

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 1851

By: Fugate

AS INTRODUCED

An Act relating to education; creating the Family Choice Act; defining terms; authorizing transfer if student attends a school in need of improvement; specifying funding allocations for transfer student; authorizing certain school to count student; providing for educational scholarship to assist with transportation costs; amending 68 O.S. 2011, Section 2357.206, as last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp. 2020, Section 2357.206), which relates to the Oklahoma Equal Opportunity Education Scholarship Act; modifying definitions; providing for codification; and providing an effective date.

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 1210.550 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 "Family Choice Act".

B. As used in the Family Choice Act:

1. "Eligible student" means a child of school age who, during the immediately preceding school year, attended a public school in

1 this state which has been identified as a school in need of
2 improvement. Once an eligible student has received a transfer
3 pursuant to the Family Choice Act, the student and any other
4 siblings who are members of the same household shall be deemed and
5 remain eligible students until they graduate from high school or
6 reach twenty-one (21) years of age, whichever occurs first;

7 2. "Qualified school" means a public school which has received
8 an "A" or "B" grade on its annual report required by Section
9 1210.545 of Title 70 of the Oklahoma Statutes; and

10 3. "School in need of improvement" means a school which has
11 failed to meet either an academic performance target or an
12 attendance or graduation performance target, or both, as provided in
13 Section 1210.541 of Title 70 of the Oklahoma Statutes.

14 C. If an eligible student attends a school which is identified
15 as a school in need of improvement, the eligible student may receive
16 a Family Choice Act transfer to the nearest qualified school located
17 in another school district.

18 D. The qualified school shall enroll the eligible student and
19 receive an amount which is equal to one and one half (1.5) times the
20 State Aid allocation and any other state-appropriated revenue
21 generated by the eligible student for the applicable school year.

22 E. The school in need of improvement may continue to count the
23 eligible student who receives a Family Choice Act transfer in the
24 average daily membership of the school.

1 F. As provided in Section 2 of this act, eligible students who
2 need financial assistance with transportation costs associated with
3 a Family Choice Act transfer may apply for an educational
4 scholarship of up to Five Thousand Dollars (\$5,000.00) or eighty
5 percent (80%) of the statewide annual average per-pupil expenditure
6 as determined by the National Center for Education Statistics, U.S.
7 Department of Education, whichever is greater, through the Oklahoma
8 Equal Opportunity Education Scholarship Act established by Section
9 2357.206 of Title 68 of the Oklahoma Statutes.

10 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.206, as
11 last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp.
12 2020, Section 2357.206), is amended to read as follows:

13 Section 2357.206 A. This act shall be known and may be cited
14 as the "Oklahoma Equal Opportunity Education Scholarship Act".

15 B. 1. Except as provided in subsection F of this section,
16 after August 26, 2011, there shall be allowed a credit for any
17 taxpayer who makes a contribution to an eligible scholarship-
18 granting organization. The credit shall be equal to fifty percent
19 (50%) of the total amount of contributions made during a taxable
20 year, not to exceed One Thousand Dollars (\$1,000.00) for single
21 individuals, Two Thousand Dollars (\$2,000.00) for married
22 individuals filing jointly, or One Hundred Thousand Dollars
23 (\$100,000.00) for any taxpayer which is a legal business entity
24 including limited and general partnerships, corporations, subchapter

1 S corporations and limited liability companies; provided, if total
2 credits claimed pursuant to this paragraph exceed the caps
3 established pursuant to paragraph 1 of subsection D of this section,
4 the credit shall be equal to the taxpayer's proportionate share of
5 the cap for the taxable year, as determined pursuant to subsection H
6 of this section.

7 2. For any taxpayer who makes a contribution to an eligible
8 scholarship-granting organization and makes a written commitment to
9 contribute the same amount for an additional year, the credit for
10 the first year and the additional year shall be equal to seventy-
11 five percent (75%) of the total amount of the contribution made
12 during a taxable year, not to exceed the amounts established in
13 paragraph 1 of this subsection for the taxable year in which the
14 credit provided in this subsection is claimed. The taxpayer shall
15 provide evidence of the written commitment to the Oklahoma Tax
16 Commission at the time of filing the refund claim.

17 3. The credits authorized pursuant to the provisions of this
18 subsection shall be allocable to the partners, shareholders, members
19 or other equity owners of a taxpayer that is authorized to be
20 treated as a partnership for purposes of federal income tax
21 reporting for the taxable year for which the tax credits authorized
22 by this subsection are claimed on the applicable return, together
23 with required schedules, forms or reports of the partners,
24 shareholders, members or other equity owners of the taxpayer. Tax

1 credits which are allocated to such equity owners shall only be
2 limited in amount for the income tax return of a natural person or
3 persons based upon the limitation of the total credit amount to the
4 entity from which the tax credits have been allocated and shall not
5 be limited to One Thousand Dollars (\$1,000.00) for single
6 individuals or limited to Two Thousand Dollars (\$2,000.00) for
7 married persons filing a joint return.

8 4. On or before December 31, 2017, and once every four (4)
9 years thereafter, such scholarship-granting organization and
10 educational improvement granting organization shall submit to the
11 Governor, President Pro Tempore of the Senate and the Speaker of the
12 House of Representatives, an audited financial statement for the
13 organization along with information detailing the benefits,
14 successes or failures of the program.

15 C. 1. Except as provided in subsection F of this section,
16 after August 26, 2011, there shall be allowed a credit for any
17 taxpayer who makes a contribution to an eligible educational
18 improvement grant organization. The credit shall be equal to fifty
19 percent (50%) of the total amount of contributions made during a
20 taxable year, not to exceed One Thousand Dollars (\$1,000.00) for
21 single individuals, Two Thousand Dollars (\$2,000.00) for married
22 individuals filing jointly, or One Hundred Thousand Dollars
23 (\$100,000.00) for any taxpayer which is a legal business entity
24 including limited and general partnerships, corporations, subchapter

1 S corporations and limited liability companies; provided, if total
2 credits claimed pursuant to this paragraph exceed the cap
3 established pursuant to paragraph 1 of subsection D of this section,
4 the credit shall be equal to the taxpayer's proportionate share of
5 the cap for the taxable year, as determined pursuant to subsection H
6 of this section.

7 2. For any taxpayer who makes a contribution to an eligible
8 educational improvement grant organization and makes a written
9 commitment to contribute the same amount for an additional year, the
10 credit for the first year and the additional year shall be equal to
11 seventy-five percent (75%) of the total amount of the contribution
12 made during a taxable year, not to exceed the amounts established in
13 paragraph 1 of this subsection for the taxable year in which the
14 credit provided in this subsection is claimed; provided, if total
15 credits claimed pursuant to this paragraph exceed the cap
16 established pursuant to paragraph 3 of this subsection, the credit
17 shall be equal to the taxpayer's proportionate share of the cap for
18 the taxable year, as determined pursuant to subsection H of this
19 section. The taxpayer shall provide evidence of the written
20 commitment to the Oklahoma Tax Commission at the time of filing the
21 refund claim.

22 3. The credits authorized pursuant to the provisions of this
23 subsection shall be allocable to the partners, shareholders, members
24 or other equity owners of a taxpayer that is authorized to be

1 treated as a partnership for purposes of federal income tax
2 reporting for the taxable year for which the tax credits authorized
3 by this subsection are claimed on the applicable return, together
4 with required schedules, forms or reports of the partners,
5 shareholders, members or other equity owners of the taxpayer. Tax
6 credits which are allocated to such equity owners shall only be
7 limited in amount for the income tax return of a natural person or
8 persons based upon the limitation of the total credit amount to the
9 entity from which the tax credits have been allocated and shall not
10 be limited to One Thousand Dollars (\$1,000.00) for single
11 individuals or limited to Two Thousand Dollars (\$2,000.00) for
12 married persons filing a joint return.

13 D. Except as otherwise provided pursuant to subsection H of
14 this section, for tax years 2017 and thereafter:

15 1. The total credits authorized pursuant to subsection B of
16 this section for all taxpayers shall not exceed Three Million Five
17 Hundred Thousand Dollars (\$3,500,000.00) annually;

18 2. The total credits authorized pursuant to subsection C of
19 this section for all taxpayers shall not exceed One Million Five
20 Hundred Thousand Dollars (\$1,500,000.00) annually; and

21 3. The cap on total credits provided for in this subsection
22 shall be allocated by the Tax Commission as provided in subsection H
23 of this section.

1 E. For credits claimed for eligible contributions made during
2 tax year 2014 and thereafter, a credit shall not be allowed by the
3 Oklahoma Tax Commission for contributions made to a scholarship-
4 granting organization or an educational improvement grant
5 organization if that organization's percentage of funds actually
6 awarded is less than ninety percent (90%). For purposes of this
7 section, the "percentage of funds actually awarded" shall be
8 determined by dividing the total amount of funds actually awarded as
9 educational scholarships or educational improvement grants over the
10 most recent twenty-four (24) months by the total amount available to
11 award as educational scholarships or educational improvement grants
12 over the most recent twenty-four (24) months.

13 F. Any tax credits which are earned by a taxpayer pursuant to
14 this section during the time period beginning on the effective date
15 of ~~this act~~ the Oklahoma Equal Opportunity Education Scholarship Act
16 through December 31, 2012, may not be claimed for any period prior
17 to the taxable year beginning January 1, 2013. No credits which
18 accrue during the time period beginning on the effective date of
19 ~~this act~~ the Oklahoma Equal Opportunity Education Scholarship Act
20 through December 31, 2012, may be used to file an amended tax return
21 for any taxable year prior to the taxable year beginning January 1,
22 2013.

23 G. As used in this section:
24

1 1. "Eligible student" means an eligible student pursuant to the
2 Family Choice Act as provided in Section 1 of this act or a child of
3 school age who is lawfully present in the United States and who is a
4 member of a household in which the total annual income during the
5 preceding tax year does not exceed an amount equal to three hundred
6 percent (300%) of the income standard used to qualify for a free or
7 reduced school lunch or who, during the immediately preceding school
8 year, attended or, by virtue of the location of such student's place
9 of residence, was eligible to attend a public school in this state
10 which has been identified for school improvement as determined by
11 the State Board of Education pursuant to the requirements of the No
12 Child Left Behind Act of 2001, P.L. No. 107-110. Once a student has
13 received an educational scholarship, as defined in paragraph 3 of
14 this subsection, the student and any siblings who are members of the
15 same household shall remain eligible until they graduate from high
16 school or reach twenty-one (21) years of age, whichever occurs
17 first;

18 2. "Eligible special needs student" means a child who has been
19 provided services under an Individual Family Service Plan through
20 the SoonerStart program and during transition was evaluated and
21 determined to be eligible for school district services, a child of
22 school age who has attended public school in our state with an
23 individualized education program pursuant to the Individuals With
24 Disabilities Education Act, 20 U.S.C.A., Section 1400 et seq., or a

1 child who has been diagnosed by a clinical professional as having a
2 significant disability that will affect learning and who has been
3 approved by the board of a scholarship-granting organization;

4 3. "Educational scholarships" means:

- 5 a. scholarships to an eligible student of up to Five
6 Thousand Dollars (\$5,000.00) or eighty percent (80%)
7 of the statewide annual average per-pupil expenditure
8 as determined by the National Center for Education
9 Statistics, U.S. Department of Education, whichever is
10 greater, to cover all or part of the tuition, fees and
11 transportation costs of a qualified school which is
12 accredited by the State Board of Education or an
13 accrediting association approved by the Board pursuant
14 to Section 3-104 of Title 70 of the Oklahoma Statutes,
- 15 b. scholarships to an eligible student of up to Five
16 Thousand Dollars (\$5,000.00) or eighty percent (80%)
17 of the statewide annual average per-pupil expenditure
18 as determined by the National Center for Education
19 Statistics, U.S. Department of Education, whichever is
20 greater, to cover the educational costs of a qualified
21 school which does not charge tuition, which enrolls
22 special populations of students and which is
23 accredited by the State Board of Education or an
24 accrediting association approved by the Board pursuant

1 to Section 3-104 of Title 70 of the Oklahoma Statutes,

2 ~~or~~

3 c. scholarships to an eligible special needs student of
4 up to Twenty-five Thousand Dollars (\$25,000.00) to
5 cover all or part of the tuition, fees and
6 transportation costs of a qualified school for
7 eligible special needs students which is accredited by
8 the State Board of Education or an accrediting
9 association approved by the Board pursuant to Section
10 3-104 of Title 70 of the Oklahoma Statutes, or

11 d. scholarships to an eligible student as defined in the
12 Family Choice Act of up to Five Thousand Dollars
13 (\$5,000.00) or eighty percent (80%) of the statewide
14 annual average per-pupil expenditure as determined by
15 the National Center for Education Statistics, U.S.
16 Department of Education, whichever is greater, to
17 cover all or part of transportation costs of the
18 eligible student;

19 4. "Low-income eligible student" means an eligible student or
20 eligible special needs student who qualifies for a free or reduced-
21 price lunch;

22 5. "Qualified school" means an early childhood, elementary or
23 secondary private school in this state, including schools which
24

1 provide special educational programs for three-year-olds or
2 prekindergarten educational programs for four-year-olds, which:

- 3 a. is accredited by the State Board of Education or an
4 accrediting association approved by the Board pursuant
5 to Section 3-104 of Title 70 of the Oklahoma Statutes,
- 6 b. is in compliance with all applicable health and safety
7 laws and codes,
- 8 c. has a stated policy against discrimination in
9 admissions on the basis of race, color, national
10 origin or disability, and
- 11 d. ensures academic accountability to parents and
12 guardians of students through regular progress
13 reports;

14 6. "Qualified school for eligible special needs students" means
15 an early childhood, elementary or secondary private school in a
16 county in this state, including schools which provide special
17 educational programs for three-year-olds or prekindergarten
18 educational programs for four-year-olds;

19 7. "Scholarship-granting organization" means an organization
20 which:

- 21 a. is a nonprofit entity exempt from taxation pursuant to
22 the provisions of the Internal Revenue Code, 26
23 U.S.C., Section 501(c)(3),
24

- 1 b. distributes periodic scholarship payments as checks
2 made out to an eligible student's or eligible special
3 needs student's parent or guardian and mailed to the
4 qualified school where the student is enrolled,
- 5 c. spends no more than ten percent (10%) of its annual
6 revenue on expenditures other than educational
7 scholarships as defined in paragraph 3 of this
8 subsection,
- 9 d. spends each year a portion of its expenditures on
10 educational scholarships for low-income eligible
11 students, as defined in paragraph 4 of this
12 subsection, in an amount equal to or greater than the
13 percentage of low-income eligible students in the
14 state,
- 15 e. ensures that scholarships are portable during the
16 school year and can be used at any qualified school
17 that accepts the eligible student or at any qualified
18 school for special needs students that accepts the
19 eligible special needs student,
- 20 f. registers with the Oklahoma Tax Commission as a
21 scholarship-granting organization, and
- 22 g. has policies in place to:
- 23 (1) carry out criminal background checks on all
24 employees and board members to ensure that no

1 individual is involved with the organization who
2 might reasonably pose a risk to the appropriate
3 use of contributed funds, and

4 (2) maintain full and accurate records with respect
5 to the receipt of contributions and expenditures
6 of those contributions and supply such records
7 and any other documentation required by the Tax
8 Commission to demonstrate financial
9 accountability;

10 8. "Annual revenue" means the total amount or value of
11 contributions received by an organization from taxpayers awarded
12 credits during the organization's fiscal year and all amounts earned
13 from interest or investments;

14 9. "Public school" means public schools as defined in Section
15 1-106 of Title 70 of the Oklahoma Statutes;

16 10. "Eligible school" means any public school that is not
17 located within a ten-mile radius of a qualified school in this
18 state, or any public school that is located within a ten-mile radius
19 of a qualified school in this state but offers grade-level
20 instruction different from the qualified school or any public school
21 located within a public school district with fewer than four
22 thousand five hundred (4,500) students;

23 11. "Early childhood education program" means a special
24 educational program for eligible special needs students who are

1 three (3) years of age or a prekindergarten educational program
2 provided to children who are at least four (4) years of age but not
3 more than five (5) years of age on or before September 1;

4 12. "Innovative educational program" means an advanced academic
5 or academic improvement program that is not part of the regular
6 coursework of a public school but that enhances the curriculum or
7 academic program of the school or provides early childhood education
8 programs to students;

9 13. "Educational improvement grant" means a grant to an
10 eligible public school to implement an innovative educational
11 program for students, including the ability for multiple public
12 schools to make an application and be awarded a grant to jointly
13 provide an innovative educational program; and

14 14. "Educational improvement grant organization" means an
15 organization which:

- 16 a. is a nonprofit entity exempt from taxation pursuant to
17 the provisions of the Internal Revenue Code, 26
18 U.S.C., Section 501(c)(3), and
- 19 b. contributes at least ninety percent (90%) of its
20 annual receipts as grants to eligible schools for
21 innovative educational programs. For purposes of this
22 subparagraph, an educational improvement grant
23 organization contributes its annual cash receipts when
24 it expends or otherwise irrevocably encumbers those

1 funds for expenditure during the then current fiscal
2 year of the organization or during the next succeeding
3 fiscal year of the organization.

4 H. Total credits authorized by this section shall be allocated
5 as follows:

6 1. By January 10 of the year immediately following each
7 calendar year, a scholarship-granting organization or an educational
8 improvement grant organization which accepts contributions pursuant
9 to this section shall provide electronically to the Tax Commission
10 information on each contribution accepted during such taxable year.
11 At least once each taxable year, the scholarship-granting
12 organization or the educational improvement grant organization shall
13 notify each contributor that Oklahoma law provides for a total,
14 statewide cap on the amount of income tax credits allowed annually;

15 2. a. If the Tax Commission determines the total combined
16 credits claimed for contributions made to scholarship-
17 granting organizations during the most recently
18 completed calendar year by all taxpayers are in excess
19 of the statewide caps provided in paragraph 1 of
20 subsection D of this section, the Tax Commission shall
21 first allocate any amount of credits not claimed for
22 contributions made to educational improvement-granting
23 organizations, then shall determine the percentage of
24 the contribution which establishes the proportionate

1 share of the credit which may be claimed by any
2 taxpayer so that the total maximum credits authorized
3 by this section are not exceeded.

4 b. If the Tax Commission determines the total combined
5 credits claimed for contributions made to educational
6 improvement grant organizations during the most
7 recently completed calendar year by all taxpayers are
8 in excess of the statewide caps provided in paragraph
9 2 of subsection D of this section, the Tax Commission
10 shall first allocate any amount of credits not claimed
11 for contributions made to scholarship-granting
12 organizations, then shall determine the percentage of
13 the contribution which establishes the proportionate
14 share of the credit which may be claimed by any
15 taxpayer so that the maximum credits authorized by
16 this section are not exceeded.

17 c. Beginning for tax year 2016, credits earned, but not
18 allowed due to the application of statewide caps
19 provided in subsection D of this section will be
20 considered suspended and authorized to be used in the
21 next immediate tax year and applied to the next year's
22 statewide cap; and

23 3. The Tax Commission shall publish the percentage of the
24 contribution which may be claimed as a credit by contributors for

1 the most recently completed calendar year on the Tax Commission
2 website no later than February 15 of each calendar year for
3 contributions made the previous year. Each scholarship-granting
4 organization or educational improvement grant organization shall
5 notify contributors of that amount annually.

6 I. The credit authorized by this section shall not be used to
7 reduce the tax liability of the taxpayer to less than zero (0).

8 J. Any credits allowed but not used in any tax year may be
9 carried over, in order, to each of the three (3) years following the
10 year of qualification.

11 K. 1. In order to qualify under this section, an educational
12 improvement grant organization shall submit an application with
13 information to the Oklahoma Tax Commission on a form prescribed by
14 the Tax Commission that:

15 a. enables the Tax Commission to confirm that the
16 organization is a nonprofit entity exempt from
17 taxation pursuant to the provisions of the Internal
18 Revenue Code, 26 U.S.C., Section 501(c)(3), and

19 b. describes the proposed innovative educational program
20 or programs supported by the organization.

21 2. The Tax Commission shall review and approve or disapprove
22 the application, in consultation with the State Department of
23 Education.
24

1 3. In order to maintain eligibility under this section, an
2 educational improvement grant organization shall annually report the
3 following information to the Tax Commission by September 1 of each
4 year:

- 5 a. the name of the innovative educational program or
6 programs and the total amount of the grant or grants
7 made to those programs during the immediately
8 preceding school year,
- 9 b. a description of how each grant was utilized during
10 the immediately preceding school year and a
11 description of any demonstrated or expected innovative
12 educational improvements,
- 13 c. the names of the public school and school districts
14 where innovative educational programs that received
15 grants during the immediately preceding school year
16 were implemented,
- 17 d. where the organization collects information on a
18 county-by-county basis, and
- 19 e. the total number and total amount of grants made
20 during the immediately preceding school year for
21 innovative educational programs at public school by
22 each county in which the organization made grants.

23 4. The information required under paragraph 3 of this
24 subsection shall be submitted on a form provided by the Tax

1 Commission. No later than May 1 of each year, the Tax Commission
2 shall annually distribute sample forms together with the forms on
3 which the reports are required to be made to each approved
4 organization.

5 5. The Tax Commission shall not require any other information
6 be provided by an organization, except as expressly authorized in
7 this section.

8 L. In consultation with the State Department of Education, the
9 Tax Commission shall promulgate rules necessary to implement this
10 act. The rules shall include procedures for the registration of a
11 scholarship-granting organization or an educational improvement
12 grant organization for purposes of determining if the organization
13 meets the requirements of this act or for the revocation of the
14 registration of an organization, if applicable, and for notice as
15 required in subsection H of this section.

16 SECTION 3. This act shall become effective November 1, 2021.

17

18 58-1-6891 EK 01/18/21

19

20

21

22

23

24