

1 SB383  
2 166471-1  
3 By Senator Brewbaker  
4 RFD: Education and Youth Affairs  
5 First Read: 16-APR-15

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This act would establish qualified  
9 depositories for textbooks, which would be  
10 facilities that receive textbook orders from boards  
11 of education, store sufficient quantities of  
12 textbooks, and distribute textbooks to local school  
13 systems.

14 This bill would prohibit a qualified  
15 depository for textbooks from charging a board of  
16 education for its services, but would authorize it  
17 to charge a publisher a fee for its services.

18 The bill would provide that a publisher of  
19 textbooks is responsible for ensuring that a  
20 sufficient stock of textbooks is maintained at a  
21 qualified depository.

22 This bill would prohibit the price of any  
23 textbook sold through a qualified depository for  
24 textbooks from exceeding the costs already  
25 prescribed by law.

1                   This bill would also clarify that textbooks  
2                   include digital textbooks for the purposes of  
3                   public school textbook purchasing.  
4

5                                   A BILL  
6                                   TO BE ENTITLED  
7                                   AN ACT  
8

9                   Relating to the purchase of school textbooks; to  
10                  amend Sections 16-36-62, 16-36-64 and 16-36-65, Code of  
11                  Alabama 1975; to add Sections 16-36-60.1 and 16-36-71 to the  
12                  Code of Alabama 1975; to establish qualified depositories for  
13                  textbooks, which would be facilities that receive textbook  
14                  orders from boards of education, store sufficient quantities  
15                  of textbooks, and distribute textbooks to local school  
16                  systems; to prohibit a qualified depository for textbooks from  
17                  charging a board of education for its services, but would  
18                  authorize it to charge a publisher a fee for its services; to  
19                  prohibit the price of any textbook to exceed the costs already  
20                  prescribed by law; and to clarify that textbooks include  
21                  digital textbooks for the purposes of public school textbook  
22                  purchasing.

23                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24                                 Section 1. Sections 16-36-62, 16-36-64 and 16-36-65,  
25                  Code of Alabama 1975, are amended to read as follows:

26                                 "§16-36-62.

1           "(a) A local textbook committee or committees shall  
2 be appointed by each separate local board of education. The  
3 number, size, and composition, which shall include parents, of  
4 the committee or committees shall be determined by each local  
5 board of education. A copy of local school board policies in  
6 regard to local textbook committees shall be kept on file by  
7 each local superintendent. Names of each person serving on a  
8 local textbook committee shall also be kept on file by each  
9 local superintendent.

10           "(b) In order to qualify as a member of the  
11 committee, each member of the local textbook committee and its  
12 secretary shall prepare an affidavit to be filed with the  
13 local board of education within 10 days after notice of the  
14 member's appointment stating each of the following:

15           "(1) The member agrees to discharge faithfully all  
16 the duties imposed upon him or her as a member or as secretary  
17 of the textbook committee.

18           "(2) The member has no interest, directly or  
19 indirectly, in any contract that may be made under this  
20 article for the purchase of textbooks.

21           "(3) The member has no interest as author, as  
22 associate author, as publisher, or as a representative of the  
23 author or publisher of any textbooks.

24           "(4) The member has no pecuniary interest, directly  
25 or indirectly, in the business or profits of any person, firm,  
26 or corporation engaged in manufacturing, publishing, or  
27 selling textbooks.

1           "(5) The member agrees not to accept any emolument  
2 or promise of future reward of any kind from any publisher of  
3 textbooks, the publisher's agent, or anyone interested in or  
4 intending to bias the member's judgment in any way in the  
5 selection of any textbook for adoption.

6           "(c) Members shall serve for terms of one year.

7           "(d) The local textbook committee shall meet on call  
8 of the chairperson of the local board of education for the  
9 purpose of recommending textbooks to the local board of  
10 education from the list of adoptions by the State Board of  
11 Education or from a list submitted to the committee for  
12 consideration by the local superintendent or his or her  
13 designee, or from both lists. Textbooks which have been  
14 rejected by the State Board of Education shall not be  
15 considered for future adoption by the local board of  
16 education, except for the length of an existing local contract  
17 approved by the state superintendent. The recommendations of a  
18 local textbook committee shall be by majority vote for each  
19 textbook. No textbook shall be used in any public school of  
20 this state unless recommended by a local textbook committee  
21 and, upon the recommendation of a local superintendent,  
22 adopted by the local board of education.

23           "(e) The adoption of a textbook by a local board of  
24 education shall be by majority vote of the local board of  
25 education and shall be for a period determined by the State  
26 Superintendent of Education. Not later than 30 days after the  
27 date of the local adoption, the local superintendent of

1 education shall file a report with the State Superintendent of  
2 Education listing the title, the name of the author, the  
3 publisher, and the date of adoption of the textbook with  
4 verification to the state superintendent that all procedures  
5 described in subsection (d) have been followed. This procedure  
6 shall apply each time a textbook is adopted for use in a local  
7 school or school system.

8 "(f) Publishers shall furnish samples of all  
9 state-adopted textbooks to each local board of education for  
10 evaluation by the local textbook committee. One copy of each  
11 textbook adopted by the local textbook committee shall be  
12 retained by the local board of education as an official  
13 sample. All samples not adopted by the local boards shall be  
14 returned to the publishers at the expense of the publishers,  
15 and samples of those books adopted shall become the property  
16 of the local boards of education. If the publisher fails to  
17 reclaim samples of nonadopted books within 90 days, the sample  
18 books shall become the property of the local board of  
19 education.

20 "(g) Any textbook publisher that solicits a local  
21 textbook committee or local board to adopt their textbooks and  
22 has not participated in the state adoption process shall  
23 provide the reason for not participating in the state adoption  
24 process in writing to the local textbook committee and local  
25 board at the time of the solicitation. A copy of the document  
26 submitted to the local textbook committee and the local board

1 of education shall also be sent to the State Superintendent of  
2 Education.

3 "(h) Publishers shall be required to use a qualified  
4 depository in Alabama for distribution of state or local  
5 adopted textbooks if requested to do so by the local board of  
6 education and shall have a sufficient supply of the adopted  
7 textbooks on deposit at a qualified depository for  
8 distribution or sufficient ability to provide access to  
9 digital textbooks as ordered through a qualified depository.  
10 Nothing in this subsection shall preclude publishers from  
11 selling textbooks to the local board of education directly or  
12 through means other than a qualified depository for textbooks,  
13 but a publisher may not refuse to sell through a qualified  
14 depository. Regardless of whether a qualified depository is  
15 used in a transaction, the prices charged by a publisher shall  
16 not exceed the prices prescribed in subsection (c) of Section  
17 16-36-64.

18 "§16-36-64.

19 "(a) No contract shall be made pursuant to this  
20 article for the purchase of textbooks rejected by the State  
21 Board of Education. The only contracts entered into by the  
22 State Board of Education pursuant to this article shall be for  
23 textbooks considered by the State Textbook Committee and  
24 adopted by the State Board of Education as provided for in  
25 this article.

26 "(b) In addition to all other laws which forbid the  
27 use of textbooks in the public schools of the state by authors

1 who are members of the Communist Party or members of communist  
2 front organizations, all contracts with publishers for  
3 textbooks made pursuant to this article shall stipulate that  
4 the author or authors of such book or books is not a member of  
5 the Communist Party or known advocate of communism or Marxist  
6 socialism and is not a member of a communist front  
7 organization.

8 "(c) The maximum price at which the State Board of  
9 Education shall contract for local boards of education to pay  
10 f.o.b. the local board of education for any books to be used  
11 in the public schools of this state, after all discounts have  
12 been deducted, shall not exceed the minimum price at which the  
13 publisher sells such books in wholesale quantities f.o.b., the  
14 publisher's publishing house, after all discounts have been  
15 deducted. Any contract made for the purchase of books for use  
16 in the public schools of this state at a price higher than  
17 such determined maximum shall be void.

18 "(d) Every contract entered into under this article  
19 by the State Board of Education on behalf of the local boards  
20 of education and any publisher or publishing company shall  
21 contain a provision that the publisher covenants and agrees to  
22 all of the following:

23 "(1) The publisher is not furnishing under contract  
24 executed after the first day of January of the year in which  
25 the contract becomes effective, to any state, county, or  
26 school district in the United States the textbooks embraced in

1 the contract at a price below the price stipulated in the  
2 contract.

3 "(2) If, at any time during the period of the  
4 contract, the textbooks named in the contract shall be  
5 contracted for at a price to any state, county, or school  
6 district in the United States, lower than the price agreed  
7 upon in the contract, then that lower price shall become the  
8 contract price between the State Board of Education on behalf  
9 of the local board of education and the publisher named in the  
10 contract.

11 "(3) If, at any time during the period of the  
12 contract, any editions of the textbooks named in the contract  
13 substantially similar to the official copy on file in the  
14 office of the State Superintendent of Education shall be  
15 contracted for at a lower price with any state, county, or  
16 school district in the United States, the State Board of  
17 Education may at its option substitute for the edition  
18 contracted for the substantially similar edition at the lower  
19 price.

20 "(4) If the publisher offers any free or discounted  
21 ancillary items or services, or both, to any local board of  
22 education or any public school, the publisher shall offer the  
23 same free or discounted ancillary items or services, or both,  
24 to all local boards of education or schools under the same or  
25 similar circumstances.

26 "(e) If the State Board of Education determines that  
27 any book or books contracted for are being sold at a lower

1 contract price in any other state than the price for which the  
2 book or books are being sold to Alabama, the contract shall be  
3 forfeited. Each contract shall provide that in the event of  
4 violation of this pricing agreement, the contractor shall  
5 return all money collected for the books and also forfeit the  
6 book or books to the respective local boards of education,  
7 this being the agreed measure of damages stipulated to have  
8 been suffered by the State Board of Education and the local  
9 boards of education. Action may be brought in the name of the  
10 state on the bond of the contractor for all losses sustained,  
11 and any sum recovered shall be deposited to the credit of the  
12 Education Trust Fund.

13 "(f) Contracts with textbook publishers shall  
14 include all of the following:

15 "(1) A provision that local boards of education  
16 shall be permitted to purchase with local funds textbooks for  
17 free distribution at the same price at which the local boards  
18 of education are permitted to purchase such books with state  
19 funds.

20 "(2) The publishers shall replace defective or  
21 substandard books without cost to the purchaser.

22 "(3) Provisions for the time of delivery, penalties  
23 for delay in delivery, and other provisions as in the judgment  
24 of the State Board of Education will insure prompt delivery of  
25 all textbooks at the lowest possible price.

26 "(4) The publishers shall be required to use a  
27 qualified depository in Alabama for distribution of state or

1 local adopted textbooks if requested to do so by the  
2 contracting board of education and shall have a sufficient  
3 supply of the adopted textbooks on deposit at a qualified  
4 depository for distribution or sufficient ability to provide  
5 access to digital textbooks as ordered through a qualified  
6 depository. Nothing in this subdivision shall preclude  
7 publishers from selling textbooks to the State Board of  
8 Education directly or through means other than a qualified  
9 depository for textbooks, but a publisher may not refuse to  
10 sell through a qualified depository. Regardless of whether a  
11 qualified depository is used in a transaction, the prices  
12 charged by a publisher shall not exceed the prices prescribed  
13 in subsection (c).

14           "(g) In the case of the failure of any contractor to  
15 furnish the books as provided in this contract, the bond of  
16 the publisher shall be forfeited and the State Board of  
17 Education may contract for other books as needed. The State  
18 Board of Education may drop any textbook by giving written  
19 notice to the publisher at least 90 days in advance and upon  
20 the recommendation of the State Textbook Committee to make  
21 another adoption instead of the textbook.

22           "(h) The State Board of Education, upon the  
23 recommendation of the State Superintendent of Education, may  
24 renew or extend contracts for no less than one year nor more  
25 than two years. This provision shall be made a part of the  
26 publishers contract, and the State Board of Education may  
27 exercise the provision by notifying the publisher in advance.

1           "(i) The State Board of Education may include any  
2 additional regulations in the contract form that the State  
3 Board of Education deems best for the administration of this  
4 article, and any regulations included in the contract form and  
5 accepted by the publisher shall be construed as a part of this  
6 article. Publishers shall be required to comply with  
7 additional rules and regulations approved by the State Board  
8 of Education as if they were included in this article.

9           "(j) The State Superintendent of Education shall  
10 preserve in the offices of the State Department of Education  
11 or in another suitable location, one copy of each book which  
12 has been made the basis of any contract as the standard  
13 specimen of quality and excellence to be maintained in such  
14 books during the period of the contract.

15           "§16-36-65.

16           "~~(a) Upon receipt of requisitions from the State  
17 Superintendent of Education, the state Purchasing Agent shall,  
18 in accordance with existing statutes and procedures governing  
19 state purchases, issue statewide purchase contracts upon which  
20 local boards of education shall issue local purchase orders to  
21 the publishers who shall ship the books ordered to the local  
22 board of education, shipping charges prepaid.~~

23           "~~(b)~~ (a) The State Department of Education in  
24 conjunction with the state Purchasing Agent shall furnish  
25 contracts from which state-adopted textbooks for the pupils  
26 and teachers in classrooms and schools operated under the  
27 jurisdiction and supervision of the Alabama Department of

1 Mental Health ~~and Mental Retardation~~ can be purchased. These  
2 purchases shall be made from appropriations to the state  
3 Department of Mental Health ~~and Mental Retardation~~. The State  
4 Board of Education may make and enforce regulations for the  
5 proper care and accounting for such textbooks.

6 ~~"(c)~~ (b) The State Department of Education in  
7 conjunction with the state Purchasing Agent shall furnish  
8 contracts from which state-adopted textbooks for the pupils  
9 and teachers in classrooms and schools operated under the  
10 jurisdiction of the Alabama Institute for Deaf and Blind can  
11 be purchased. These purchases shall be made from  
12 appropriations to the Alabama Institute for Deaf and Blind.  
13 The State Board of Education may make and enforce regulations  
14 for the proper care and accounting for these textbooks and  
15 shall not be required to purchase and furnish special books or  
16 materials for the deaf and blind.

17 ~~"(d)~~ (c) The State Department of Education in  
18 conjunction with the state Purchasing Agent shall furnish  
19 contracts from which state-adopted textbooks for the pupils  
20 and teachers in classrooms and schools operated by the  
21 Department of Youth Services can be purchased. The cost of the  
22 textbooks provided herein shall be paid from appropriations to  
23 the Department of Youth Services. The State Board of Education  
24 may make and enforce regulations for the proper care and  
25 accounting for these textbooks and shall not be required to  
26 purchase and furnish any special books or materials under this  
27 section.

1           "~~(e)~~ (d) The State Board of Education shall have no  
2 power or authority to enter into any contract or arrangement  
3 for furnishing textbooks or providing a depository for  
4 textbooks or delivering textbooks, but shall have the power  
5 and authority to enter into any contract or arrangement  
6 requiring the use of a qualified depository for textbooks."

7           Section 2. Sections 16-36-60.1 and 16-36-71 are  
8 added to the Code of Alabama 1975, to read as follows:

9           §16-36-60.1.

10          For the purposes of this article, the following  
11 words shall have the following meanings:

12           (1) QUALIFIED DEPOSITORY FOR TEXTBOOKS or QUALIFIED  
13 DEPOSITORY. A facility in the state responsible for receiving  
14 orders for, storing of, and distribution of textbooks pursuant  
15 to the provisions of Section 16-36-71.

16           (2) TEXTBOOK. Includes digital textbooks, as defined  
17 in Section 16-16B-2. Digital textbooks shall be recommended,  
18 adopted, and purchased in the same manner as provided for  
19 textbooks under this article.

20           §16-36-71.

21           (a) A qualified depository of textbooks shall be  
22 responsible for receiving textbook orders from the State Board  
23 of Education or local boards of education, storing sufficient  
24 quantities of textbooks, and distributing textbooks in  
25 accordance with this article.

26           (b) A qualified depository shall do all of the  
27 following:

1                   (1) Have sufficient warehouse space to maintain  
2 sufficient stock.

3                   (2) Be located within the state.

4                   (3) Have the financial capacity to provide steady  
5 and continuous operations upon which the State Board of  
6 Education and local boards of education can rely. The  
7 financial capacity may be maintained in a qualified depository  
8 or in another member of the same Alabama affiliated group, as  
9 that term is defined in Section 40-18-39.

10                   (c) For the services provided herein, a qualified  
11 depository may not charge the State Board of Education or a  
12 local board of education, but rather shall sell the textbooks  
13 in accordance with the prices prescribed in subsection (c) of  
14 Section 16-36-64. A qualified depository may negotiate  
15 contracts directly with publishers of textbooks to charge a  
16 fee to the publishers.

17                   (d) It shall be the responsibility of the publisher  
18 to ensure that a sufficient stock of textbooks is maintained  
19 at a qualified depository. Upon the failure of any publisher  
20 to carry a sufficient stock to meet all of the immediate  
21 demands of the State Board of Education and local boards of  
22 education as required by a contract made under this article,  
23 the contracting board of education may recover on the bond  
24 given by the publisher for the full value of the books not  
25 furnished as required by the contract and terminate the  
26 contract.

1                   Section 3. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.