

An Act

ENROLLED HOUSE
BILL NO. 1934

By: McCall of the House

and

Treat, Stanley, Thompson
(Kristen), Bullard, Haste,
Green, Seifried,
Standridge, Coleman,
Prieto, Daniels, Bergstrom,
Rader, Garvin, Newhouse,
Rogers, Woods, and Stewart
of the Senate

An Act relating to students; creating the Oklahoma Parental Choice Tax Credit Act; providing short title; providing legislative intent; defining terms; creating the Oklahoma Parental Choice Tax Credit Program; providing purpose; creating income tax credit for certain taxpayers beginning in certain tax year; prescribing maximum credit amounts based on certain income levels; directing taxpayer claiming certain credit to retain certain receipts and submit them upon certain request; prescribing maximum amount of credits for certain tax years; authorizing the Oklahoma Tax Commission to prescribe certain applications and certain deadline; providing for advancement of certain credit in installments; providing procedures for claiming credit; directing the Commission to give first preference in making installments to certain taxpayers; authorizing dual participation in certain program; authorizing the Commission to conduct or contract for certain audit; authorizing prorated recapture of credits under certain circumstances; directing certain credit amount to be reduced if certain event occurs; requiring the posting of certain credit amounts; requiring the State Department of Education to provide certain notice; directing implementation of certain system; requiring coordination of a process to verify student enrollment status; providing for promulgation of rules; providing immunity from

liability for certain actions; allowing certain parents to intervene in certain legal proceeding; prohibiting severability of act provisions; and providing for codification.

SUBJECT: Students

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-100 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Parental Choice Tax Credit Act".

B. It is the intent of the Legislature that parents, legal guardians, custodians, and others with legal authority over children in this state be able to choose educational services that meet the needs of their individual children. The Legislature affirms that parents and legal guardians are best suited to make choices to help children in this state reach their full potential and achieve a brighter future.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-101 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. As used in the Oklahoma Parental Choice Tax Credit Act:

1. "Commission" means the Oklahoma Tax Commission;
2. "Curriculum" means a complete course of study for a particular content area or grade level;
3. "Department" means the State Department of Education;
4. "Education service provider" means a person, business, public school district, public charter school, magnet school, or organization that provides educational goods and/or services to eligible students;

5. "Eligible student" means a resident of this state who is eligible to enroll in a public school in this state. Eligible student shall include a student who is enrolled in and attends a private school accredited by the State Board of Education or another accrediting association or a student who is educated pursuant to the other means of education exception provided for in subsection A of Section 10-105 of Title 70 of the Oklahoma Statutes;

6. "Qualified expense" for the purpose of claiming the credit authorized by subparagraph a of paragraph 1 of subsection C of this section means tuition and fees at a private school accredited by the State Board of Education or another accrediting association;

7. "Qualified expense" for the purpose of claiming the credit authorized by subparagraph b of paragraph 1 of subsection C of this section means the following expenditures:

- a. tuition and fees for nonpublic online learning programs,
- b. academic tutoring services provided by an individual or a private academic tutoring facility,
- c. textbooks, curriculum, or other instructional materials including, but not limited to, supplemental materials or associated online instruction required by an education service provider, and
- d. fees for nationally standardized assessments including, but not limited to, assessments used to determine college admission and advanced placement examinations as well as tuition and fees for tutoring or preparatory courses for the assessments; and

8. "Taxpayer" means a biological or adoptive parent, grandparent, aunt, uncle, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student.

B. There is hereby created the Oklahoma Parental Choice Tax Credit Program to provide an income tax credit to a taxpayer for qualified expenses to support the education of eligible students in this state.

C. For the tax year 2024 and subsequent tax years, there shall be allowed against the tax imposed by Section 2355 of Title 68 of

the Oklahoma Statutes a credit for any Oklahoma taxpayer who incurs a qualified expense on behalf of an eligible student, to be administered subject to the following amounts for each tax year:

1. If the eligible student attends a private school accredited by the State Board of Education or another accrediting association, the maximum credit amount shall be:

- a. (1) Seven Thousand Five Hundred Dollars (\$7,500.00) or the amount of tuition and fees for the private school, whichever is less, if the eligible student is a member of a household in which the total adjusted gross income during the second preceding tax year does not exceed Seventy-five Thousand Dollars (\$75,000.00),
- (2) Seven Thousand Dollars (\$7,000.00) or the amount of tuition and fees for the private school, whichever is less, if the eligible student is a member of a household in which the total adjusted gross income during the second preceding tax year is more than Seventy-five Thousand Dollars (\$75,000.00) but does not exceed One Hundred Fifty Thousand Dollars (\$150,000.00),
- (3) Six Thousand Five Hundred Dollars (\$6,500.00) or the amount of tuition and fees for the private school, whichever is less, if the eligible student is a member of a household in which the total adjusted gross income during the second preceding tax year is more than One Hundred Fifty Thousand Dollars (\$150,000.00) but does not exceed Two Hundred Twenty-five Thousand Dollars (\$225,000.00),
- (4) Six Thousand Dollars (\$6,000.00) or the amount of tuition and fees for the private school, whichever is less, if the eligible student is a member of a household in which the total adjusted gross income during the second preceding tax year is more than Two Hundred Twenty-five Thousand Dollars (\$225,000.00) but does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), or

(5) Five Thousand Dollars (\$5,000.00) or the amount of tuition and fees for the private school, whichever is less, if the eligible student is a member of a household in which the total adjusted gross income during the second preceding tax year is more than Two Hundred Fifty Thousand Dollars (\$250,000.00), and

b. One Thousand Dollars (\$1,000.00) in qualified expenses per eligible student in each tax year if the eligible student is educated pursuant to the other means of education exception provided for in subsection A of Section 10-105 of Title 70 of the Oklahoma Statutes. To claim the credit, the taxpayer shall submit to the Commission receipts for qualified expenses as defined by paragraph 7 of subsection A of this section;

2. The taxpayer shall retain all receipts of qualified expenses as proof of the amounts paid each tax year the credit is claimed and shall submit them to the Commission upon request; and

3. If the credit exceeds the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes, the excess amount shall be refunded to the taxpayer.

D. 1. a. For tax year 2024, the total amount of credits authorized by subparagraph a of paragraph 1 of subsection C of this section shall not exceed One Hundred Fifty Million Dollars (\$150,000,000.00).

b. For tax year 2025, the total amount of credits authorized by subparagraph a of paragraph 1 of subsection C of this section shall not exceed Two Hundred Million Dollars (\$200,000,000.00).

c. For tax year 2026, and subsequent tax years, the total amount of credits authorized by subparagraph a of paragraph 1 of subsection C of this section shall not exceed Two Hundred Fifty Million Dollars (\$250,000,000.00).

2. For tax year 2025, and subsequent tax years, the total amount of credits authorized by subparagraph b of paragraph 1 of subsection C of this section shall not exceed Five Million Dollars (\$5,000,000.00).

E. The Commission shall prescribe applications for the purposes of claiming the credits authorized by the Oklahoma Parental Choice Tax Credit Act and a deadline by which applications shall be submitted. A taxpayer claiming the credit authorized by subparagraph a of paragraph 1 of subsection C of this section shall submit an application prescribed by the Commission to receive the credit in two installments, each of which shall be half of the expected amount of tuition and fees for the private school based on the affidavit submitted pursuant to this subsection, but in no event shall an installment payment exceed half the amount of the credit authorized by subparagraph a of paragraph 1 of subsection C of this section. A taxpayer claiming the credit authorized by subparagraph a of paragraph 1 of subsection C of this section shall submit to the Commission an affidavit from the private school in which the eligible student is enrolled or is expected to enroll with the tuition and fees to be charged the taxpayer for the applicable school year. In reviewing applications submitted by eligible taxpayers to determine whether they qualify for a credit authorized by subparagraph a of paragraph 1 of subsection C of this section, the Commission shall give first preference in making installments to taxpayers who qualify pursuant to divisions (1) and (2) of subparagraph a of paragraph 1 of subsection C of this section. The Commission shall make the installments based on the expected amount of tuition and fee amounts on the affidavit submitted pursuant to this subsection.

F. Taxpayers claiming the credit shall:

1. Only claim the credit for qualified expenses as defined in paragraphs 6 and 7 of subsection A of this section to provide an education for an eligible student;
2. Ensure no other person is claiming a credit for the eligible student;
3. Not claim the credit for an eligible student who enrolls as a full-time student in a public school district, public charter school, public virtual charter school, or magnet school; and
4. Comply with rules and requirements established by the Commission for administration of the Oklahoma Parental Choice Tax Credit Program.

G. Eligible students may accept a scholarship from the Lindsey Nicole Henry Scholarships for Students with Disabilities Program created by Section 13-101.2 of Title 70 of the Oklahoma Statutes while participating in the Oklahoma Parental Choice Tax Credit Program.

H. 1. The Commission shall have the authority to conduct an audit or contract for the auditing of receipts for qualified expenses submitted pursuant to subparagraph b of paragraph 1 of subsection C of this section.

2. The Commission shall be authorized to recapture the credits otherwise authorized by the provisions of this act on a prorated basis if an audit conducted pursuant to this subsection shows that the credit was claimed for expenditures that were not qualified expenses or it finds that the taxpayer has claimed an eligible student who no longer attends a private school or has enrolled in a public school in the state.

I. In the event of a failure of revenue pursuant to the Oklahoma State Finance Act, the tax credits otherwise authorized in subsection C of this section shall be reduced proportionately to the reduction in the amount of money appropriated to the State Board of Education for the financial support of public schools for the fiscal year in which the failure of revenue occurs.

J. The Commission shall make available on its website the amount of credits claimed each tax year pursuant to subparagraphs a and b of paragraph 1 of subsection C of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-102 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Education shall provide parents, legal guardians, custodians, or other persons with legal authority of eligible students with disabilities notice that participation in the Oklahoma Parental Choice Tax Credit Program shall have the same effect as a parental revocation of consent pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of the Individuals with Disabilities Education Act (IDEA) and an explanation of the rights parents, legal guardians, custodians, or other persons with legal authority of eligible students with disabilities have under IDEA and any applicable state laws and regulations.

B. The Department shall implement a commercially viable, cost-effective, and user-friendly system for users to publicly rate, review, and share information about education service providers.

C. The Oklahoma Tax Commission shall coordinate with the State Department of Education to develop a process to review student enrollment information in order to verify that an eligible student who is claimed by a taxpayer receiving a tax credit is not enrolled in a public school in the state.

D. The Commission may promulgate rules to implement the provisions of the Oklahoma Parental Choice Tax Credit Act. The State Board of Education may promulgate rules to implement the provisions of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-103 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. No liability shall arise on the part of the Oklahoma Tax Commission, State Department of Education, State Board of Education, the state, a public school district, a public charter school, a public virtual charter school, or a magnet school based on the award of or use of a tax credit pursuant to the Oklahoma Parental Choice Tax Credit Act.

B. If any part of the Oklahoma Parental Choice Tax Credit Act is challenged in a state court as violating either the Oklahoma Constitution or United States Constitution, taxpayers shall be permitted to intervene for the purposes of defending the Oklahoma Parental Choice Tax Credit Program's constitutionality. However, for the purposes of judicial administration, a court may require that all taxpayers file a joint brief so long as they are not required to join any brief filed on behalf of any named state defendant.

C. The provisions of the Oklahoma Parental Choice Tax Credit Act shall not be severable, and if any provision of the Oklahoma Parental Choice Tax Credit Act or the application thereof to any person or circumstances is held invalid, such invalidity shall invalidate the other provisions or applications of this act.

Passed the House of Representatives the 2nd day of May, 2023.

Thayer Hilllet

Presiding Officer of the House
of Representatives

Passed the Senate the 27th day of April, 2023.

Greg [Signature]

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 19th

day of May, 20 23, at 3:54 o'clock pm M.

By: *James Curry*

Approved by the Governor of the State of Oklahoma this 25th

day of May, 20 23, at 3:15 o'clock pm M.

[Signature]

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 25th

day of May, 20 23, at 3:30 o'clock pm M.

By: *Therese [Signature]*