

# Chapter 178

2017 EDITION

## State Treasurer; Oregon Retirement Savings Plan; Oregon 529 Savings Network

ADMINISTRATION		OREGON 529 SAVINGS NETWORK	
178.010	Oath and bond		(Generally)
178.020	Additional bond requirement	178.300	Definitions for ORS 178.300 to 178.355
178.030	Premiums on surety bonds of treasurer and employees paid by state; limit on amount	178.305	Oregon 529 Savings Network
178.040	Successive recoveries on bond	178.310	Oregon 529 Savings Board; membership
178.050	Duties of State Treasurer	178.315	Board powers and duties; rules
178.060	Deputy State Treasurer; other personnel; merit system; rules; duties of Deputy State Treasurer in event of vacancy in office of State Treasurer	178.320	Oregon 529 Savings Network Fund; College Savings Plan Subaccount; ABLE Subaccount
178.065	Authority of State Treasurer to require fingerprints	178.325	State interest in contributions and earnings
178.090	Manner of providing evidence of receipt of funds or securities	178.330	Annual report to Governor and Legislative Assembly  (Accounts for Qualified Higher Education Expenses)
	OREGON RETIREMENT SAVINGS PLAN	178.335	Network participation for higher education expenses; contribution limits; fees
178.200	Oregon Retirement Savings Board	178.340	Right to direct investments for higher education expenses; insurance and guarantees prohibited; liability for loss
178.205	Powers and duties of Oregon Retirement Savings Board; rules	178.345	Prohibitions and limitations on accounts for higher education expenses
178.210	Requirements for Oregon Retirement Savings Plan	178.350	Designated beneficiary of account for higher education expenses; confidentiality of account information
178.215	Rules for Oregon Retirement Savings Plan	178.355	Withdrawals from accounts for higher education expenses; rules; report  (ABLE Accounts for Qualified Disability Expenses)
178.220	Confidentiality of account information	178.375	Definitions for ORS 178.375, 178.380 and 178.385
178.225	Oregon Retirement Savings Plan Administrative Fund	178.380	Establishment of qualified ABLE program; requirements for program; treatment of contributions to ABLE account; rules
178.230	Prerequisites to establishment of Oregon Retirement Savings Plan	178.385	Right to direct investments for ABLE accounts; insurance and guarantees prohibited; liability for loss
178.235	Annual reports		
178.240	Preemption		
178.245	Assistance of state agencies with outreach, technical assistance and compliance services		

**EXECUTIVE BRANCH; ORGANIZATION**

---

**ADMINISTRATION**

**178.010 Oath and bond.** (1) The State Treasurer, before entering upon the duties of the office of the State Treasurer, shall take and subscribe the oath required by the Constitution, and give to the State of Oregon a fidelity bond executed by a corporate insurance company licensed to transact the business of surety within this state, in such penal sum, not less than \$200,000, as the Governor shall determine.

(2) The bond shall be conditioned for the:

(a) Faithful discharge by the State Treasurer of the duties of office.

(b) Faithful performance by all persons employed in the office, of their duties and trusts therein.

(c) Transfer and delivery to the successor in office, or to any other person authorized by law to receive the same, of all moneys, books, papers, records and other articles and effects belonging to the office.

(3) The bond shall be deemed to extend to the faithful performance of all duties of the office of treasurer until a successor is elected and qualified.

(4) The bond shall be approved by the Governor and, with the oath of office of the treasurer, shall be preserved in the executive office. [Amended by 1977 c.366 §2]

**178.020 Additional bond requirement.** Whenever the Governor, for any cause, deems the bond of the State Treasurer insufficient in amount, the Governor shall require the treasurer to give an additional like bond within such time, and in such reasonable amount, as the Governor directs and approves.

**178.030 Premiums on surety bonds of treasurer and employees paid by state; limit on amount.** (1) If the State Treasurer, in furnishing the bond required from the State Treasurer by law, furnishes a bond executed by a surety company legally authorized to transact business in this state, and the bond is approved by the Governor, the state shall pay the premium for the bond, not to exceed one-third of one percent per annum of the penalty named in the bond so executed and approved.

(2) Whenever a person employed in the office of the State Treasurer, required by the State Treasurer to furnish a bond, furnishes a bond executed by a surety company legally authorized to transact business in this state, and the bond is approved by the State Treasurer, the state shall pay the premium for the bond, not to exceed one-third of one percent per annum of the penalty named in the bond so executed and approved.

**178.040 Successive recoveries on bond.** One recovery had on the official bond given by the State Treasurer shall not render the bond void, but the bond may be prosecuted upon a breach thereof, from time to time, until the whole penalty is collected.

**178.050 Duties of State Treasurer.** The State Treasurer shall:

(1) Keep the office at the seat of government.

(2) Receive and have charge of all moneys paid into the State Treasury.

(3) Pay out moneys from the State Treasury as directed by law.

(4) Permit the books, papers and transactions of the office to be open at all times to inspection and examination by the Governor, Secretary of State, the legislature and any committee of either branch of the legislature.

(5) Deliver over to the successor in office all moneys, books, papers, furniture and other effects belonging to or preserved in the office.

(6) Perform all other duties imposed upon the State Treasurer by law.

**178.060 Deputy State Treasurer; other personnel; merit system; rules; duties of Deputy State Treasurer in event of vacancy in office of State Treasurer.** (1) The State Treasurer may employ and appoint a Deputy State Treasurer and may also employ other personnel necessary in the performance of the business and duties of the office and fix their compensation.

(2) The Deputy State Treasurer and other personnel shall be paid out of the State Treasury, and their compensation may not exceed the appropriation of the Legislative Assembly for the compensation.

(3) Except as provided in subsection (4) of this section, ORS chapter 240 does not apply to the office of the State Treasurer.

(4) ORS 240.165, 240.167, 240.240 (3) and 240.321 apply to the office of the State Treasurer.

(5) The State Treasurer shall adopt rules, policies and procedures necessary to establish a system of personnel administration based on merit principles. The system must include provisions for the transfer of accumulated leave with pay between the office of the State Treasurer and other state agencies. For employees who do not serve at the pleasure of the State Treasurer or who are not subject to a collective bargaining agreement, the system must provide standards for discipline and dismissal and a process for appeal of decisions related to discipline and dismissal.

(6) The Deputy State Treasurer and other personnel shall perform such duties as the State Treasurer may direct and shall take an oath to support the Oregon Constitution and faithfully to discharge the duties of their positions.

(7) In the event of a vacancy in the office of State Treasurer:

(a) The Deputy State Treasurer may exercise any of the duties, powers or functions granted to the State Treasurer by the statutory law of this state until the vacancy is filled as provided by law; and

(b) Any duties assigned by the former State Treasurer to the Deputy State Treasurer under subsection (6) of this section prior to the vacancy are retained by the Deputy State Treasurer until modified by a successor in the office of State Treasurer. [Amended by 2005 c.751 §2; 2011 c.68 §1]

**178.065 Authority of State Treasurer to require fingerprints.** For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the State Treasurer may require the fingerprints of a person who:

(1) Is employed or applying for employment by the State Treasurer;

(2) Provides services or seeks to provide services to the State Treasurer as a contractor, vendor or volunteer; or

(3) Has been appointed or is being considered for appointment to a board or commission by the State Treasurer. [Formerly 181.541]

**Note:** 178.065 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 178 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**178.070** [Amended by 1981 c.660 §19; repealed by 1989 c.569 §6]

**178.080** [Amended by 1969 c.591 §290; 1971 c.186 §2; renumbered 305.830]

**178.090 Manner of providing evidence of receipt of funds or securities.** Whenever the State Treasurer is required in the performance of official duties to provide evidence of receipt of funds or of receipt of securities, the receipt shall be in such form as the State Treasurer specifies as appropriate to show that the funds or securities were received. The form of receipt specified by the State Treasurer is not required to be uniform for all funds or securities received. The receipt specified by the State Treasurer shall be considered as proper evidence for all purposes for which any printed or other form of receipt was considered adequate evidence. [1975 c.295 §1]

**178.100** [2001 c.936 §8; renumbered 276A.242 in 2017]

## OREGON RETIREMENT SAVINGS PLAN

**178.200 Oregon Retirement Savings Board.** (1) The Oregon Retirement Savings Board is established in the office of the State Treasurer. The board consists of seven members as follows:

(a) The State Treasurer or the designee of the State Treasurer.

(b) The following members appointed by the Governor:

(A) A representative of employers.

(B) A representative with experience in the field of investments.

(C) A representative of an association representing employees.

(D) A public member who is retired.

(c) A member of the Senate appointed by the President of the Senate to be a nonvoting advisory member of the board.

(d) A member of the House of Representatives appointed by the Speaker of the House of Representatives to be a nonvoting advisory member of the board.

(2) Members of the board appointed by the Governor must be confirmed by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(3) The term of office of each member of the board appointed by the Governor is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) Each legislative member serves at the pleasure of the appointing authority and may serve as long as the member remains in the chamber of the Legislative Assembly from which the member was appointed.

(5) The State Treasurer or the designee appointed to the board under subsection (1) of this section shall serve as chairperson of the board.

(6) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(7) A member of the board appointed by the Governor is entitled to compensation and expenses as provided in ORS 292.495. A legislative member shall receive compensation and expenses as provided in ORS 171.072.

(8) The office of the State Treasurer shall provide staff support to the board. [2015 c.557 §1]

**178.205 Powers and duties of Oregon Retirement Savings Board; rules.** (1) The Oregon Retirement Savings Board shall develop a defined contribution retirement plan for persons employed for compensation in this state and conduct a market and legal analysis of the plan.

(2) The board shall have the following powers:

(a) To establish, implement and maintain the plan developed under this section.

(b) To adopt rules for the general administration of the plan as provided in ORS 178.215.

(c) To direct the investment of the funds contributed to accounts in the plan consistent with the investment restrictions established by the board. The investment restrictions must be consistent with the objectives of the plan, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board.

(d) To collect application, account or administrative fees to defray the costs of administering the plan.

(e) To make and enter into contracts, agreements or arrangements, and to retain, employ and contract for any of the following considered necessary or desirable, for carrying out the purposes set forth in ORS 178.200 to 178.245:

(A) Services of private and public financial institutions, depositories, consultants, investment advisers, investment administrators and third-party plan administrators.

(B) Research, technical and other services.

(C) Services of other state agencies to assist the board in its duties.

(f) To evaluate the need for, and procure as needed, pooled private insurance of the plan.

(g) To develop and implement an outreach plan to gain input and disseminate information regarding the plan and retirement savings in general. [2015 c.557 §2]

**178.210 Requirements for Oregon Retirement Savings Plan.** (1) The plan developed and established by the Oregon Retirement Savings Board under ORS 178.205 must:

(a) Allow eligible individuals employed for compensation in this state to contribute

to an account established under the plan through payroll deduction.

(b) Require an employer to offer its employees the opportunity to contribute to the plan through payroll deductions unless the employer offers a qualified retirement plan, including but not limited to a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code.

(c) Provide for automatic enrollment of employees and allow employees to opt out of the plan.

(d) Have a default contribution rate set by the board by rule.

(e) Offer default escalation of contribution levels that can be increased or decreased within the limits allowed by the Internal Revenue Code.

(f) Provide for contributions to the plan to be deposited directly with the investment administrator for the plan.

(g) Whenever possible, use existing employer and public infrastructure to facilitate contributions to the plan, recordkeeping and outreach.

(h) Require no employer contributions to employee accounts.

(i) Require the maintenance of separate records and accounting for each plan account.

(j) Provide for reports on the status of plan accounts to be provided to plan participants at least annually.

(k) Allow for account owners to maintain an account regardless of place of employment and to roll over funds into other retirement accounts.

(L) Pool accounts established under the plan for investment.

(m) Be professionally managed.

(n) Provide that the State of Oregon and employers that participate in the plan have no proprietary interest in the contributions to or earnings on amounts contributed to accounts established under the plan.

(o) Provide that the investment administrator for the plan is the trustee of all contributions and earnings on amounts contributed to accounts established under the plan.

(p) Not impose any duties under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) on employers.

(q) Keep administration fees in the plan low.

(r) Allow the use of private sector partnerships to administer and invest the con-

tributions to the plan under the supervision and guidance of the board.

(s) Allow employers to establish an alternative retirement plan for some or all employees.

(2) The plan, the board, each board member and the State of Oregon may not guarantee any rate of return or any interest rate on any contribution. The plan, the board, each board member and the State of Oregon may not be liable for any loss incurred by any person as a result of participating in the plan. [2015 c.557 §3]

**178.215 Rules for Oregon Retirement Savings Plan.** The Oregon Retirement Savings Board shall adopt rules that:

(1) Establish the process for voluntary enrollment in the plan developed under ORS 178.205, including procedures for automatic enrollment of employees and for employees to opt out of the plan.

(2) Establish the process for participants to make the default contributions to plan accounts and to adjust the contribution levels.

(3) Establish the process for employers to withhold employee contributions to plan accounts from employees' wages and send the contributions to the investment administrator for the plan.

(4) Establish the process for allowing employees to opt out of enrollment in the plan.

(5) Establish the process for participants to make nonpayroll contributions to plan accounts.

(6) Set minimum, maximum and default contribution levels in accordance with limits established by the Internal Revenue Code.

(7) Establish the process for withdrawals from plan accounts.

(8) Establish the process and requirements for an employer to obtain an exemption from offering the plan if the employer offers a qualified retirement plan, including but not limited to a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code.

(9) Mandate the contents and frequency of required disclosures to employees, employers and other plan participants. These disclosures must include, but need not be limited to:

(a) The benefits and risks associated with making contributions to the plan;

(b) Instructions for making contributions to the plan;

(c) How to opt out of the plan;

(d) How to participate in the plan with a level of contributions other than the default rate;

(e) The process for withdrawal of retirement savings;

(f) How to obtain additional information about the plan;

(g) That employees seeking financial advice should contact financial advisers, that participating employers are not in a position to provide financial advice and that participating employers are not liable for decisions employees make pursuant to ORS 178.200 to 178.245;

(h) That the plan is not an employer-sponsored retirement plan; and

(i) That the plan accounts and rate of return are not guaranteed by the state. [2015 c.557 §4]

**178.220 Confidentiality of account information.** Individual account information for accounts under the plan developed under ORS 178.205, including but not limited to names, addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, is confidential and must be maintained as confidential:

(1) Except to the extent necessary to administer the plan developed under ORS 178.205 in a manner consistent with ORS 178.200 to 178.245, the tax laws of this state and the Internal Revenue Code; or

(2) Unless the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed. [2015 c.557 §5]

**178.225 Oregon Retirement Savings Plan Administrative Fund.** (1) The Oregon Retirement Savings Plan Administrative Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Retirement Savings Plan Administrative Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Retirement Savings Board.

(2) The Oregon Retirement Savings Plan Administrative Fund consists of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Moneys transferred to the fund from the federal government, other state agencies or local governments;

(c) Moneys from the payment of fees and the payment of other moneys due the board;

(d) Any gifts or donations made to the State of Oregon for deposit in the fund; and

(e) Earnings on moneys in the fund.

(3) The board may use the moneys in the fund to pay the administrative costs and expenses of the board and the plan developed under ORS 178.205 and for any other purpose described in ORS 178.200 to 178.245. [2015 c.557 §6]

**178.230 Prerequisites to establishment of Oregon Retirement Savings Plan.** (1) Before establishing a plan developed under ORS 178.205, the Oregon Retirement Savings Board shall:

(a) Conduct a market analysis to determine:

(A) The feasibility of the plan.

(B) Whether and to what extent plans with the characteristics described in ORS 178.210 currently exist in the private market.

(b) Obtain legal advice regarding the applicability of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and the Internal Revenue Code to the plan.

(c) Investigate whether employers that are not required to participate in the plan can make the plan available to their employees.

(d) Investigate how to allow individuals who are not automatically enrolled in the plan to opt in to the plan and make contributions to an account, either through payroll contributions or another method of contribution.

(2) The board shall coordinate with the efforts of other states as those states pursue legal guidance for similar retirement savings programs. [2015 c.557 §7]

**178.235 Annual reports.** The Oregon Retirement Savings Board shall report in each calendar year to the Governor and to an appropriate committee or interim committee of the Legislative Assembly detailing the board's activities. [2015 c.557 §8]

**178.240 Preemption.** A local government, as defined in ORS 174.116, may not establish or offer any retirement plan for persons not employed by a public body as defined in ORS 174.109. [2015 c.557 §9]

**178.245 Assistance of state agencies with outreach, technical assistance and compliance services.** The Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the Oregon Retirement Savings Board to provide outreach, technical assistance or compliance services shall collaborate to provide the outreach, technical assistance or compliance services to the board. [2015 c.557 §10]

## OREGON 529 SAVINGS NETWORK (Generally)

**178.300 Definitions for ORS 178.300 to 178.355.** As used in ORS 178.300 to 178.355:

(1) "Account" means an individual account established in accordance with ORS 178.300 to 178.355.

(2) "Account owner" means the person who has the right to withdraw funds from the account. The account owner may also be the designated beneficiary of the account.

(3) "Board" means the Oregon 529 Savings Board established under ORS 178.310.

(4) "Designated beneficiary" means, except as provided in ORS 178.350, the individual designated at the time the account is opened as having the right to receive a qualified withdrawal for the payment of qualified higher education expenses, or if the designated beneficiary is replaced in accordance with ORS 178.350, the replacement.

(5) "Financial institution" means a bank, a commercial bank, a national bank, a savings bank, a savings and loan, a thrift institution, a credit union, an insurance company, a trust company, a mutual fund, an investment firm or other similar entity authorized to do business in this state.

(6) "Higher education institution" means an eligible education institution as defined in section 529(e)(5) of the Internal Revenue Code.

(7) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 2016.

(8) "Member of the family" shall have the same meaning as contained in section 529(e) of the Internal Revenue Code.

(9) "Network" means the Oregon 529 Savings Network established under ORS 178.305.

(10) "Nonqualified withdrawal" means a withdrawal from an account that is not a qualified withdrawal.

(11) "Qualified higher education expenses" means tuition and other permitted expenses as set forth in section 529(e) of the Internal Revenue Code for the enrollment or attendance of a designated beneficiary at a higher education institution.

(12) "Qualified withdrawal" means a withdrawal made as prescribed under ORS 178.355 and made:

(a) From an account to pay the qualified higher education expenses of the designated beneficiary;

(b) As the result of the death or disability of the designated beneficiary;

(c) As the result of a scholarship, allowance or payment described in section 135(d)(1)(A), (B) or (C) of the Internal Revenue Code that is received by the designated beneficiary, but only to the extent of the amount of the scholarship, allowance or payment; or

(d) As a rollover or change in the designated beneficiary described in ORS 178.350. [Formerly 348.841; 2016 c.33 §1; 2017 c.527 §1]

**178.305 Oregon 529 Savings Network.**

(1) It is the intent of the Legislative Assembly, in enacting ORS 178.300 to 178.355, 178.375 and 178.380, to create a savings program called the Oregon 529 Savings Network.

(2) The Oregon 529 Savings Network shall consist of:

(a) A higher education qualified tuition savings program:

(A) That increases the ability of families and individuals to save for higher education.

(B) In which the earnings on contributions of network participants are exempt from state income taxation.

(C) That utilizes the private sector to administer and invest the contributions to the network under the guidance of the Oregon 529 Savings Board.

(D) In which the contributions and earnings are held by the network in trust for the benefit of designated beneficiaries and account owners for the uses and purposes set forth in ORS 178.300 to 178.355, and for no other benefit, use or purpose.

(b) A qualified ABLE program established under ORS 178.380, under which individuals with disabilities may establish ABLE accounts to be used for disability-related expenses. [Formerly 348.844]

**178.310 Oregon 529 Savings Board; membership.** (1) There is established the Oregon 529 Savings Board to administer ORS 178.300 to 178.355, 178.375 and 178.380.

(2) The board shall consist of:

(a) The State Treasurer or a designee of the State Treasurer;

(b) A representative of persons with intellectual disabilities or other developmental disabilities, who shall be appointed by the State Treasurer;

(c) A representative of accredited private colleges and universities located in this state, who shall be appointed by the State Treasurer; and

(d) Two public members, who by reason of their education and experience are qualified to serve, and who shall be appointed by the State Treasurer.

(3) The State Treasurer shall designate the board chairperson from among the members of the board. The chairperson shall serve at the pleasure of the State Treasurer.

(4) Members of the board appointed by the State Treasurer serve at the pleasure of the State Treasurer for a term of office of three years. Members of the board may be reappointed to subsequent terms.

(5) The State Treasurer shall provide staff and assistance to the board in the administration of the Oregon 529 Savings Network, including the qualified ABLE program established under ORS 178.380, as directed by the board.

(6) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(7) A majority of the members of the board constitutes a quorum for the transaction of business. [Formerly 348.849]

**178.315 Board powers and duties; rules.** The Oregon 529 Savings Board shall have the following powers, duties, and functions:

(1) To establish, develop, implement and maintain the Oregon 529 Savings Network in a manner consistent with ORS 178.300 to 178.355, 178.375 and 178.380 and sections 529 and 529A of the Internal Revenue Code and to obtain the benefits of sections 529 and 529A of the Internal Revenue Code for the network and its participants.

(2) To adopt rules for the general administration of the network, to administer ORS 178.300 to 178.355, 178.375 and 178.380 and to ensure the network's compliance with sections 529 and 529A of the Internal Revenue Code.

(3) To maintain, invest and reinvest the funds contributed into the network consistent with the investment restrictions established by the board. The investment restrictions shall be consistent with the objectives of the network, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board.

(4) To make and enter into any and all contracts, agreements or arrangements, and to retain, employ and contract for the services of private and public financial institutions, depositories, consultants, investment advisors or managers and third-party plan administrators and for research, technical and other services necessary or desirable for



carrying out the purposes of ORS 178.300 to 178.355, 178.375 and 178.380.

(5) To accept donations or receive funds for the purpose of providing scholarships, grants and other incentives to account owners, potential account owners and their designated beneficiaries or furthering any of the purposes of ORS 178.300 to 178.355, 178.375 and 178.380.

(6) To encourage increased participation in the network by awarding scholarships or grants, providing or making available other incentives to account owners or potential account owners and their designated beneficiaries, or entering into promotional arrangements with third parties as the board deems desirable.

(7) To adopt rules to establish a qualified ABLE program under ORS 178.380 and to administer and maintain the program in a manner consistent with ORS 178.375 and 178.380 and the ABLE Act.

(8) To enter into agreements with other states to provide services to the other states related to the other states' ABLE programs. [Formerly 348.853; 2017 c.367 §6]

**178.320 Oregon 529 Savings Network Fund; College Savings Plan Subaccount; ABLE Subaccount.** (1) The Oregon 529 Savings Network Fund is established in the State Treasury, separate and distinct from the General Fund. The Oregon 529 Savings Network Fund shall consist of the Oregon 529 College Savings Plan Subaccount and the Oregon 529 ABLE Subaccount. Interest earned by each subaccount shall be credited to the subaccount.

(2)(a) All moneys credited to the Oregon 529 College Savings Plan Subaccount are continuously appropriated to the Oregon 529 Savings Board for the purpose of administering accounts established for qualified higher education expenses under ORS 178.300 to 178.355.

(b) All moneys credited to the Oregon 529 ABLE Subaccount are continuously appropriated to the board for the purpose of administering a qualified ABLE program pursuant to ORS 178.380.

(3) Each subaccount in the Oregon 529 Savings Network Fund shall consist of:

(a) Moneys appropriated to the subaccount by the Legislative Assembly;

(b) Moneys transferred to the subaccount from the federal government, other state agencies or local governments;

(c) Moneys from the payment of fees and the payment of other moneys due the board;

(d) Any gifts or donations made to the State of Oregon for deposit in the subaccount; and

(e) Earnings on moneys in the subaccount.

(4)(a) The board may use the moneys in the Oregon 529 College Savings Plan Subaccount to pay the administrative costs and expenses of the board and the Oregon 529 Savings Network related to the administration of accounts established for qualified higher education expenses under ORS 178.300 to 178.355, to provide or make available scholarships, grants and other incentives to account owners, potential account owners and their designated beneficiaries or to further any other purpose of ORS 178.300 to 178.355.

(b) The board may use the moneys in the Oregon 529 ABLE Subaccount to pay the administrative costs and expenses of the board and the Oregon 529 Savings Network related to the administration of the qualified ABLE program established under ORS 178.380, to provide or make available incentives to owners of ABLE accounts or potential account owners and their designated beneficiaries or to further any other purpose of the qualified ABLE program established under ORS 178.380. [Formerly 348.856]

**178.325 State interest in contributions and earnings.** The State of Oregon has no proprietary interest in the contributions or earnings of the Oregon 529 Savings Network. Except as otherwise provided by law, the Oregon 529 Savings Board is the trustee of the contributions and earnings. [Formerly 348.869]

**178.330 Annual report to Governor and Legislative Assembly.** The Oregon 529 Savings Board shall publish an annual report to the Governor and the Legislative Assembly detailing the board's activities under ORS 178.300 to 178.355, 178.375 and 178.380. The board shall submit the report to the Governor and the Legislative Assembly on or before March 15 of each year. [Formerly 348.873]

**(Accounts for Qualified Higher Education Expenses)**

**178.335 Network participation for higher education expenses; contribution limits; fees.** (1) An account owner may establish an account by making an initial contribution to the Oregon 529 Savings Network in the name of the designated beneficiary. Once a contribution is made it becomes part of the network and subject to the provisions of ORS 178.300 to 178.355.

(2) Any person may make a contribution to an account once an account is opened.

(3) Contributions to an account shall be made only in cash and may be deposited as provided in ORS 305.796.

(4) Total contributions to all accounts established on behalf of a particular beneficiary may not exceed those reasonably necessary to provide for the qualified higher education expenses of the designated beneficiary. The Oregon 529 Savings Board shall establish maximum contribution limits applicable to network accounts and shall require the provision of any information from the account owner and the designated beneficiary that the board deems necessary to establish these limits.

(5) Separate records and accounting shall be required for each account and reports shall be made no less frequently than annually to the account owner.

(6) The board may collect application, account or administrative fees to defray the costs of the network.

(7) This section applies only to accounts established for qualified higher education expenses. [Formerly 348.857]

**178.340 Right to direct investments for higher education expenses; insurance and guarantees prohibited; liability for loss.**

(1)(a) Except as permitted in section 529 of the Internal Revenue Code, no person other than the Oregon 529 Savings Board or a financial institution in which Oregon 529 Savings Network funds have been invested has the right to direct the investment of amounts held by the network in trust, or any earnings from those amounts.

(b) Nothing in this subsection prohibits a designated beneficiary from directing the investment of contributions to the network or earnings from those contributions by selecting between investment options offered under the network in accordance with rules adopted by the board.

(2) The network, the board, a board member and the State of Oregon may not insure any account or guarantee any rate of return or any interest rate on any contribution. The network, the board, a board member and the State of Oregon may not be liable for any loss incurred by any person as a result of participating in the network.

(3) The board, in the exercise of its sole discretion and without liability, may remove the network's funds from any financial institution and reinvest the funds in a similar or different investment alternative at another financial institution pursuant to a contract, agreement or arrangement entered into under ORS 178.315 (4).

(4) This section applies only to accounts established for qualified higher education expenses. [Formerly 348.860; 2017 c.367 §4]

**178.345 Prohibitions and limitations on accounts for higher education expenses.**

(1) An account and any interest in an account may not be assignable or pledged or otherwise used to secure or obtain a loan or other advancement.

(2) The right of a designated beneficiary to the payment of qualified higher education expenses or of an account owner to a withdrawal, payments and withdrawals made in exercise of those rights and moneys or property held within an account shall be exempt from garnishment and may not be subject to execution, attachment or any other process or to the operation of any bankruptcy or insolvency law.

(3) A refund of a qualified educational expense payment may not be paid by a higher education institution directly to the designated beneficiary or to the account owner. Any refund of qualified tuition expenses owed by a higher education institution on account of an overpayment of educational expenses must be refunded to the Oregon 529 Savings Network for credit to an account of the designated beneficiary.

(4) A qualified withdrawal that is used to pay for qualified higher education expenses must be paid as prescribed by section 529 of the Internal Revenue Code and rules adopted by the Oregon 529 Savings Board.

(5) This section applies only to accounts established for qualified higher education expenses. [Formerly 348.863]

**178.350 Designated beneficiary of account for higher education expenses; confidentiality of account information.**

(1) An account owner shall have the right at any time to change the designated beneficiary of an account to another individual who is a member of the family of the former designated beneficiary.

(2) An account owner shall have the right at any time to direct that all or a portion of an account be transferred to the account of another designated beneficiary who is a member of the family of the former designated beneficiary.

(3) The right to change the designated beneficiary or to transfer between accounts contained in subsections (1) and (2) of this section may be denied if, under rules adopted by the Oregon 529 Savings Board, the exercise of the right would result in either excess contributions to an account or the exercise of impermissible investment direction by the account owner.

(4) Individual account information, including but not limited to names, addresses, telephone numbers, personal identification information, amounts contributed and earn-

ings on amounts contributed, is confidential and must be maintained as confidential:

(a) Except to the extent necessary to administer the Oregon 529 Savings Network in a manner consistent with ORS 178.300 to 178.355, Oregon tax laws and the Internal Revenue Code; or

(b) Unless the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed.

(5) This section applies only to accounts established for qualified higher education expenses. [Formerly 348.867]

**178.355 Withdrawals from accounts for higher education expenses; rules; report.** (1) Withdrawal from an account may be made as prescribed by the rules adopted by the Oregon 529 Savings Board.

(2) A financial institution shall report an account withdrawal during any calendar year to the account owner and the federal Internal Revenue Service. The report shall be made at the time and contain such information as required by law.

(3) This section applies only to accounts established for qualified higher education expenses. [Formerly 348.870]

**(ABLE Accounts for Qualified Disability Expenses)**

**178.375 Definitions for ORS 178.375, 178.380 and 178.385.** As used in this section and ORS 178.380 and 178.385:

(1) “ABLE account” means an account established by an eligible individual, owned by the eligible individual and maintained under the qualified ABLE program established by the Oregon 529 Savings Board under ORS 178.380.

(2) “ABLE Act” means the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (Division B of P.L. 113-295).

(3) “Designated beneficiary” has the same meaning as contained in section 529A of the Internal Revenue Code.

(4) “Eligible individual” has the same meaning as contained in section 529A of the Internal Revenue Code.

(5) “Internal Revenue Code” means the federal Internal Revenue Code as amended and in effect on December 31, 2015.

(6) “Qualified disability expense” has the same meaning as contained in section 529A of the Internal Revenue Code. [2015 c.843 §1; 2016 c.33 §1a; 2017 c.367 §3]

**178.380 Establishment of qualified ABLE program; requirements for program; treatment of contributions to ABLE account; rules.** (1) The Oregon 529

Savings Board shall establish by rule and maintain a qualified ABLE program in accordance with the requirements of the ABLE Act.

(2) The rules must:

(a) Allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;

(b) Limit a designated beneficiary to one ABLE account for purposes of this section;

(c) Require cash-only contributions to ABLE accounts;

(d) Provide for a separate accounting for each designated beneficiary of an ABLE account;

(e) Provide that a designated beneficiary of an ABLE account may not, directly or indirectly, direct the investment of contributions to the account, or earnings on the account, more than two times in any calendar year;

(f) Prohibit the use of a designated beneficiary’s interest in an ABLE account as security for a loan;

(g) Establish limitations on aggregate contributions to an ABLE account on behalf of a designated beneficiary; and

(h) Satisfy all other requirements of section 529A of the Internal Revenue Code, the ABLE Act, rules adopted by the United States Secretary of the Treasury under the ABLE Act and other applicable federal law.

(3) Notwithstanding any other provision of law that requires consideration of one or more financial circumstances of an individual for the purpose of determining the eligibility to receive, or the amount of, any assistance or benefit authorized by law to be provided to or for the benefit of the individual, any amount in an ABLE account of the individual, including earnings on the account, any contributions to the ABLE account of the individual and any distribution for qualified disability expenses, shall be disregarded for such purpose with respect to any period during which the individual maintains, makes contributions to or receives distributions from the ABLE account.

(4)(a) Except as provided by federal law, upon the death of a designated beneficiary, amounts in an ABLE account may be transferred to the estate of the designated beneficiary or an ABLE account of another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary.

(b) Except as required by federal law, the Department of Human Services and the Oregon Health Authority may not seek payment

under ORS 416.350 or section 529A(f) of the Internal Revenue Code from amounts in an ABLE account or from amounts transferred from an ABLE account under paragraph (a) of this subsection. [2015 c.843 §2; 2016 c.33 §1b; 2017 c.367 §1]

**178.385 Right to direct investments for ABLE accounts; insurance and guarantees prohibited; liability for loss.** (1)(a) Except as permitted in section 529A of the Internal Revenue Code, no person other than the Oregon 529 Savings Board or a financial institution in which Oregon 529 Savings Network moneys have been invested has the right to direct the investment of amounts held by the network in trust, or any earnings from those amounts.

(b) Nothing in this subsection prohibits a designated beneficiary from directing the investment of contributions to the network or earnings from those contributions by selecting between investment options offered

under the network in accordance with rules adopted by the board.

(2)(a) The network, the board, a board member and the State of Oregon may not insure any account or guarantee any rate of return or any interest rate on any contribution.

(b) The network, the board, a board member and the State of Oregon are not liable for any loss incurred by any person as a result of participating in the network.

(3) The board, in its sole discretion and without liability, may remove the network's funds from any financial institution and reinvest the funds in a similar or different investment alternative at another financial institution pursuant to a contract, agreement or arrangement entered into under ORS 178.315 (4).

(4) This section applies only to ABLE accounts. [2017 c.367 §2]

---