

CHAPTER 2020-14

Senate Bill No. 828

An act relating to the Florida ABLE program; amending s. 1009.986, F.S.; abrogating the future repeal of provisions relating to the Florida ABLE program; providing an effective date.

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

Section 1. Subsection (12) of section 1009.986, Florida Statutes, is amended, and subsections (1) through (11) of that section are republished, 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. 1009.987 and 1009.988 and this section, 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) Unless prohibited by federal law, upon the death of a designated beneficiary, funds in the ABLE account must first be distributed for qualified disability expenses then transferred to the estate of the designated beneficiary or an ABLE account of another eligible individual specified by the designated beneficiary or by the estate of the designated beneficiary.

(b) Except as required by federal law, the state Medicaid program may not file a claim for Medicaid recovery of funds in an ABLE account.

(c) 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 2. This act shall take effect upon becoming a law.

Approved by the Governor April 8, 2020.

Filed in Office Secretary of State April 8, 2020.