HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2949

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By: Nelson, Newell, Rogers,
Strohm, Echols, Jordan,
Kern, Hall, Brumbaugh,
Moore, Fisher, Johnson and
McCullough of the House

and

Jolley of the Senate

AS INTRODUCED

An Act relating to schools; creating the Oklahoma Education Savings Account Act; creating the Education Savings Account Program; stating purpose of the act; providing for establishment of individual education savings accounts by certain school year; providing definitions; requiring the parent of an eligible student to sign an agreement for enrollment; listing conditions for enrollment; listing eligible uses of money deposited into an education savings account; prohibiting use of money deposited into an education savings account for certain purposes; requiring annual renewal of an account; requiring submission of certain achievement test results; making the signed agreement represent school attendance for compliance with certain law; establishing dates for submission of requests; allowing for continuance in the Program; providing for calculation of the annual amount to be deposited into accounts; directing the State Board of Education to promulgate rules; providing for certain verification; requiring the State Department of Education to transfer the annual amount upon submission of a signed agreement; providing for source of money; authorizing the Department to retain a certain amount of funds; requiring the Department to transfer certain amount to the Office of the State

Treasurer; establishing the Education Savings Account Administrative Fund; stating use of monies in the fund; exempting monies from certain laws; allowing the Department to request certain increases; establishing the Treasurer's Education Savings Account Administrative Fund; stating use of monies in the fund; exempting monies from certain laws; allowing the Treasurer to request certain increases; directing the Department to maintain a list of certain tests; prohibiting certain schools and providers from sharing, refunding or rebating certain money to parents or students; prohibiting parents from receiving certain money from a school or provider; providing for closure of an account; providing for the amount of funds to be prorated under certain circumstances; establishing duties of the Department; stating that money is not taxable income; requiring the Treasurer to make quarterly deposits into accounts; authorizing the Treasurer to contract for management of accounts; requiring the Department to make random audits of accounts; directing the Board to establish a notification process for violations; providing process for suspending an eligible student from the Program for certain reasons; allowing a parent to appeal suspension decisions; directing the Department to refer certain cases to the Attorney General; limiting regulatory authority of the state and school districts; directing the State Board of Education to set aside certain amount of money from State Aid appropriations; providing for adding back certain amount of money to State Aid funds; directing the Board to promulgate certain rules; specifying certain rules; limiting authority of state agencies over nonpublic schools and certain students; providing for status of certain providers; limiting liability of certain entities; providing for a study and report by an independent research organization; requiring the reporting and sharing of data to comply with certain act; prohibiting the disaggregation of certain data; requiring Department to publish report on the website; providing for codification; providing an effective date; and declaring an emergency.

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

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SECTION 1. 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:

This act shall be known and may be cited as the "Oklahoma Education Savings Account Act".

- SECTION 2. 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. There is hereby created the Education Savings Account Program.
- B. The purpose of the Oklahoma Education Savings Account Act is to provide additional educational options to parents for the education of students in this state, by creating education accounts for individual students empowering parents to make educational decisions for their children.
- C. Education savings accounts shall be established for individual students beginning with the 2016-2017 school year.
- SECTION 3. 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:

As used in the Oklahoma Education Savings Account Act:

- 1. "Account" means an education savings account established for an eligible student pursuant to this act;
 - 2. "Board" means the State Board of Education;

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- 3. "Department" means the State Department of Education;
- 4. "Eligible postsecondary institution" means an accredited public or private postsecondary institution;
- 5. "Eligible private school" means any school recognized by the Oklahoma Private School Accreditation Commission or that meets the accreditation requirements set by the State Board of Education or other nationally recognized accreditation association that has notified the Department of its intention to accept students who are in the Program and comply with the antidiscrimination provisions of 42 U.S.C., Section 2000d;
- 6. "Eligible student" means a person who is a resident of Oklahoma and is eligible to attend a public school in Oklahoma and either:
 - a. is a member of a household where the total annual income is equal to or less than two times the amount required to qualify for the federal free or reduced-price lunch program and who:
 - (1) is currently eligible to attend prekindergarten or kindergarten,
 - (2) is enrolled in a public school where the student is being counted for funding purposes or was enrolled and counted for funding purposes during the most recently concluded school year if the

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public school is not yet enrolling students for the next school year, or

- (3) is a new resident of this state,
- b. is a member of a household where the total annual income is greater than two times the amount required to qualify for the federal free or reduced-priced lunch program and who:
 - is currently eligible to attend prekindergarten or kindergarten,
 - is enrolled in a public school where the student is being counted for funding purposes or was enrolled and counted for funding purposes during the most recently concluded school year if the public school is not yet enrolling students for the next school year, or
 - (3) is a new resident of this state, or
- c. meets any of the following:
 - (1) is participating in or was participating in the
 Lindsey Nicole Henry Scholarships for Students
 with Disabilities Program during the current or a
 previous school year. A student shall not be
 eligible to participate in both the Education
 Savings Account Program and the Lindsey Nicole

- (2) is a child in the household of a member of the

 United States Armed Forces transferred from out

 of state or from a foreign country pursuant to a

 permanent change-of-station order of the parent;
- 7. "Parent" means a resident of the state who is a parent, legal guardian or other person with the authority to act on behalf of an eligible student;
 - 8. "Program" means the Education Savings Account Program;
- 9. "Resident school district" means the public school district in which the student resides as defined in Section 1-113 of Title 70 of the Oklahoma Statutes; and
 - 10. "Treasurer" means the Office of the State Treasurer.
- SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-104 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. To enroll an eligible student in the Education Savings

 Account Program, the parent of the eligible student shall sign an

 agreement to do all the following:
- 1. Provide an education for the eligible student in at least the subjects of English language arts, mathematics, social studies and science or provide eligible students with special needs an

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- 2. Notify the State Board of Education of the date the eligible student withdraws from the public school to participate in the Program, the date the eligible student stops participating in the Program and the date the eligible student enrolls or reenrolls in a public school or graduates;
- 3. Not enroll the eligible student in a public school or charter school full-time without first notifying the Board of the decision to discontinue participation in the Program;
- 4. Sign a document releasing the resident school district from all obligation to educate the eligible student;
- 5. Use the money deposited in the education savings account established for the eligible student only for the following expenses of the student:
 - a. tuition and fees to an eligible private school,
 virtual school or virtual coursework provider, or
 eligible postsecondary institution,
 - b. purchasing, renting or subscribing to a service that provides textbooks, other learning materials or programs, or curriculum for a complete course of study for a particular content area or grade level including any supplementary materials recommended by the curriculum,

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c. educational therapies or services for the eligible student from a licensed or accredited practitioner or provider, including licensed or accredited paraprofessionals or educational aides. The State Board of Education shall promulgate rules defining which therapies and services are eligible under the Program and setting the required qualifications for paraprofessionals and aides,

- d. tutoring services. The Board shall promulgate rules setting the required qualifications for tutors. Tutors shall be required to notify the Board of their intention to provide tutoring services to students in the Program,
- e. services provided by a public school, including individual classes and extracurricular programs,
- f. fees for a nationally standardized norm-referenced achievement test, advanced placement examinations or any exams related to college or university admissions,
- g. contributions to a Coverdell Savings Account
 established pursuant to 26 U.S.C., Section 530 for the
 benefit of the eligible student, except that money
 used for elementary or secondary education expenses
 shall be for expenses otherwise allowed by this act,

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- i. insurance or surety bond payments as required by the
 Board; and
- 6. Not use monies deposited in the account of an eligible student for any of the following:
 - a. purchasing computer hardware, electronic equipment, assistive technological devices, or educational equipment or instruments. Nothing shall prohibit the renting of such items,
 - b. regular or routine transportation of the student.
 Regular and routine transportation shall not include transporting the student for education-related field trips and other extracurricular activities, and
 - c. consumable educational supplies including but not limited to paper, pens or markers.
- B. A parent shall renew the account of an eligible student on an annual basis by submitting a renewal request to the Department.

 The renewal request shall also include documentation showing the results of the student on a nationally standardized norm-referenced achievement test taken during that school year.
- C. A signed agreement under this section shall be deemed school attendance and shall constitute compliance with the compulsory

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attendance law as set forth in Section 10-105 of Title 70 of the Oklahoma Statutes.

- D. The parent of an eligible student shall submit a request to participate in the Education Savings Account Program no later than December 1 of the school year during which an account is requested, in order to receive funding for the same school year. If a request is made after December 1 the account will not begin receiving funds until the following school year.
- E. Students may continue in the Program once they are determined to be eligible pursuant to this act until they graduate, return to public school or it has been found by the Board that the agreement required in this section has been violated.
- SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-105 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. For a student who is determined to be an eligible student pursuant to subparagraph a of paragraph 6 of Section 3 of this act, the annual amount to be deposited to the education savings account for the student shall be as follows:
- 1. If the total household annual income is equal to or less than the amount required to qualify for the federal free or reduced-price lunch program, the amount granted to the account shall be equal to ninety percent (90%) of the total State Aid factors multiplied by the Grade Level Weight and the Student Category

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Weights that would be generated by that student for the applicable school year; and

- 2. If the total household annual income is greater than the amount required to qualify for the federal free or reduced-price lunch program but is equal to or less than two times that amount, the amount granted to the account shall be equal to sixty percent (60%) of the total State Aid factors multiplied by the Grade Level Weight and the Student Category Weights that would be generated by that student for the applicable school year.
- B. For a student who is determined to be an eligible student pursuant to subparagraph b of paragraph 6 of Section 3 of this act, the amount granted to the education savings account for the student shall be equal to thirty percent (30%) of the total State Aid factors multiplied by the Grade Level Weight and the Student Category Weights that would be generated by that student for the applicable school year.
- C. For a student who is determined to be an eligible student pursuant to subparagraph c of paragraph 6 of Section 3 of this act, the annual amount granted to the education savings account for the student shall be equal to ninety percent (90%) of the total State Aid factors multiplied by the Grade Level Weight and the Student Category Weights that would be generated by that student for the applicable school year.

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D. The State Board of Education shall promulgate rules establishing a process for initial verification of the household income of a student for purposes of this section. Household income verification shall not be required at anytime for students who qualify pursuant to subsection B of this section.

Upon the request of a student for a change in the amount granted to an account, the Board may conduct another verification of household income but shall not require the student to submit to any other eligibility verification that is not otherwise provided for in this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-106 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Upon submission of the signed agreement by the parent as required pursuant to Section 4 of this act, the State Department of Education shall transfer the amount of funds calculated pursuant to Section 5 of this act to the State Treasurer for deposit into the education savings account for each eligible student pursuant to a schedule established by the State Board of Education. The total calculated amount shall be transferred in equal allocations according to the schedule established by the Board for such transfers and deposits, but such transfers shall not be made less often than quarterly. Monies for deposit into the accounts shall be from the funds set aside by the Board as provided for in Section 11

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of this act for purposes of the Education Savings Account Program and as directed by the Oklahoma Education Savings Account Act.

- B. The Department may retain an amount equal to five percent (5%) of the total amount set aside for the Program for administrative services. The retained funds shall be deposited in the Education Savings Account Administrative Fund established in subsection C of this section. The Department shall transfer one percent (1%) of the total deposited into the Education Savings Account Administrative Fund to the Treasurer's Education Savings Account Administrative Fund established in subsection D of this section.
- C. There is hereby established the Education Savings Account
 Administrative Fund. The fund shall consist of monies retained by
 the Department pursuant to subsection B of this section. The
 Department shall administer the fund. Monies in the fund shall be
 used by the Department for the costs in administering the Education
 Savings Account Program. Monies in the fund shall be exempt from
 the provisions of law relating to lapsing of appropriations. If the
 number of education savings accounts significantly increases after
 the fiscal year ending June 30, 2017, the Department may request the
 Legislature to increase the amount allowed to be retained as set
 forth in subsection B of this section to cover administrative costs
 for the additional accounts.

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- D. There is hereby established the Treasurer's Education
 Savings Account Administrative Fund. The fund shall consist of
 monies transferred by the Department pursuant to subsection B of
 this section for use by the Treasurer. The Treasurer shall
 administer the fund. Monies in the fund shall be used by the
 Treasurer for the costs of administering education savings accounts.
 Monies in the fund shall be exempt from the provisions of law
 relating to lapsing of appropriations. If the number of education
 savings accounts significantly increases after the fiscal year
 ending June 30, 2017, the Treasurer may request the Legislature to
 increase the amount allowed to be retained as set forth in
 subsection B of this section to cover administrative costs for the
 additional accounts.
- E. The Department shall maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying the testing requirements of subsection B of Section 4 of this act. The tests shall meet industry standards of quality in accordance with rules promulgated by the State Board of Education.
- SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-107 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. An eligible private school or a provider of educational services receiving funds from an education savings account shall not

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share with, or refund or rebate to, the parent or eligible student, in any manner, any of the funds from an education savings account.

- B. Parents shall not receive or accept rebates, discounts or payments from an eligible private school or a provider of educational services using funds from an education savings account.
- SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-108 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. Upon graduation from a postsecondary institution by an eligible student or after a period of four (4) consecutive years after high school graduation if the eligible student is not enrolled in a postsecondary institution, the education savings account of the student shall be closed and any remaining funds shall be returned to the State Board of Education to be allocated to school districts through the State Aid funding formula.
- B. If an eligible student begins or ends participation in the Education Savings Account Program after the start of a full school year, the amount of the funds deposited into an education savings account for the student shall be prorated to reflect the actual amount of time the student participated in the Program during the current school year.
 - C. The State Department of Education shall:
- 1. Upon request provide to the parent of a student the calculated amount of funds the student would be eligible to receive

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in an education savings account within ten (10) days after receiving the request or within ten (10) days after the total State Aid factors have been determined for the current fiscal year. Upon request of a parent prior to submission of an application, the Department shall provide to the parent an estimate of the approximate amount of funds the student may receive in an education savings account;

- 2. Not be responsible for any additional costs associated with the education of eligible students incurred by the parents;
- 3. Establish a toll-free telephone number and website that provides information about the Program to parents, private schools and providers;
- 4. Require an annual, notarized, sworn statement by parents participating in the Program certifying compliance with provisions of the Oklahoma Education Savings Account Act, which statement shall be retained by the Department; and
- 5. Cross-check the list of eligible students participating in the Program with the public school enrollments prior to each deposit to avoid duplication of funding.
- D. Monies received and used by the parent of an eligible student in compliance with the provisions of this act shall not constitute taxable income to the parent.

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- E. The Treasurer shall make deposits into education savings accounts upon verification by the Department that the student is still participating in the Program.
- F. The Treasurer may contract with private financial management firms to manage education savings accounts with the supervision of the Treasurer.
- G. The Department shall conduct or contract for random audits at least quarterly of education savings accounts to ensure compliance with provisions of this act.
- SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-109 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. The State Board of Education shall establish a process by which the public may notify the Board of any violation of the Oklahoma Education Savings Account Act.
- B. The Board may suspend an eligible student from the Education Savings Account Program if the parent or the eligible student fails to comply with the provisions of this act or if the Board has reason to believe that the parent or eligible student failed to comply with the provisions of this act with intent to defraud. Upon the suspension of an eligible student from the Program, the Board shall:
- 1. Notify the Treasurer to suspend the account of the eligible student until a final determination is made by the Board;

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- 2. Notify the parent in writing that the account has been suspended and that no further transactions will be allowed. The notification shall specify the reason or reasons for the suspension and state that the parent or student has ten (10) days, not including weekends, to respond and take corrective action;
- 3. If the parent responds within the ten-day period, the Board shall review the information provided by the parent and make a decision to reinstate the student or to terminate participation of the student in the Program; and
- 4. If the parent or eligible student refuses or fails to contact the Board, to furnish any information or make any report that may be required for reinstatement within the ten-day period, the Board shall terminate participation of the student in the Program and any remaining funds shall be returned to the State Board of Education to be allocated to school districts through the State Aid funding formula.
- C. A parent may appeal the decision made by the Board pursuant to subsection B of this section.
- D. The Board shall refer cases of misuse of monies to the Attorney General for investigation when it obtains evidence that the parent or eligible student failed to comply with the provisions of this act with intent to defraud.

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SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-110 of Title 70, unless there is created a duplication in numbering, reads as follows:

Acceptance by private schools of students participating in the Education Savings Account Program shall not expand the regulatory authority of the state or any school district to impose any additional regulation on private schools.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-111 of Title 70, unless there is created a duplication in numbering, reads as follows:

- A. For the 2016-2017 school year, the State Board of Education shall set aside an amount of money from the total amount appropriated to the State Board of Education for State Aid purposes and any other revenue available for allocation for State Aid purposes to cover expected demand for education savings accounts during the 2016-2017 school year. At the beginning of each subsequent school year the Board shall set aside one hundred twenty percent (120%) of the total amount deposited into education savings accounts the previous school year and of the total amount for which applications were received but for which no funds were available, to allow for potential growth in participation.
- B. Prior to the end of the fiscal year, the Board shall determine the amount of funding that was set aside during that fiscal year for deposit into education savings accounts but was not

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needed and was not deposited into individual student education savings accounts and shall allocate that amount to school districts through the State Aid funding formula.

- C. The Board shall promulgate rules necessary for the administration of the Education Savings Account Program, including:
- 1. Provisions for conducting or contracting for examinations of the use of education savings account monies by eligible students;
- Provisions for conducting or contracting for random,
 quarterly and annual reviews or audits of education savings
 accounts;
- 3. Establishing or contracting for the establishment of an online anonymous fraud-reporting service;
- 4. Establishing a telephone number to receive anonymous fraud reporting; and
- 5. Requirements for a surety bond or insurance for education savings account holders.
- SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-112 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. The Oklahoma Education Savings Account Act shall not be construed to authorize or permit any state agency to exercise control or supervision over any nonpublic school or students being educated by other means. Students who are being provided an

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- education by other means shall not be eligible to participate in the Education Savings Account Program.
- B. Educational service providers which accept payment from an education savings account shall not be considered agents of the state or federal government.
- C. No liability shall arise on the part of the state, the State Treasurer, the State Board of Education, the State Department of Education or a school district based on participation in the Program by an eligible student.
- SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28-113 of Title 70, unless there is created a duplication in numbering, reads as follows:
- A. The State Board of Education may select an independent research organization, which may be a public or private entity or university, to conduct a study of and report on the academic gains of eligible students participating in the Education Savings Account Program. The Board shall provide the standardized test scores on the nationally norm-referenced tests of eligible students which have been submitted as required pursuant to Section 4 of this act to the independent research organization. Beginning in the third year of the Program the independent research organization shall annually report to the Board on the year-to-year learning gains of participating students on a statewide basis. The report shall also include, to the extent possible, a comparison of the learning gains

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of participating students to the learning gains of public school students in the state with socioeconomic backgrounds similar to those participating students. To minimize costs and reduce time required for the analysis and evaluation by the independent research organization, the Department shall conduct analyses of matched students from public school assessment data and calculate control-group learning gains using an agreed-upon methodology outlined in the contract approved by the Board with the independent research organization.

- B. The reporting and sharing of student learning-gain data as required by this section shall be made in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and shall be for the sole purpose of creating the annual report. All parties with access to the data shall preserve the confidentiality of the information as required by law.
- C. The annual report made pursuant to this section shall not disaggregate data to a level that will identify individual students or providers, or disclose the academic level of individual students.
- D. The annual report made pursuant to this section shall be published by the Department on its website.
 - SECTION 14. This act shall become effective July 1, 2016.
- SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

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declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval. COMMITTEE REPORT BY: COMMITTEE ON COMMON EDUCATION, dated 02/17/2016 - DO PASS, As Coauthored. 1 1 1 2 1 5 1 9 2 2 2 3