

CHAPTER 843

AN ACT

SB 777

Relating to savings accounts for disability-related expenses; creating new provisions; amending ORS 279A.025, 316.680, 316.699, 348.841, 348.844, 348.849, 348.853, 348.856, 348.857, 348.860, 348.863, 348.867, 348.869, 348.870, 348.873, 458.685, 458.690 and 458.700; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this section and section 2 of this 2015 Act:

(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 section 2 of this 2015 Act.

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

(3) "Contracting state" means a state without a qualified ABLE program that has entered into a contract with this state to provide residents of the contracting state access to the qualified ABLE program of this state.

(4) "Designated beneficiary" has the same meaning as contained in section 529A of the Internal Revenue Code.

(5) "Eligible individual" has the same meaning as contained in section 529A of the Internal Revenue Code.

(6) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on the effective date of this 2015 Act.

(7) "Qualified disability expense" has the same meaning as contained in section 529A of the Internal Revenue Code.

SECTION 2. (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) Allow for the establishment of an ABLE account only for a designated beneficiary who is a resident of this state or a resident of a contracting state;

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

(i) 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.

SECTION 3. ORS 316.680 is amended to read:

316.680. (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(d) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(e)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(f) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(g) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.974 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(h) If included in taxable income for federal tax purposes, the amount withdrawn during the tax year in qualified withdrawals from a [college] savings network account **for higher education** established under ORS 348.841 to 348.873.

(i) If included in taxable income for federal tax purposes, any distributions from an ABLE account that do not exceed the qualified disability expenses of the designated beneficiary as provided in sections 1 and 2 of this 2015 Act and rules adopted by the Oregon 529 Savings Board.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or se-

curities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States that by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) If the taxpayer makes a nonqualified withdrawal, as defined in ORS 348.841, from a [college] savings network account **for higher education** established under ORS 348.841 to 348.873, the amount of the withdrawal that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(k) If the taxpayer makes a distribution from an ABLE account that is not a qualified disability expense of the designated beneficiary as provided in sections 1 and 2 of this 2015 Act and rules adopted by the Oregon 529 Savings Board,

the amount of the distribution that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code.

SECTION 4. ORS 316.680, as amended by section 74, chapter 1, Oregon Laws 2015, is amended to read:

316.680. (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(d) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(e)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(f) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(g) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.974 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(h) If included in taxable income for federal tax purposes, the amount withdrawn during the tax year in qualified withdrawals from a [college] savings network account **for higher education** established under ORS 348.841 to 348.873.

(i) For income tax years commencing on or after January 1, 2015, the amount of any deductions or credits that the taxpayer would have been allowed but for the provisions of section 280E of the Internal Revenue Code.

(j) If included in taxable income for federal tax purposes, any distributions from an ABLE account that do not exceed the qualified disability expenses of the designated beneficiary as provided in sections 1 and 2 of this 2015 Act and rules adopted by the Oregon 529 Savings Board.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States that by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry

the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) If the taxpayer makes a nonqualified withdrawal, as defined in ORS 348.841, from a [college] savings network account **for higher education** established under ORS 348.841 to 348.873, the amount of the withdrawal that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(k) If the taxpayer makes a distribution from an ABLE account that is not a qualified disability expense of the designated beneficiary as provided in sections 1 and 2 of this 2015 Act and rules adopted by the Oregon 529 Savings Board, the amount of the distribution that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue

Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code.

SECTION 5. ORS 316.699 is amended to read:

316.699. (1) There shall be subtracted from federal taxable income the amount contributed to:

(a) A [college] savings network account **for higher education** established under ORS 348.841 to 348.873; or

(b) An ABLE account established under section 2 of this 2015 Act and rules adopted by the Oregon 529 Savings Board, when the contribution is made before the designated beneficiary of the account attains 21 years of age.

(2) Notwithstanding subsection (1) of this section, a subtraction under this section may not exceed the lesser of:

(a) \$4,000 for the tax year if the taxpayer files a joint return, or \$2,000 for the tax year if the taxpayer files a return other than a joint return; and

(b) If an amount is carried forward to a succeeding tax year under subsection (4) of this section, the balance in the [college] savings network account **for higher education or ABLE account** at the close of the tax year for which the subtraction is being made.

(3)(a) The Department of Revenue shall annually adjust the maximum subtraction allowable under this section according to the cost-of-living adjustment for the calendar year. The department shall make this adjustment by multiplying the amount in subsection (2) of this section by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2007.

(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) Any amounts contributed to a [college] savings network account **for higher education or an ABLE account** that are not subtracted from federal taxable income because of the monetary limitations imposed by subsection (2) of this section may be carried forward for four succeeding tax years and subtracted from federal taxable income in any of those succeeding tax years in an amount that does not exceed the monetary limitations imposed by subsection (2) of this section.

(5) The amount contributed to a [college] savings network account **for higher education or an ABLE account** may be subtracted from a preceding tax year if the contribution is made before the taxpayer files a return or before the 15th day of the fourth month following the closing of the taxpayer's tax year, whichever is earlier.

SECTION 6. ORS 348.849 is amended to read:

348.849. (1) There is established the Oregon 529 [College] Savings Board to administer ORS 348.841 to 348.873 **and sections 1 and 2 of this 2015 Act.**

(2) The board shall consist of:

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

(b) [A member of the State Board of Higher Education, to be selected by the State Board of Higher Education] **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)[(a) *The board member who is a member of the State Board of Higher Education shall serve at the pleasure of the State Board of Higher Education but may not serve on the board following the end of the member's term on the State Board of Higher Education.*]

[(b) *The representative of private colleges and universities and the public members of the board shall*] **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. [These] Members of the board may be reappointed to subsequent terms.

(5) The State Treasurer [and the Oregon University System] shall provide staff and assistance to the board in the administration of the Oregon 529 [College] Savings Network, **including the qualified ABLE program established under section 2 of this 2015 Act**, 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.

SECTION 7. (1) **The term of the member of the Oregon 529 Savings Board described in ORS 348.849 (2)(b), as in effect immediately before the effective date of this 2015 Act, terminates on the effective date of this 2015 Act.**

(2) **The State Treasurer shall appoint the new member of the Oregon 529 Savings Board described in ORS 348.849 (2)(b), as in effect on the effective date of this 2015 Act, not later than January 1, 2016.**

SECTION 8. ORS 348.841, as amended by section 27, chapter 52, Oregon Laws 2014, is amended to read:

348.841. As used in ORS 348.841 to 348.873:

(1) "Account" means an individual account established in accordance with ORS 348.841 to 348.873.

(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 [College] Savings Board established under ORS 348.849.

(4) "Designated beneficiary" means, except as provided in ORS 348.867, 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 348.867, 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, [2013] **2014.**

(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 [College] Savings Network established under ORS [348.841 to 348.873] **348.844.**

(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 348.870 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 348.867.

SECTION 9. ORS 348.844 is amended to read:

348.844. (1) It is the intent of the Legislative Assembly, in enacting ORS 348.841 to 348.873 **and sections 1 and 2 of this 2015 Act**, to create a [higher education qualified tuition] savings program called the Oregon 529 [College] Savings Network[.].

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

(a) A higher education qualified tuition savings program:

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

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

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

[(4)] (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 348.841 to 348.873, and for no other benefit, use or purpose.

(b) A qualified ABLE program established under section 2 of this 2015 Act, under which individuals with disabilities may establish ABLE accounts to be used for disability-related expenses.

SECTION 10. ORS 348.853 is amended to read:

348.853. The Oregon 529 [College] Savings Board shall have the following powers, duties, and functions:

(1) To establish, develop, implement and maintain the Oregon 529 [College] Savings Network in a manner consistent with ORS 348.841 to 348.873, **sections 1 and 2 of this 2015 Act** and [section 529] **sections 529 and 529A** of the Internal Revenue Code and to obtain the benefits of [section 529] **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 348.841 to 348.873 **and sections 1 and 2 of this 2015 Act** and to ensure the network's compliance with [section 529] **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 348.841 to 348.873 **and sections 1 and 2 of this 2015 Act**.

(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 348.841 to 348.873 **and sections 1 and 2 of this 2015 Act**.

(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 section 2 of this 2015 Act and to administer and maintain the program in a manner consistent with sections 1 and 2 of this 2015 Act and the ABLE Act.

SECTION 11. ORS 348.856 is amended to read:

348.856. (1) The Oregon 529 [College] Savings Network Fund is established in the State Treasury, separate and distinct from the General Fund. [Interest earned by the Oregon 529 College Savings Network Fund shall be credited to the fund. All moneys credited to the Oregon 529 College Savings Network Fund are continuously appropriated to the Oregon 529 College Savings Board for the purposes of ORS 348.841 to 348.873.] **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 348.841 to 348.873.**

(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 section 2 of this 2015 Act.**

[(2)] (3) **Each subaccount in the Oregon 529 [College] Savings Network Fund shall consist of:**

(a) Moneys appropriated to the [fund] **subaccount** by the Legislative Assembly;

(b) Moneys transferred to the [fund] **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 [fund] **subaccount**; and

(e) Earnings on moneys in the [fund] **subaccount**.

[(3)] (4)(a) The board may use the moneys in the [fund] **Oregon 529 College Savings Plan Subaccount** to pay the administrative costs and expenses of the board and the Oregon 529 [College] Savings Network **related to the administration of accounts established for qualified higher education expenses under ORS 348.841 to 348.873**, to provide or make available scholarships, grants and other incentives to account owners, potential account own-

ers and their designated beneficiaries or to further any other purpose of ORS 348.841 to 348.873.

(b) The board may use the moneys in the Oregon 529 ABLÉ Subaccount to pay the administrative costs and expenses of the board and the Oregon 529 Savings Network related to the administration of the qualified ABLÉ program established under section 2 of this 2015 Act, to provide or make available incentives to owners of ABLÉ accounts or potential account owners and their designated beneficiaries or to further any other purpose of the qualified ABLÉ program established under section 2 of this 2015 Act.

SECTION 11a. Not later than January 1, 2016, the Oregon 529 Savings Board shall transfer an amount equal to the amount contained in the Oregon 529 Savings Network Fund on the effective date of this 2015 Act to the Oregon 529 College Savings Plan Subaccount established by ORS 348.856, as amended by section 11 of this 2015 Act.

SECTION 12. ORS 348.857 is amended to read:

348.857. (1) An account owner may establish an account by making an initial contribution to the Oregon 529 [College] 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 348.841 to 348.873.

(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 [College] 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.

SECTION 13. ORS 348.860 is amended to read:

348.860. (1) Except as permitted in section 529 of the Internal Revenue Code, no person other than the Oregon 529 [College] Savings Board or a financial institution in which Oregon 529 [College] Savings Network funds have been invested shall

have the right to direct the investment of any contributions to or earnings from the network.

(2) The network, the board, each 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, 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 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 348.853 (4).

(4) This section applies only to accounts established for qualified higher education expenses.

SECTION 14. ORS 348.863 is amended to read:

348.863. (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 [College] 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 [College] Savings Board.

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

SECTION 15. ORS 348.867 is amended to read:

348.867. (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 [College] 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 earnings on amounts contributed, is confidential and must be maintained as confidential:

(a) Except to the extent necessary to administer the Oregon 529 [College] Savings Network in a manner consistent with ORS 348.841 to 348.873, 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.

SECTION 16. ORS 348.869 is amended to read:

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

SECTION 17. ORS 348.870 is amended to read:

348.870. (1) Withdrawal from an account may be made as prescribed by the rules adopted by the Oregon 529 [College] 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.

SECTION 18. ORS 348.873 is amended to read:

348.873. The Oregon 529 [College] Savings Board shall publish an annual report to the Governor and the Legislative Assembly detailing the board's activities **under ORS 348.841 to 348.873 and sections 1 and 2 of this 2015 Act.** The board shall submit the report to the Governor and the Legislative Assembly on or before March 15 of each year.

SECTION 19. ORS 279A.025 is amended to read:

279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

- (a) Contracts between a contracting agency and:
- (A) Another contracting agency;

- (B) The Oregon Health and Science University;
- (C) A public university listed in ORS 352.002;
- (D) The Oregon State Bar;
- (E) A governmental body of another state;
- (F) The federal government;
- (G) An American Indian tribe or an agency of an American Indian tribe;
- (H) A nation, or a governmental body in a nation, other than the United States; or
- (I) An intergovernmental entity formed between or among:
 - (i) Governmental bodies of this or another state;
 - (ii) The federal government;
 - (iii) An American Indian tribe or an agency of an American Indian tribe;
 - (iv) A nation other than the United States; or
 - (v) A governmental body in a nation other than the United States;
- (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
- (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
- (d) Grants;
- (e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
- (f) Acquisitions or disposals of real property or interest in real property;
- (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;
- (h) Contracts for the procurement or distribution of textbooks;
- (i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
- (j) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;
- (k) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;
- (L) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department;
- (m) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;
- (n) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services is subject to ORS chapter 279B;
- (o) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS chapters 178, 286A, 287A, 289, 293, 294 and 295, including but not limited to investment contracts

and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services is subject to ORS chapter 279B;

(p) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(q) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565;

(r) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

(s) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The legislative department;

(c) The judicial department;

(d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;

(e) Oregon Corrections Enterprises;

(f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;

(g) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

(h) The Oregon 529 [College] Savings Network and the Oregon 529 [College] Savings Board;

(i) The Oregon Innovation Council;

(j) The Oregon Utility Notification Center; or

(k) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

SECTION 20. ORS 458.685 is amended to read:

458.685. (1) A person may establish an individual development account only for a purpose approved by

a fiduciary organization. Purposes that the fiduciary organization may approve are:

(a) The acquisition of post-secondary education or job training.

(b) If the account holder has established the account for the benefit of a household member who is under the age of 18 years, the payment of extracurricular nontuition expenses designed to prepare the member for post-secondary education or job training.

(c) If the account holder has established a [college] savings network account **for higher education** under ORS 348.841 to 348.873 on behalf of a designated beneficiary, the establishment of an additional [college] savings network account **for higher education** on behalf of the same designated beneficiary.

(d) The purchase of a primary residence. In addition to payment on the purchase price of the residence, account moneys may be used to pay any usual or reasonable settlement, financing or other closing costs. The account holder must not have owned or held any interest in a residence during the three years prior to making the purchase. However, this three-year period shall not apply to displaced homemakers or other individuals who have lost home ownership as a result of divorce.

(e) The capitalization of a small business. Account moneys may be used for capital, plant, equipment and inventory expenses or for working capital pursuant to a business plan. The business plan must have been developed by a financial institution, nonprofit microenterprise program or other qualified agent demonstrating business expertise and have been approved by the fiduciary organization. The business plan must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(f) Improvements, repairs or modifications necessary to make or keep the account holder's primary dwelling habitable, accessible or visitable for the account holder or a household member. This paragraph does not apply to improvements, repairs or modifications made to a rented primary dwelling to achieve or maintain a habitable condition for which ORS 90.320 (1) places responsibility on the landlord. As used in this paragraph, "accessible" and "visitable" have the meanings given those terms in ORS 456.508.

(g) The purchase of equipment, technology or specialized training required to become competitive in obtaining or maintaining employment or to start or maintain a business, as specified in the account holder's personal development plan for increasing the independence of the person.

(2)(a) If an emergency occurs, an account holder may withdraw all or part of the account holder's deposits to an individual development account for a purpose not described in subsection (1) of this section. As used in this paragraph, an emergency includes making payments for necessary medical expenses, to avoid eviction of the account holder from the account holder's residence and for necessary living expenses following a loss of employment.

(b) The account holder must reimburse the account for the amount withdrawn under this subsection within 12 months after the date of the withdrawal. Failure of an account holder to make a timely reimbursement to the account is grounds for removing the account holder from the individual development account program. Until the reimbursement has been made in full, an account holder may not withdraw any matching deposits or accrued interest on matching deposits from the account.

(3) If an account holder withdraws moneys from an individual development account for other than an approved purpose, the fiduciary organization may remove the account holder from the program.

(4) If an account holder moves from the area where the program is conducted or is otherwise unable to continue in the program, the fiduciary organization may remove the account holder from the program.

(5) If an account holder is removed from the program under subsection (2), (3) or (4) of this section, all matching deposits in the account and all interest earned on matching deposits shall revert to the fiduciary organization. The fiduciary organization shall use the reverted funds as a source of matching deposits for other accounts.

SECTION 21. ORS 458.690 is amended to read:

458.690. (1) Notwithstanding ORS 315.271, a fiduciary organization selected under ORS 458.695 may qualify as the recipient of account contributions that qualify the contributor for a tax credit under ORS 315.271 only if the fiduciary organization structures the accounts to have the following features:

(a) The fiduciary organization matches amounts deposited by the account holder according to a formula established by the fiduciary organization. The fiduciary organization shall maintain on deposit in the account not less than \$1 nor more than \$5 for each \$1 deposited by the account holder.

(b) The matching deposits by the fiduciary organization to the individual development account are placed in:

(A) A savings account jointly held by the account holder and the fiduciary organization and requiring the signatures of both for withdrawals;

(B) A savings account that is controlled by the fiduciary organization and is separate from the savings account of the account holder; or

(C) In the case of an account established for the purpose described in ORS 458.685 (1)(c), a [college] savings network account **for higher education** under ORS 348.841 to 348.873, in which the fiduciary organization is the account owner as defined in ORS 348.841.

(2) Account holders may not accrue more than \$3,000 of matching funds under subsection (1) of this section from state-directed moneys in any 12-month period. A fiduciary organization may designate a lower amount as a limit on annual matching funds. A fiduciary organization shall maintain on deposit sufficient funds to cover the matching deposit

agreements for all individual development accounts managed by the organization.

(3) The Housing and Community Services Department shall adopt rules to establish a maximum total amount of state-directed moneys that may be deposited as matching funds into an individual development account.

SECTION 22. ORS 458.700 is amended to read:

458.700. (1) Subject to Housing and Community Services Department rules, a fiduciary organization has sole authority over, and responsibility for, the administration of individual development accounts. The responsibility of the fiduciary organization extends to all aspects of the account program, including marketing to participants, soliciting matching contributions, counseling account holders, providing financial literacy education, and conducting required verification and compliance activities. The fiduciary organization may establish program provisions as the organization believes necessary to ensure account holder compliance with the provisions of ORS 458.680 and 458.685. Notwithstanding ORS 458.670 (5) and 458.680 (2), a fiduciary organization may establish income and net worth limitations for account holders that are lower than the income and net worth limitations established by ORS 458.670 (5) and 458.680 (2).

(2) A fiduciary organization may act in partnership with other entities, including businesses, government agencies, nonprofit organizations, community development corporations, community action programs, housing authorities and congregations to assist in the fulfillment of fiduciary organization responsibilities under this section and ORS 458.685, 458.690 and 458.695.

(3) A fiduciary organization may use a reasonable portion of moneys allocated to the individual development account program for administration, operation and evaluation purposes.

(4) A fiduciary organization selected to administer moneys directed by the state to individual development account purposes or receiving tax deductible contributions shall provide the Housing and Community Services Department with an annual report of the fiduciary organization's individual development account program activity. The report shall be filed no later than 90 days after the end of the fiscal year of the fiduciary organization. The report shall include, but is not limited to:

(a) The number of individual development accounts administered by the fiduciary organization;

(b) The amount of deposits and matching deposits for each account;

(c) The purpose of each account;

(d) The number of withdrawals made; and

(e) Any other information the department may require for the purpose of making a return on investment analysis.

(5) A fiduciary organization that is the account owner of a [college] savings network account **for higher education under ORS 348.841 to 348.873:**

(a) May make a qualified withdrawal only at the direction of the designated beneficiary and only after the [college] savings network account of the account holder that was established for the designated beneficiary has been reduced to a balance of zero exclusively through qualified withdrawals by the designated beneficiary; and

(b) May make nonqualified withdrawals only if the [college] savings network account of the account holder that was established for the designated beneficiary has a balance of less than \$100 or if the account holder or designated beneficiary has granted permission to make the withdrawal. Moneys received by a fiduciary organization from a nonqualified withdrawal made under this paragraph must be used for individual development account purposes.

(6) The department may make all reasonable and necessary rules to ensure fiduciary organization compliance with this section and ORS 458.685, 458.690 and 458.695.

SECTION 23. ORS 458.700, as amended by section 10, chapter 765, Oregon Laws 2007, is amended to read:

458.700. (1) Subject to Housing and Community Services Department rules, a fiduciary organization has sole authority over, and responsibility for, the administration of individual development accounts. The responsibility of the fiduciary organization extends to all aspects of the account program, including marketing to participants, soliciting matching contributions, counseling account holders, providing financial literacy education, and conducting required verification and compliance activities. The fiduciary organization may establish program provisions as the organization believes necessary to ensure account holder compliance with the provisions of ORS 458.680 and 458.685. Notwithstanding ORS 458.670 (5) and 458.680 (2), a fiduciary organization may establish income and net worth limitations for account holders that are lower than the income and net worth limitations established by ORS 458.670 (5) and 458.680 (2).

(2) A fiduciary organization may act in partnership with other entities, including businesses, government agencies, nonprofit organizations, community development corporations, community action programs, housing authorities and congregations to assist in the fulfillment of fiduciary organization responsibilities under this section and ORS 458.685 and 458.695.

(3) A fiduciary organization may use a reasonable portion of moneys allocated to the individual development account program for administration, operation and evaluation purposes.

(4) A fiduciary organization selected to administer moneys directed by the state to individual development account purposes or receiving tax deductible contributions shall provide the Housing and Community Services Department with an annual report of the fiduciary organization's individual development account program activity. The report shall be filed no later than 90 days after the end of the fiscal

year of the fiduciary organization. The report shall include, but is not limited to:

(a) The number of individual development accounts administered by the fiduciary organization;

(b) The amount of deposits and matching deposits for each account;

(c) The purpose of each account;

(d) The number of withdrawals made; and

(e) Any other information the department may require for the purpose of making a return on investment analysis.

(5) A fiduciary organization that is the account owner of a [college] savings network account **for higher education under ORS 348.841 to 348.873:**

(a) May make a qualified withdrawal only at the direction of the designated beneficiary and only after the [college] savings network account of the account holder that was established for the designated beneficiary has been reduced to a balance of zero exclusively through qualified withdrawals by the designated beneficiary; and

(b) May make nonqualified withdrawals only if the [college] savings network account of the account holder that was established for the designated beneficiary has a balance of less than \$100 or if the account holder or designated beneficiary has granted permission to make the withdrawal. Moneys received by a fiduciary organization from a nonqualified withdrawal made under this paragraph must be used for individual development account purposes.

(6) The department may make all reasonable and necessary rules to ensure fiduciary organization compliance with this section and ORS 458.685 and 458.695.

SECTION 24. In addition to and not in lieu of any other appropriation, there is appropriated to the State Treasurer, for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$664,743, which may be expended for the establishment of an Oregon 529 ABLE program under the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (Division B of P.L. 113-295) and this 2015 Act.

SECTION 24a. Notwithstanding ORS 348.856, as soon as is practicable, the State Treasurer shall transfer an amount equal to the total amount of the appropriation made under section 24 of this 2015 Act from the Oregon 529 ABLE Subaccount of the Oregon 529 Savings Network Fund to the General Fund.

SECTION 25. (1) The amendments to ORS 348.849 by section 6 of this 2015 Act are intended to change the name of the Oregon 529 College Savings Board to the Oregon 529 Savings Board.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the Oregon 529 College Savings Board, wherever they occur in statutory law, other words designating the Oregon 529 Savings Board.

SECTION 26. (1) The amendments to ORS 348.844 by section 9 of this 2015 Act are intended to change the name of the Oregon 529 College Savings Network to the Oregon 529 Savings Network.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the Oregon 529 College Savings Network, wherever they occur in statutory law, other words designating the Oregon 529 Savings Network.

SECTION 27. (1) The amendments to ORS 348.856 by section 11 of this 2015 Act are intended to change the name of the Oregon 529 College Savings Network Fund to the Oregon 529 Savings Network Fund.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the Oregon 529 College Savings Network Fund, wherever they occur in statutory law, other words designating the Oregon 529 Savings Network Fund.

SECTION 28. Sections 1 and 2 of this 2015 Act and the amendments to ORS 316.680 and 316.699 by sections 3 to 5 of this 2015 Act apply to distributions from and contributions to ABLE accounts for tax years beginning on or after January 1, 2016.

SECTION 29. The State Treasurer and the Oregon 529 Savings Board shall establish and maintain a qualified ABLE program in accordance with the requirements of section 2 of this 2015 Act and ORS 348.841 to 348.873, as amended by sections 6 to 18 of this 2015 Act, not later than January 1, 2017.

SECTION 30. This 2015 Act takes effect on the 91st day after the date on which the 2015 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Approved by the Governor August 12, 2015
Filed in the office of Secretary of State August 13, 2015
Effective date October 5, 2015
