

A-Engrossed
Senate Bill 1027

Ordered by the Senate April 14
Including Senate Amendments dated April 14

Sponsored by Senator GELSER, Representative HAYDEN (at the request of State Treasurer Tobias Read)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits Department of Human Services and Oregon Health Authority from seeking payment from amounts in ABLÉ account.

Specifies that Oregon 529 Savings Network, Oregon 529 Savings Board, board members and State of Oregon may not insure or guarantee rate of return on ABLÉ account and are not liable for loss incurred by any person as result of establishing or contributing to ABLÉ account.

Specifies that only board or financial institution in which network moneys are held may direct investment of amounts held in trust by network.

Provides that board may enter into agreements with other states to provide services related to ABLÉ programs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon 529 Savings Network; creating new provisions; amending ORS 178.315,
3 178.340, 178.375, 178.380 and 416.350; and declaring an emergency.

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

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

7 178.380. (1) The Oregon 529 Savings Board shall establish by rule and maintain a qualified ABLÉ
8 program in accordance with the requirements of the ABLÉ Act.

9 (2) The rules must:

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

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

13 (c) Require cash-only contributions to ABLÉ accounts;

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

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

18 (f) Prohibit the use of a designated beneficiary's interest in an ABLÉ account as security for a
19 loan;

20 (g) Establish limitations on aggregate contributions to an ABLÉ account on behalf of a desig-
21 nated beneficiary; and

22 (h) Satisfy all other requirements of section 529A of the Internal Revenue Code, the ABLÉ Act,
23 rules adopted by the United States Secretary of the Treasury under the ABLÉ Act and other ap-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 plicable federal law.

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

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

13 (b) **Except as required by federal law, the Department of Human Services and the Oregon**
14 **Health Authority may not seek payment under ORS 416.350 or section 529A(f) of the Internal**
15 **Revenue Code from amounts in an ABLE account or from amounts transferred from an**
16 **ABLE account under paragraph (a) of this subsection.**

17 **SECTION 2.** (1)(a) **Except as permitted in section 529A of the Internal Revenue Code, no**
18 **person other than the Oregon 529 Savings Board or a financial institution in which Oregon**
19 **529 Savings Network moneys have been invested has the right to direct the investment of**
20 **amounts held by the network in trust, or any earnings from those amounts.**

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

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

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

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

33 (4) **This section applies only to ABLE accounts.**

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

36 178.375. As used in this section and ORS 178.380 **and section 2 of this 2017 Act:**

37 (1) "ABLE account" means an account established by an eligible individual, owned by the eli-
38 gible individual and maintained under the qualified ABLE program established by the Oregon 529
39 Savings Board under ORS 178.380.

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

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

44 (4) "Eligible individual" has the same meaning as contained in section 529A of the Internal Re-
45 venue Code.

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

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

5 **SECTION 4.** ORS 178.340 is amended to read:

6 178.340. (1)(a) Except as permitted in section 529 of the Internal Revenue Code, no person other
7 than the Oregon 529 Savings Board or a financial institution in which Oregon 529 Savings Network
8 funds have been invested [*shall have*] **has** the right to direct the investment of [*any contributions to*
9 *or earnings from the network*] **amounts held by the network in trust, or any earnings from**
10 **those amounts.**

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

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

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

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

24 **SECTION 5.** ORS 416.350 is amended to read:

25 416.350. (1) The Department of Human Services or the Oregon Health Authority may recover
26 from any person the amounts of medical assistance the department or the authority incorrectly paid
27 to or on behalf of the person.

28 (2) **Except as prohibited by ORS 178.380,** medical assistance pursuant to ORS chapter 414 paid
29 to or on behalf of an individual who was 55 years of age or older when the individual received the
30 assistance, or paid to or on behalf of a person of any age who was a permanently institutionalized
31 inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities or
32 other medical institution, may be recovered from the estate of the individual or from any recipient
33 of property or other assets held by the individual at the time of death including the estate of the
34 surviving spouse. Claim for such medical assistance correctly paid to or on behalf of the individual
35 may be established against the estate, but the claim may not be adjusted or recovered until after
36 the death of the surviving spouse, if any, and only at a time when the individual has no surviving
37 child who is under 21 years of age or who is blind or permanently and totally disabled. Transfers
38 of real or personal property by recipients of such aid without adequate consideration are voidable
39 and may be set aside under ORS 411.620 (2).

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

43 (4) In any action or proceeding under this section to recover medical assistance paid, it is the
44 legal burden of the person who receives the property or other assets from a medical assistance re-
45 cipient to establish the extent and value of the recipient's legal title or interest in the property or

1 assets in accordance with rules established by the authority.

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

6 (6) As used in this section:

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

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

14 **SECTION 6.** ORS 178.315 is amended to read:

15 178.315. The Oregon 529 Savings Board shall have the following powers, duties, and functions:

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

20 (2) To adopt rules for the general administration of the network, to administer ORS 178.300 to
21 178.355, 178.375 and 178.380 and to ensure the network's compliance with sections 529 and 529A of
22 the Internal Revenue Code.

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

29 (4) To make and enter into any and all contracts, agreements or arrangements, and to retain,
30 employ and contract for the services of private and public financial institutions, depositories, con-
31 sultants, investment advisors or managers and third-party plan administrators and for research,
32 technical and other services necessary or desirable for carrying out the purposes of ORS 178.300 to
33 178.355, 178.375 and 178.380.

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

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

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

43 **(8) To enter into agreements with other states to provide services to the other states**
44 **related to the other states' ABLE programs.**

45 **SECTION 7. This 2017 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
2 **on its passage.**

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