

CHAPTER 2015-56

Committee Substitute for Senate Bill No. 642

An act relating to individuals with disabilities; creating s. 1009.985, F.S.; providing a short title; creating s. 1009.986, F.S.; providing legislative intent; defining terms; requiring the Florida Prepaid College Board to establish a direct-support organization known as “Florida ABLE, Inc.”; specifying requirements for the registration, organization, incorporation, and operation of the organization; requiring the organization to operate under a written contract with the Florida Prepaid College Board; specifying provisions that must be included in the contract; requiring the organization to provide for an annual financial audit and supplemental data under certain circumstances; establishing and providing for the membership of a board of directors for the organization; providing limits on a director’s authority; specifying meeting and quorum requirements; prohibiting compensation for the service of directors and other specified members; authorizing specified reimbursement for the travel expenses of directors and specified members of the organization; authorizing the organization to use certain services, property, and facilities of the Florida Prepaid College Board; requiring the organization to establish and administer the Florida ABLE program by a specified date; specifying requirements that must be met before implementation of the program; requiring a participation agreement for the program which contains specified provisions; authorizing other provisions that may be included in the agreement; providing for the amendment of the agreement under certain circumstances; providing for the use of the balance of an abandoned ABLE account by the organization; providing that a contract or participation agreement entered into by the organization or an obligation of the organization does not constitute a debt or obligation of the Florida Prepaid College Board or the state; authorizing the organization to contract with other states for specified purposes under certain circumstances; providing for termination of the program under certain circumstances and for the disposition of certain assets upon termination; prohibiting the state from limiting or altering the specified vested rights of designated beneficiaries except under specified circumstances; requiring the organization to establish a comprehensive investment plan for the program; exempting funds paid into the program’s trust fund from the claims of specified creditors; providing for recovery by Medicaid of certain medical assistance provided to a deceased designated beneficiary; providing for the distribution of the balance of a deceased designated beneficiary’s ABLE account; requiring the organization to assist and cooperate with the Agency for Health Care Administration and Medicaid program in other states by providing specified information; providing that specified payroll deduction authority applies to the Florida Prepaid College Board and the organization for the purpose of administering the program; requiring the organization to submit certain reports to specified entities; requiring the Florida Prepaid College Board to adopt rules; requiring the Agency for

Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education to assist, cooperate, and coordinate with the organization in the provision of public information and outreach for the program; providing that the section is repealed on a specified date; amending s. 222.22, F.S.; providing that specified moneys, assets, and income of a qualified ABLE program, including the Florida ABLE program, are not subject to attachment, levy, garnishment, or certain legal process in favor of certain creditors or claimants; amending s. 1009.971, F.S.; conforming provisions to changes made by the act; authorizing the Florida Prepaid College Board to amend its contracts to provide the organization or program with contractual services; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1009.985, Florida Statutes, is created to read:

1009.985 Short title.—Sections 1009.985-1009.988 may be cited as the “Florida Achieving a Better Life Experience (ABLE) Act.”

Section 2. Section 1009.986, Florida Statutes, is created to read:

1009.986 Florida ABLE program.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to establish a qualified ABLE program in this state which will encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified disability expenses of eligible individuals with disabilities. The Legislature intends that the qualified ABLE program be implemented in a manner that is consistent with federal law authorizing the program and that maximizes program efficiency and effectiveness.

(2) DEFINITIONS.—As used in ss. 1009.986-1009.988, the term:

(a) “ABLE account” means an account established and maintained under the Florida ABLE program.

(b) “Contracting state” means a state that has entered into a contract with Florida ABLE, Inc., to provide residents of Florida or that state with access to a qualified ABLE program.

(c) “Designated beneficiary” means the eligible individual who established an ABLE account or the eligible individual to whom an ABLE account was transferred.

(d) “Eligible individual” has the same meaning as provided in s. 529A of the Internal Revenue Code.

(e) “Florida ABLE program” means the qualified ABLE program established and maintained under this section by Florida ABLE, Inc.

(f) “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as defined in s. 220.03(1), and regulations adopted pursuant thereto.

(g) “Participation agreement” means the agreement between Florida ABLE, Inc., and a participant in the Florida ABLE program.

(h) “Qualified ABLE program” means the program authorized under s. 529A of the Internal Revenue Code which may be established by a state or agency, or instrumentality thereof, to 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 ABLE account.

(i) “Qualified disability expense” has the same meaning as provided in s. 529A of the Internal Revenue Code.

(3) DIRECT-SUPPORT ORGANIZATION; FLORIDA ABLE, INC.—

(a) The Florida Prepaid College Board shall establish a direct-support organization to be known as “Florida ABLE, Inc.,” which is:

1. A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.

2. Organized and operated to receive, hold, invest, and administer property and to make expenditures for the benefit of the Florida ABLE program.

(b) Florida ABLE, Inc., shall operate under a written contract with the Florida Prepaid College Board. The contract must include, but is not limited to, provisions that require:

1. The articles of incorporation and bylaws of Florida ABLE, Inc., to be approved by the Florida Prepaid College Board.

2. Florida ABLE, Inc., to submit an annual budget for approval by the Florida Prepaid College Board. The budget must comply with rules adopted by the Florida Prepaid College Board.

3. Florida ABLE, Inc., to pay reasonable consideration to the Florida Prepaid College Board for products or services provided directly or indirectly by the Florida Prepaid College Board.

4. The Florida Prepaid College Board to solicit proposals, to contract or subcontract, or to amend contractual service agreements of the Florida Prepaid College Board for the benefit of Florida ABLE, Inc.

5. The Florida Prepaid College Board to maintain the website of Florida ABLE, Inc.

6. The Florida Prepaid College Board to annually certify that Florida ABLE, Inc., is complying with the terms of the contract and acting in a manner consistent with this section and in the best interest of the state. The certification must be reported in the official minutes of a meeting of the Florida Prepaid College Board.

7. The disclosure of material provisions in the contract and of the distinction between the Florida Prepaid College Board and Florida ABLE, Inc., to donors of gifts, contributions, or bequests, and the inclusion of such disclosure on all promotional and fundraising publications.

8. The fiscal year for Florida ABLE, Inc., to begin on July 1 and end on June 30 of the following year.

(c) Florida ABLE, Inc., shall provide for an annual financial audit in accordance with s. 215.981. The Florida Prepaid College Board and the Auditor General may require Florida ABLE, Inc., or its independent auditor, to provide any supplemental data relating to the operation of Florida ABLE, Inc.

(d)1. The board of directors of Florida ABLE, Inc., shall consist of:

a. The chair of the Florida Prepaid College Board, who shall serve as the chair of the board of directors of Florida ABLE, Inc.

b. One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Florida Prepaid College Board. A current member of the Florida Prepaid College Board, other than the chair, may be appointed.

c. One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Governor.

d. Two individuals who are advocates of persons with disabilities, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker of the House of Representatives. At least one of the individuals appointed under this sub-subparagraph must be an advocate of persons with developmental disabilities, as that term is defined in s. 393.063.

2.a. The term of the appointee under sub-subparagraph 1.b. shall be up to 3 years as determined by the Florida Prepaid College Board. Such appointee may be reappointed.

b. The term of the appointees under sub-subparagraphs 1.c. and d. shall be 3 years. Such appointees may be reappointed for up to one consecutive term.

3. Unless authorized by the board of directors of Florida ABLE, Inc., an individual director has no authority to control or direct the operations of Florida ABLE, Inc., or the actions of its officers and employees.

4. The board of directors of Florida ABLE, Inc.:

a. Shall meet at least quarterly and at other times upon the call of the chair.

b. May use any method of telecommunications to conduct, or establish a quorum at, its meetings or the meetings of a subcommittee or other subdivision if the public is given proper notice of the telecommunications meeting and provided reasonable access to observe and, if appropriate, to participate.

5. A majority of the total current membership of the board of directors of Florida ABLE, Inc., constitutes a quorum of the board.

6. Members of the board of directors of Florida ABLE, Inc., and the board’s subcommittees or other subdivisions shall serve without compensation; however, the members may be reimbursed for reasonable, necessary, and actual travel expenses pursuant to s. 112.061.

(e) Subject to rule adopted by the Florida Prepaid College Board, Florida ABLE, Inc., may use property, other than money, facilities, and personal services of the Florida Prepaid College Board, provided that Florida ABLE, Inc., offers equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. As used in this paragraph, the term “personal services” means use of the Florida Prepaid College Board’s full-time and part-time personnel, payroll processing services, and other services prescribed by rule of the Florida Prepaid College Board.

(4) FLORIDA ABLE PROGRAM.—

(a) On or before July 1, 2016, Florida ABLE, Inc., shall establish and administer the Florida ABLE program. Before implementing the program, Florida ABLE, Inc., must obtain a written opinion from counsel specializing in:

1. Federal tax matters which indicates that the Florida ABLE program is designed to comply with s. 529A of the Internal Revenue Code.

2. Federal securities law which indicates that the Florida ABLE program and the offering of participation in the program are designed to comply with applicable federal securities law and qualify for the available tax exemptions under such law.

(b) The participation agreement must include provisions specifying that:

1. The participation agreement is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund and, as provided

under paragraph (f), is not a debt or obligation of the Florida Prepaid College Board or the state.

2. Participation in the Florida ABLE program does not guarantee that sufficient funds will be available to cover all qualified disability expenses for any designated beneficiary and does not guarantee the receipt or continuation of any product or service for the designated beneficiary.

3. The designated beneficiary must be a resident of this state or a resident of a contracting state at the time the ABLE account is established.

4. The establishment of an ABLE account in violation of federal law is prohibited.

5. Contributions in excess of the limitations set forth in s. 529A of the Internal Revenue Code are prohibited.

6. The state is a creditor of ABLE accounts as, and to the extent, set forth in s. 529A of the Internal Revenue Code.

7. Material misrepresentations by a party to the participation agreement, other than Florida ABLE, Inc., in the application for the participation agreement or in any communication with Florida ABLE, Inc., regarding the Florida ABLE program may result in the involuntary liquidation of the ABLE account. If an account is involuntarily liquidated, the designated beneficiary is entitled to a refund, subject to any fees or penalties provided by the participation agreement and the Internal Revenue Code.

(c) The participation agreement may include provisions specifying:

1. The requirements and applicable restrictions for opening an ABLE account.

2. The eligibility requirements for a party to a participation agreement and the rights of the party.

3. The requirements and applicable restrictions for making contributions to an ABLE account.

4. The requirements and applicable restrictions for directing the investment of the contributions or balance of the ABLE account.

5. The administrative fee and other fees and penalties applicable to an ABLE account.

6. The terms and conditions under which an ABLE account or participation agreement may be modified, transferred, or terminated.

7. The disposition of abandoned ABLE accounts.

8. Other terms and conditions determined to be necessary or proper.

(d) The participation agreement may be amended throughout its term for purposes that include, but are not limited to, allowing a participant to increase or decrease the level of participation and to change designated beneficiaries and other matters authorized by this section and s. 529A of the Internal Revenue Code.

(e) If an ABLE account is determined to be abandoned pursuant to rules adopted by the Florida Prepaid College Board, Florida ABLE, Inc., may use the balance of the account to operate the Florida ABLE program.

(f) A contract or participation agreement entered into by or an obligation of Florida ABLE, Inc., on behalf of and for the benefit of the Florida ABLE program does not constitute a debt or obligation of the Florida Prepaid College Board or the state, but is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund. The state does not have an obligation to a designated beneficiary or any other person as a result of the Florida ABLE program. The obligation of the Florida ABLE program is limited solely to amounts in the Florida ABLE Program Trust Fund. All amounts obligated to be paid from the Florida ABLE Program Trust Fund are limited to the amounts available for such obligation. The amounts held in the Florida ABLE program may be disbursed only in accordance with this section.

(g) Notwithstanding any other provision of law, Florida ABLE, Inc., may enter into an agreement with a contracting state which allows Florida ABLE, Inc., to participate under the design, operation, and rules of the contracting state's qualified ABLE program or which allows the contracting state to participate under the Florida ABLE program.

(h) The Florida ABLE program shall continue in existence until terminated by law. If the state determines that the program is financially infeasible, the state may terminate the program. Upon termination, amounts in the Florida ABLE Program Trust Fund held for designated beneficiaries shall be returned in accordance with the participation agreement.

(i) The state pledges to the designated beneficiaries that the state will not limit or alter their rights under this section which are vested in the Florida ABLE program until the program's obligations are met and discharged. However, this paragraph does not preclude such limitation or alteration if adequate provision is made by law for the protection of the designated beneficiaries pursuant to the obligations of Florida ABLE, Inc., and does not preclude termination of the Florida ABLE program if the state determines that the program is not financially feasible. This pledge and undertaking by the state may be included in participation agreements.

(5) COMPREHENSIVE INVESTMENT PLAN.—Florida ABLE, Inc., shall establish a comprehensive investment plan for the Florida ABLE program, subject to the approval of the Florida Prepaid College Board. The comprehensive investment plan must specify the investment policies to be used by Florida ABLE, Inc., in its administration of the program. Florida

ABLE, Inc., may place assets of the program in investment products and in such proportions as may be designated or approved in the comprehensive investment plan. Such products shall be underwritten and offered in compliance with the applicable federal and state laws or regulations or exemptions therefrom. A designated beneficiary may not direct the investment of any contributions to the Florida ABLE program, unless specific fund options are offered by Florida ABLE, Inc. Directors, officers, and employees of Florida ABLE, Inc., may enter into participation agreements, notwithstanding their fiduciary responsibilities or official duties related to the Florida ABLE program.

(6) EXEMPTION FROM CLAIMS OF CREDITORS.—Moneys paid into or out of the Florida ABLE Program Trust Fund by or on behalf of a designated beneficiary are exempt, as provided by s. 222.22, from all claims of creditors of the designated beneficiary if the participation agreement has not been terminated. Moneys paid into the Florida ABLE program and benefits accrued through the program may not be pledged for the purpose of securing a loan.

(7) MEDICAID RECOVERY; PRIORITY OF DISTRIBUTIONS.—

(a) Upon the death of the designated beneficiary, the Agency for Health Care Administration and the Medicaid program for another state may file a claim with the Florida ABLE program for the total amount of medical assistance provided for the designated beneficiary under the Medicaid program, less any premiums paid by or on behalf of the designated beneficiary to a Medicaid buy-in program. Funds in the ABLE account of the deceased designated beneficiary must first be distributed for qualified disability expenses followed by distributions for the Medicaid claim authorized under this paragraph. Any remaining amount shall be distributed as provided in the participation agreement.

(b) Florida ABLE, Inc., shall assist and cooperate with the Agency for Health Care Administration and Medicaid programs in other states by providing the agency and programs with the information needed to accomplish the purpose and objective of this subsection.

(8) PAYROLL DEDUCTION AUTHORITY.—The payroll deduction authority provided under s. 1009.975 applies to the Florida Prepaid College Board and Florida ABLE, Inc., for purposes of administering this section.

(9) REPORTS.—

(a) On or before November 1, 2015, Florida ABLE, Inc., shall prepare a report on the status of the establishment of the Florida ABLE program by Florida ABLE, Inc. The report must also include, if warranted, recommendations for statutory changes to enhance the effectiveness and efficiency of the program. Florida ABLE, Inc., shall submit copies of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(b) On or before March 31 of each year, Florida ABLE, Inc., shall prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the Florida ABLE program which includes a description of the financial condition of the program at the close of the fiscal year. Florida ABLE, Inc., shall submit copies of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives and shall make the report available to each designated beneficiary. The accounts of the Florida ABLE program are subject to annual audit by the Auditor General.

(10) RULES.—The Florida Prepaid College Board shall adopt rules to administer this section. Such rules must include, but are not limited to:

(a) Specifying the procedures by which Florida ABLE, Inc., shall be governed and operate, including requirements for the budget of Florida ABLE, Inc., and conditions with which Florida ABLE, Inc., must comply to use property, facilities, or personal services of the Florida Prepaid College Board.

(b) The procedures for determining that an ABLE account has been abandoned.

(c) Adoption of provisions determined necessary by the Florida Prepaid College Board for the Florida ABLE program to retain its status as a qualified ABLE program or the tax-exempt status or other similar status of the program or its participants under the Internal Revenue Code. Florida ABLE, Inc., shall inform participants in the Florida ABLE program of changes to the tax or securities status of their interests in the ABLE program and participation agreements.

(11) STATE OUTREACH PARTNERS.—The Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education shall assist, cooperate, and coordinate with Florida ABLE, Inc., in the provision of public information and outreach for the Florida ABLE program.

(12) REPEAL.—In accordance with s. 20.058, this section is repealed October 1, 2020, unless reviewed and saved from repeal by the Legislature.

Section 3. Subsection (5) is added to section 222.22, Florida Statutes, to read:

222.22 Exemption of assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts from legal process.—

(5) Except as provided in s. 1009.986(7), as it relates to any validly existing qualified ABLE program authorized by s. 529A of the Internal Revenue Code, including, but not limited to, the Florida ABLE program participation agreements under s. 1009.986, moneys paid into or out of such a program, and the income and assets of such a program, are not liable to

attachment, levy, garnishment, or legal process in this state in favor of any creditor of or claimant against any designated beneficiary or other program participant.

Section 4. Subsections (1) and (4) of section 1009.971, Florida Statutes, are amended to read:

1009.971 Florida Prepaid College Board.—

(1) FLORIDA PREPAID COLLEGE BOARD; CREATION.—The Florida Prepaid College Board is hereby created as a body corporate with all the powers of a body corporate for the purposes delineated in this section. The board shall administer the prepaid program and the savings program, and shall perform essential governmental functions as provided in ss. 1009.97-1009.988 ~~ss. 1009.97-1009.984~~. For the purposes of s. 6, Art. IV of the State Constitution, the board shall be assigned to and administratively housed within the State Board of Administration, but it shall independently exercise the powers and duties specified in ss. 1009.97-1009.988 ~~ss. 1009.97-1009.984~~.

(4) FLORIDA PREPAID COLLEGE BOARD; POWERS AND DUTIES. The board shall have the powers and duties necessary or proper to carry out the provisions of ss. 1009.97-1009.988 ~~ss. 1009.97-1009.984~~, including, but not limited to, the power and duty to:

(a) Appoint an executive director to serve as the chief administrative and operational officer of the board and to perform other duties assigned to him or her by the board.

(b) Adopt an official seal and rules.

(c) Sue and be sued.

(d) Make and execute contracts and other necessary instruments.

(e) Establish agreements or other transactions with federal, state, and local agencies, including state universities and Florida College System institutions.

(f) Administer the trust fund in a manner that is sufficiently actuarially sound to defray the obligations of the prepaid program and the savings program, considering the separate purposes and objectives of each program. The board shall annually evaluate or cause to be evaluated the actuarial soundness of the prepaid fund. If the board perceives a need for additional assets in order to preserve actuarial soundness of the prepaid program, the board may adjust the terms of subsequent advance payment contracts to ensure such soundness.

(g) Invest funds not required for immediate disbursement.

(h) Appear in its own behalf before boards, commissions, or other governmental agencies.

(i) Hold, buy, and sell any instruments, obligations, securities, and property determined appropriate by the board.

(j) Require a reasonable length of state residence for qualified beneficiaries.

(k) Segregate contributions and payments to the trust fund into the appropriate fund.

(l) Procure and contract for goods and services, employ personnel, and engage the services of private consultants, actuaries, managers, legal counsel, and auditors in a manner determined to be necessary and appropriate by the board.

(m) Solicit and accept gifts, grants, loans, and other aids from any source or participate in any other way in any government program to carry out the purposes of ss. 1009.97-1009.988 ~~ss. 1009.97-1009.984~~.

(n) Require and collect administrative fees and charges in connection with any transaction and impose reasonable penalties, including default, for delinquent payments or for entering into an advance payment contract or a participation agreement on a fraudulent basis.

(o) Procure insurance against any loss in connection with the property, assets, and activities of the trust fund or the board.

(p) Impose reasonable time limits on use of the benefits provided by the prepaid program or savings program. However, any such limitations shall be specified within the advance payment contract or the participation agreement, respectively.

(q) Delineate the terms and conditions under which payments may be withdrawn from the trust fund and impose reasonable fees and charges for such withdrawal. Such terms and conditions shall be specified within the advance payment contract or the participation agreement.

(r) Provide for the receipt of contributions in lump sums or installment payments.

(s) Require that purchasers of advance payment contracts or benefactors of participation agreements verify, under oath, any requests for contract conversions, substitutions, transfers, cancellations, refund requests, or contract changes of any nature. Verification shall be accomplished as authorized and provided for in s. 92.525(1)(a).

(t) Delegate responsibility for administration of one or both of the comprehensive investment plans required in s. 1009.973 to persons the board determines to be qualified. Such persons shall be compensated by the board.

(u) Endorse insurance coverage written exclusively for the purpose of protecting advance payment contracts, and participation agreements, and the purchasers, benefactors, and beneficiaries thereof, including group life policies and group disability policies, which are exempt from the provisions of part V of chapter 627.

(v) Form strategic alliances with public and private entities to provide benefits to the prepaid program, savings program, and participants of either or both programs.

(w) Solicit proposals and contract, pursuant to s. 287.057, for the marketing of the prepaid program or the savings program, or both together. Any materials produced for the purpose of marketing the prepaid program or the savings program shall be submitted to the board for review. No such materials shall be made available to the public before the materials are approved by the board. Any educational institution may distribute marketing materials produced for the prepaid program or the savings program; however, all such materials shall be approved by the board prior to distribution. Neither the state nor the board shall be liable for misrepresentation of the prepaid program or the savings program by a marketing agent.

(x) Establish other policies, procedures, and criteria to implement and administer the provisions of ~~ss. 1009.97-1009.988~~ ~~ss. 1009.97-1009.984~~.

(y) Adopt procedures to govern contract dispute proceedings between the board and its vendors.

(z) Amend board contracts to provide Florida ABLE, Inc., or the Florida ABLE program with contractual services.

Section 5. For the 2015-2016 fiscal year, the sums of \$2,166,000 in recurring and \$1,220,000 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Education for transfer to the Florida ABLE Program Trust Fund, for the purpose of funding the costs for startup, staffing, market research, marketing, banking services, investment custodian and consultant services, records administration services, and general operations of Florida ABLE, Inc. The funds appropriated in this section shall be placed in reserve. Florida ABLE, Inc., through the Department of Education, may submit a budget amendment for release of such funds pursuant to chapter 216, Florida Statutes, which must include an itemized budget for the use of such funds by Florida ABLE, Inc.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor May 21, 2015.

Filed in Office Secretary of State May 21, 2015.