies, and of other persons with knowledge in the field to

1 which this chapter applies to advise the Chancellor in the  
2 administration of this chapter relating to ~~proprietary~~ private  
3 postsecondary institutions. The advisory committee may review  
4 any action taken or policy established by the ~~Alabama~~  
5 Department of Postsecondary Education, ~~as appropriate,~~ in the  
6 administration of this chapter and may offer recommendations  
7 to the Chancellor or State Board of Education. Reimbursement  
8 for per diem and travel to advisory committee meetings shall  
9 be authorized under this chapter and shall be expended by  
10 voucher as required by the ~~Alabama~~ Department of Postsecondary  
11 Education.

12 "§16-46-8.

13 "~~The Alabama State Department of Education or the~~  
14 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~  
15 may institute such action of law or in equity as may be  
16 necessary to enforce this chapter. In addition to any other  
17 remedy under this chapter, the ~~Alabama State Department of~~  
18 ~~Education or the Alabama~~ Department of Postsecondary  
19 Education, ~~as appropriate,~~ may apply for relief by injunction,  
20 mandamus, or any other appropriate remedy in equity without  
21 being compelled to allege or prove that an adequate remedy at  
22 law does not otherwise exist. The ~~Alabama State Department of~~  
23 ~~Education and the Alabama~~ Department of Postsecondary  
24 Education ~~are~~ is not required to give or post bond in any  
25 action to which it is party, whether upon appeal or otherwise.

1 All legal actions shall be brought against the ~~Alabama State~~  
2 ~~Department of Education or the Alabama~~ Department of  
3 Postsecondary Education, ~~as appropriate,~~ in the name of the  
4 ~~Alabama State Board of Education or the Alabama~~ Department of  
5 Postsecondary Education, ~~as appropriate.~~ The ~~Alabama State~~  
6 ~~Department of Education and the Alabama~~ Department of  
7 Postsecondary Education, ~~as appropriate,~~ may institute an  
8 action by its own attorney, but each shall have the right, if  
9 it deems advisable, to call upon any assistant district  
10 attorney or district attorney to represent it in the circuit  
11 courts of this state or the Attorney General to represent it  
12 on appeal in the appellate courts of this state.

13 "§16-46-9.

14 "Any person or school or private postsecondary  
15 institution aggrieved by the actions of the ~~Alabama State~~  
16 ~~Department of Education or the Alabama~~ Department of  
17 Postsecondary Education with respect to exemption, issuance,  
18 denial, deferral, probation, suspension, or revocation of a  
19 license or permit provided for in Sections 16-46-3, 16-46-5,  
20 and 16-46-6, may file within 30 days a petition for review by  
21 the ~~Alabama~~ State Board of Education. The aggrieved person, or  
22 school, or institution shall then be entitled to a hearing  
23 before the ~~Alabama~~ State Board of Education. The person, or  
24 school, or institution may be represented by counsel at the  
25 hearing. The aggrieved person, or school, or institution may

1     adduce evidence, both oral and documentary, at such hearing  
2     and on official record if such hearing shall be transcribed by  
3     a qualified court reporter. After the ~~Alabama~~ State Board of  
4     Education acts on the petition for review, any person, or  
5     school, or institution aggrieved by the ~~Alabama~~ State Board of  
6     Education's actions ~~shall~~, within 30 days after receiving  
7     notice of any such action, may have such action reviewed by a  
8     writ of certiorari by filing in the Circuit Court of  
9     Montgomery County, Alabama, a verified petition setting out  
10    the specific action or actions of the ~~Alabama~~ State Board of  
11    Education by which the person, or school, or institution is  
12    aggrieved. The court shall consider only such matters as are  
13    contained in the petition. Upon such petition being filed, a  
14    writ of certiorari shall be issued out of the court directly  
15    to the ~~Alabama~~ State Board of Education requiring it to file  
16    with the court the records and transcript of testimony upon  
17    which such action or order was made and requiring the board to  
18    file an answer to the petition within 30 days of service of  
19    the writ. Upon the board filing such answer, the issue shall  
20    be joined thereon without further pleading and the case  
21    considered on the petition, the records of the board, and the  
22    answer filed by the board, but no new or additional evidence  
23    shall be taken or heard by the court. If new or additional  
24    evidence is discovered by any party ~~or school~~, after the  
25    hearing of the ~~Alabama~~ State Board of Education, the evidence



1 may be made grounds for a motion for a new hearing before the  
2 ~~Alabama~~ State Board of Education under the rules applicable to  
3 similar laws for a new trial in the state courts of Alabama.  
4 Such court may suspend or stay such actions of the ~~Alabama~~  
5 State Board of Education complained of in such petition,  
6 pending final hearing, only upon the petitioner executing a  
7 bond in such amount as the court deems reasonably sufficient  
8 to pay all costs of appeal if the petition is not sustained.  
9 In no case shall the bond be less than the reasonable cost of  
10 the transcript of the hearing before the ~~Alabama~~ State Board  
11 of Education that is being appealed. Upon final hearing, the  
12 court shall have jurisdiction to reverse, vacate, or modify  
13 the action complained of if, upon the consideration of the  
14 issues before the court, the court is of the opinion that the  
15 action is unlawful.

16 "§16-46-10.

17 "It shall be unlawful for any person to violate ~~any~~  
18 ~~provisions~~ of this chapter. Any person required by this  
19 chapter to have a license or permit who shall do in this state  
20 any business of the nature described in this chapter without  
21 first obtaining such a license or permit as required of him or  
22 her by this chapter shall be guilty of a misdemeanor and, upon  
23 conviction, shall be punished by a fine of not more than five  
24 hundred dollars (\$500) or a term of imprisonment not to exceed  
25 six months, or both. Each day's violation of this chapter

1 shall constitute a separate offense. All fines shall be  
2 deposited in the State Treasury to the credit of the ~~Alabama~~  
3 ~~State Department of Education or the Alabama~~ Department of  
4 Postsecondary Education, ~~as appropriate.~~"

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

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

21 Section 8. All nonpublic schools which choose to  
22 become members of the Alabama High School Athletic Association  
23 shall be in compliance with the constitution and bylaws  
24 established by Alabama High School Athletic Association member  
25 schools.

1                   Section 9. All laws or parts of laws which conflict  
2 with this act are repealed.

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

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*Kay Ivey*

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*

**TIME** *8:12 a.m.*  
By: Senator *Brewbaker*

*Robert Bentley*  
**GOVERNOR**

Alabama Secretary Of State

Act Num....: 2014-245  
Bill Num...: S-38

Recv'd 04/02/14 10:28amSLF

1 XXXXXXXXXX

CO-SPONSORS

2 XXXXXX 19

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required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 38.

yeas \_\_\_\_\_ nays \_\_\_\_\_ abstain \_\_\_\_\_

**PATRICK HARRIS,**  
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB \_\_\_\_\_ as required in the General Acts of Alabama, 1975 Act No. 919.

**PATRICK HARRIS,**  
Secretary

**CONFERENCE COMMITTEE**

Senate Conferees

Brinkman  
Fittman  
Ross

RD 1 RFD

ERP

**REPORT OF STANDING COMMITTEE**

This bill having been referred by House to its standing committee

Education Policy \_\_\_\_\_ acted upon by such committee

session, and returned therefrom to House with the recommendation that it

Passed; w/amend(s) 2 w/sub 2 This 20th day of February, 2011

W. McQuinn Chairpers

DATE:

2.20

RF

RF

DATE:

RE-REFERRED

RE-COMMITTED

Committee \_\_\_\_\_

I hereby certify that the Resolution required in Section C of Act No. 81-889 was adopted and is attached to the Bill SB 38.

YEAS 64 NAYS 21

**C: F WOODA**  
Clerk

FURTHER HOUSE ACTION (OVER)