

CHAPTER 367

AN ACT

SB 1027

Relating to the Oregon 529 Savings Network; creating new provisions; amending ORS 178.315, 178.340, 178.375, 178.380 and 416.350; and declaring an emergency.

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

SECTION 1. ORS 178.380, as amended by section 1b, chapter 33, Oregon Laws 2016, is amended to read:

178.380. (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 individ-

ual 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.

SECTION 2. (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.

SECTION 3. ORS 178.375, as amended by section 1a, chapter 33, Oregon Laws 2016, is amended to read:

178.375. As used in this section and ORS 178.380 **and section 2 of this 2017 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 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.

SECTION 4. ORS 178.340 is amended to read:

178.340. (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 *[shall have]* **has** the right to direct the investment of *[any contributions to or earnings from the network]* **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, *[each]* 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, *[each]* 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.

SECTION 5. ORS 416.350 is amended to read:

416.350. (1) The Department of Human Services or the Oregon Health Authority may recover from any person the amounts of medical assistance the department or the authority incorrectly paid to or on behalf of the person.

(2) **Except as prohibited by ORS 178.380,** medical assistance pursuant to ORS chapter 414 paid to or on behalf of an individual who was 55 years of age or older when the individual received the assistance, or paid to or on behalf of a person of any age who was a permanently institutionalized inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities or other medical institution, may be recovered from the estate of the individual or from any recipient of property or other assets held by the individual at the time of death including the estate of the surviving spouse. Claim for such medical assistance correctly paid to or on behalf of the individual may be established against the estate, but the claim may not be adjusted or recovered until after the death of the

surviving spouse, if any, and only at a time when the individual has no surviving child who is under 21 years of age or who is blind or permanently and totally disabled. Transfers of real or personal property by recipients of such aid without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(4) In any action or proceeding under this section to recover medical assistance paid, it is the legal burden of the person who receives the property or other assets from a medical assistance recipient to establish the extent and value of the recipient’s legal title or interest in the property or assets in accordance with rules established by the authority.

(5) Amounts recovered under this section do not include the value of benefits paid to or on behalf of a beneficiary under a policy or certificate of qualified long term care insurance as defined in ORS 743.652, that were disregarded in determining eligibility for or the amount of medical assistance provided to the beneficiary.

(6) As used in this section:

(a) “Estate” includes all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other similar arrangement.

(b) “Medical assistance” includes the state’s monthly contribution to the federal government to defray the costs of outpatient prescription drug coverage provided to a person who is eligible for Medicare Part D prescription drug coverage and who receives medical assistance.

SECTION 6. ORS 178.315 is amended to read:

178.315. 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, provid-

ing 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.

SECTION 7. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Approved by the Governor June 14, 2017

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