

1                                   A bill to be entitled  
2           An act relating to postsecondary education;  
3           creating s. 240.553, F.S.; establishing the  
4           Florida College Savings Program; providing  
5           legislative intent; providing definitions;  
6           providing for establishment of the program;  
7           providing for deposits in the program and  
8           earnings to be exempt from taxation; providing  
9           for the program to be administered by the  
10          Florida Prepaid College Board; providing duties  
11          and powers of the board; providing for the  
12          program to be a qualified state tuition program  
13          for federal tax purposes; providing  
14          requirements for participation agreements;  
15          providing for duration of participation  
16          agreements; providing for distributions from an  
17          account for qualified higher education  
18          expenses; providing for refunds; providing a  
19          penalty for making a material misrepresentation  
20          in an application for a participation  
21          agreement; providing for priorities for  
22          expending assets; providing an exemption for  
23          moneys in a program account from claims of  
24          creditors; providing for payroll deduction;  
25          providing a disclaimer regarding guarantee of  
26          postsecondary admission; providing for program  
27          termination; providing for nonlimitation or  
28          alteration of rights under the program;  
29          requiring an annual report to the Governor and  
30          the Legislature; providing restrictions for  
31          program implementation; amending s. 222.22,

1 F.S.; exempting moneys in a program account  
2 from legal process; amending s. 732.402, F.S.;  
3 designating program accounts as exempt property  
4 for purposes of probate; providing  
5 severability; providing an effective date.  
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7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Section 240.553, Florida Statutes, is  
10 created to read:

11 240.553 Florida College Savings Program.--

12 (1) LEGISLATIVE INTENT.--The Legislature recognizes  
13 that affordability and accessibility of higher education are  
14 essential to the welfare and well-being of the residents of  
15 the state and is a critical state interest. Promoting and  
16 enhancing financial access to postsecondary institutions  
17 serves a legitimate public purpose. Accordingly, as a  
18 supplement and alternative to existing programs that promote  
19 timely planning for postsecondary attendance, it is the intent  
20 of the Legislature to allow the Florida Prepaid College Board  
21 to establish a Florida College Savings Program to allow  
22 persons to make contributions to a trust account that is  
23 established for the purpose of meeting some or all of the  
24 qualified higher education expenses of a designated  
25 beneficiary, consistent with federal law authorizing such  
26 programs. There is not any guarantee by the state that such  
27 contributions, together with the investment return on such  
28 contributions, if any, will be adequate to pay for qualified  
29 higher education expenses. It is the intent of the Legislature  
30 that this program enable participants in the Florida College  
31 Savings Program to save for qualified higher education

1 expenses. It is further the intent of the Legislature that  
2 this program provide a choice to persons who determine that  
3 the overall educational needs of their families are best  
4 suited to a savings program or who wish to save to meet  
5 postsecondary educational needs beyond the traditional 4-year  
6 curriculum. Finally, it is the intent of the Legislature that  
7 the program be conducted as a public-private partnership to  
8 maximize program efficiency and effectiveness.

9 (2) DEFINITIONS.--As used in this section, the term:

10 (a) "Benefactor" means any person making a deposit,  
11 payment, contribution, gift, or other expenditure to the  
12 trust.

13 (b) "Board" means the Florida Prepaid College Board.

14 (c) "Designated beneficiary" means:

15 1. Any individual designated in the participation  
16 agreement;

17 2. Any individual defined in s.152 (a), paragraphs (1)  
18 through (8), of the Internal Revenue Code; or

19 3. Any individual receiving a scholarship from  
20 interests in the program purchased by a state or local  
21 government or an organization described in s. 501(c)(3) of the  
22 Internal Revenue Code.

23 (d) "Eligible educational institution" means an  
24 institution of higher education that qualifies under s. 529 of  
25 the Internal Revenue Code as an eligible educational  
26 institution.

27 (e) "Internal Revenue Code" means the Internal Revenue  
28 Code of 1986, as defined in s. 220.03(1).

29 (f) "Participation agreement" means an agreement  
30 between the board and a benefactor for participation in a  
31 savings plan for a designated beneficiary.

1           (g) "Program" means the Florida College Savings  
2 Program.

3           (h) "Qualified higher education expenses" means higher  
4 education expenses permitted under s. 529 of the Internal  
5 Revenue Code and required for the enrollment or attendance of  
6 a designated beneficiary at an eligible educational  
7 institution, including undergraduate and graduate schools, and  
8 any other higher education expenses that are permitted under  
9 s. 529 of the Internal Revenue Code.

10           (3) FLORIDA COLLEGE SAVINGS PROGRAM; CREATION.--

11           (a) The board is authorized to create and establish  
12 the Florida College Savings Program to promote and enhance the  
13 affordability and accessibility of higher education in the  
14 state. Such program shall enable persons to contribute funds  
15 that are combined and invested to pay the subsequent qualified  
16 higher education expenses of a designated beneficiary. The  
17 board shall administer the program and shall perform essential  
18 governmental functions, as provided in this section.

19           (b) The amounts on deposit in the program shall remain  
20 therein and shall be available solely for carrying out the  
21 purposes of this section. Any contract entered into by or any  
22 obligation of the board on behalf of and for the benefit of  
23 the program does not constitute a debt or obligation of the  
24 state but is an obligation of the program. The state has no  
25 obligation to any designated beneficiary or any other person  
26 as a result of the program. The obligation of the program is  
27 limited solely to those amounts deposited in the program. All  
28 amounts obligated to be paid from the program are limited to  
29 amounts available for such obligation. The amounts on deposit  
30 in the program may only be disbursed in accordance with the  
31 provisions of this section. Each participation agreement must

1 clearly state that the contract is only a debt or obligation  
2 of the program and is not otherwise a debt or obligation of  
3 the state.

4 (c) The benefactor retains ownership of all amounts on  
5 deposit in his or her account with the program up to the date  
6 of distribution on behalf of a designated beneficiary.  
7 Earnings derived from investment of the contributions shall be  
8 considered to be held in trust in the same manner as  
9 contributions, except as applied for purposes of the  
10 designated beneficiary and for purposes of maintaining and  
11 administering the program as provided in this section. Nothing  
12 in this paragraph or in any other provision of this section  
13 permits any contributions or corresponding interest in the  
14 program to be used as security for a loan by a benefactor or  
15 designated beneficiary.

16 (d) All amounts attributable to penalties shall be  
17 used for purposes of the program, and other amounts received  
18 other than contributions shall be properties of the program.  
19 Proceeds from penalties shall remain with the program and may  
20 be used for any costs or purposes of the program.

21 (e) The board may not receive deposits in any form  
22 other than cash. A benefactor or designated beneficiary may  
23 not direct the investment of any contributions or amounts held  
24 in the program other than the specific fund options provided  
25 by the board, if any.

26 (f) Appropriations, moneys acquired from other  
27 governmental or private sources, and moneys remitted in  
28 accordance with participation agreements, shall be deposited  
29 into the Florida Prepaid College Trust Fund in accordance with  
30 s. 240.551(4).

31

1           (g) Deposits and contributions to the program, the  
2 property of the board, and the earnings on the college savings  
3 accounts are exempt from taxation.

4           (4) PROGRAM ADMINISTRATION.--

5           (a) The Florida College Savings Program shall be  
6 administered by the Florida Prepaid College Board as an agency  
7 of the state. The Florida Prepaid College Board has all the  
8 powers of a body corporate for the purposes delineated in this  
9 section.

10           (b) The assets of the program shall be continuously  
11 invested and reinvested in a manner consistent with the  
12 purposes of the program, expended on expenses incurred by the  
13 operation and management of the program, or refunded to the  
14 benefactor or designated beneficiary under the conditions  
15 provided in the participation agreement. The board is not  
16 required to invest directly in obligations of the state or any  
17 political subdivision of the state or in any investment or  
18 other fund administered by the state.

19           (5) FLORIDA COLLEGE SAVINGS PROGRAM; BOARD  
20 DUTIES.--The board shall:

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

24           (b) Receive and hold all payments, deposits, and  
25 contributions intended for the program, as well as gifts;  
26 bequests; endowments; federal, state, or local grants; any  
27 other public or private source of funds; and all earnings,  
28 until disbursed to pay qualified higher education expenses or  
29 refunds as authorized in this section.

30           (c) Invest the contributions in a manner reasonable  
31 and appropriate to achieve the objectives of the program,

1 exercising the discretion and care of a prudent person in  
 2 similar circumstances with similar objectives. The board shall  
 3 give due consideration to rate of return, risk, term of  
 4 maturity, diversification of total portfolio within the  
 5 program, liquidity, projected disbursements and expenditures,  
 6 and expected payments, deposits, contributions, and gifts to  
 7 be received. Moneys in the program are exempt from s.  
 8 215.20(1), state securities law, and the investment  
 9 requirements of s. 18.10, but are subject to the investment  
 10 restrictions contained in s. 215.472.

11 (d) Solicit proposals and contract, pursuant to s.  
 12 287.057, for a trustee-services firm to hold and maintain  
 13 assets of the board in conjunction with the operations of  
 14 product providers contracted under this section. Such firm may  
 15 also provide for the short-term investment of the board's  
 16 assets. In selecting a trustee-services firm, the board shall  
 17 seek to obtain the highest standards of professional trustee  
 18 services, to allow all qualified firms interested in providing  
 19 such services equal consideration, and to provide such  
 20 services to the state at no cost and to the participants at  
 21 the lowest cost possible. The trustee services firm shall  
 22 agree to meet the obligations of the program to designated  
 23 beneficiaries if money in the fund fails to offset the  
 24 obligations of the program as a result of imprudent selection  
 25 or supervision of short-term investments or in the event of  
 26 the loss of securities by such firm. Evaluations of proposals  
 27 submitted under this paragraph must include, but need not be  
 28 limited to, the following criteria:

29 1. Adequacy of trustee services to hold and maintain  
 30 assets of the board, including current operations and staff  
 31 organization and commitment of management to the proposal.

1           2. Capability to execute program responsibilities  
2 within time and regulatory constraints.

3           3. Past experience in trustee services and current  
4 ability to maintain regular and continuous interactions with  
5 the board and product provider.

6           4. The minimum benefactor participation assumed within  
7 the proposal and any additional requirements of benefactors.

8           5. Adequacy of technical assistance and services  
9 proposed for staff.

10          6. Adequacy of a management system for evaluating and  
11 improving overall trustee services to the program.

12          7. Adequacy of facilities, equipment, and electronic  
13 data-processing services.

14          8. Detailed projections of administrative costs,  
15 including the amount and type of insurance coverage, and  
16 detailed projections of total costs.

17          (e) Solicit proposals and contract, pursuant to s.  
18 287.057, for one or more investment consultants to advise the  
19 board regarding investment management and performance. In  
20 selecting investment consultants, the board shall seek to  
21 obtain the highest standards of investment consulting, to  
22 allow all qualified firms interested in providing such  
23 services equal consideration, and to provide such services to  
24 the state at no cost and to the participants at the lowest  
25 cost possible. The investment consultants shall agree to meet  
26 the obligations of the programs to designated beneficiaries if  
27 money in the fund fails to offset the obligations of the  
28 program as a result of imprudent supervision of the board's  
29 investments. Evaluations of proposals submitted under this  
30 paragraph must include, but need not be limited to, the  
31 following criteria:



1           1. Capability to execute program responsibilities  
2 within time and regulatory constraints.

3           2. Past experience in investment consulting and  
4 current ability to maintain regular and continuous  
5 interactions with the board and product providers.

6           3. Adequacy of technical assistance and services  
7 proposed for staff.

8           4. Detailed projections of administrative costs.

9           (f) Solicit proposals and contract, pursuant to s.  
10 287.057, for product providers to develop investment  
11 portfolios on behalf of the board to achieve the purposes of  
12 this section. Product providers shall be limited to authorized  
13 insurers as defined in s. 624.09, banks as defined in s.  
14 658.12, associations as defined in s. 665.012, authorized  
15 Securities and Exchange Commission investment advisers, and  
16 investment companies as defined in the Investment Company Act  
17 of 1940. All product providers must have their principal place  
18 of business and corporate charter located and registered in  
19 the United States. Each product provider must agree to meet  
20 the obligations of the program to designated beneficiaries if  
21 moneys in the fund fail to offset the obligations of the  
22 program as a result of imprudent investing by such provider.  
23 Each authorized insurer must evidence superior performance  
24 overall on an acceptable level of surety in meeting its  
25 obligations to its policyholders and other contractual  
26 obligations. Only qualified public depositories approved by  
27 the State Insurance Commissioner and Treasurer are eligible  
28 for consideration. Each investment company must provide  
29 investment plans as specified within the request for  
30 proposals. In selecting a product provider, the board shall  
31 seek to provide all participants with the most secure,

1 well-diversified, and beneficially administered college  
2 savings plan possible, to allow all qualified firms interested  
3 in providing such services equal consideration, and to provide  
4 such services to participants at the lowest cost possible.

5 Evaluations of proposals submitted under this paragraph must  
6 include, but need not be limited to, the following criteria:

7 1. Fees and other costs charged to participants which  
8 affect account values or operational costs related to the  
9 program.

10 2. Past and current investment performance, including  
11 investment and interest rate history, guaranteed minimum rates  
12 of interest, consistency of investment performance, and any  
13 terms and conditions under which moneys are held.

14 3. Past experience and ability to provide timely and  
15 accurate service in the areas of benefit payments, investment  
16 management, and complaint resolution.

17 4. Financial history and current financial strength  
18 and capital adequacy to provide products, including operating  
19 procedures and other methods of protecting program assets.

20 (g) Establish an investment plan for the purposes of  
21 this section with the approval of the State Board of  
22 Administration. The investment plan must specify the  
23 investment policies to be used by the board in its  
24 administration of the program. The board may place assets of  
25 the program in savings accounts or purchase fixed or variable  
26 life insurance or annuity contracts, securities, evidence of  
27 indebtedness, or other investment products pursuant to the  
28 investment plan and in the proportions that are designated or  
29 approved under the investment plan. The insurance, annuity,  
30 savings, or investment products must be underwritten and  
31 offered in compliance with the applicable federal and state

1 laws and rules by persons who are duly authorized by  
2 applicable federal and state authorities. Within the  
3 investment plan, the board may authorize investment vehicles,  
4 or products incident thereto, as are available or offered by  
5 qualified companies or persons. A benefactor may not direct  
6 the investment of his or her contribution to the program and a  
7 designated beneficiary may not direct the contribution made on  
8 his or her behalf to the program. Board members and employees  
9 of the board are not prohibited from participating in the  
10 program by virtue of their fiduciary responsibilities as  
11 members of the board or official duties as employees of the  
12 board.

13 (h) Administer the program in a manner that is  
14 sufficiently actuarially sound to defray the obligations of  
15 the trust. The board shall annually evaluate or cause to be  
16 evaluated the actuarial soundness of the trust.

17 (i) Establish adequate safeguards to prevent  
18 contributions on behalf of a designated beneficiary in excess  
19 of those necessary to provide for the qualified higher  
20 education expenses of the beneficiary.

21 (j) Maintain separate accounts for each designated  
22 beneficiary and establish other accounts within the program as  
23 necessary to appropriately account for all funds held in the  
24 program.

25 (6) FLORIDA COLLEGE SAVINGS PROGRAM; BOARD  
26 POWERS.--The board shall have the powers necessary or proper  
27 to carry out the provisions of this section, including, but  
28 not limited to, the power to:

29 (a) Adopt an official seal and rules.

30 (b) Sue and be sued.

31

1           (c) Make and execute contracts and other necessary  
2 instruments.

3           (d) Establish agreements or other transactions with  
4 federal, state, and local agencies, including state  
5 universities and community colleges.

6           (e) Invest funds not required for immediate  
7 disbursement.

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

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

12           (h) Require a reasonable length of state residence for  
13 qualified beneficiaries.

14           (i) Segregate contributions and payments to the fund  
15 into various accounts and funds.

16           (j) Contract for necessary goods and services; employ  
17 necessary personnel; and engage the services of private  
18 consultants, actuaries, managers, legal counsel, and auditors  
19 for administrative or technical assistance.

20           (k) Solicit and accept gifts, grants, loans, and other  
21 aids from any source or participate in any other way in any  
22 government program to carry out the purposes of this section.

23           (l) Require and collect administrative fees and  
24 charges in connection with any transaction and impose  
25 reasonable penalties, including default, for delinquent  
26 payments or for entering into a participation agreement on a  
27 fraudulent basis.

28           (m) Procure insurance against any loss in connection  
29 with the property, assets, and activities of the program or  
30 the board.

31

1           (n) Impose reasonable time limits on use of the  
2 benefits provided by the program; however, any such limitation  
3 must be specified within the participation agreement.

4           (o) Delineate the terms and conditions under which  
5 contributions may be withdrawn from the fund and impose  
6 reasonable fees and charges for such withdrawal. Such terms  
7 and conditions must be specified within the participation  
8 agreement.

9           (p) Provide for the receipt of contributions in lump  
10 sums or installments.

11           (q) Require that benefactors verify, under oath, any  
12 requests for conversions, substitutions, transfers,  
13 cancellations, refunds, or other changes to a participation  
14 agreement. Verification must be accomplished as authorized and  
15 provided for in s. 92.525(1)(a).

16           (r) Delegate responsibility for administering the  
17 investment plan required in paragraph (5)(g) to a person the  
18 board determines to be qualified. Such person shall be  
19 compensated by the board. Directly or through such person, the  
20 board may contract with a private corporation or institution  
21 to provide the services that are a part of the investment plan  
22 or that are deemed necessary or proper by the board or such  
23 person, including, but not limited to, providing for  
24 consolidated billing; individual and collective recordkeeping  
25 and accountings; and the purchase, control, and safekeeping of  
26 assets.

27           (s) Endorse insurance coverage written exclusively for  
28 program participants which may be issued in the form of a  
29 group life policy and which is exempt from part V of chapter  
30 627.

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1           (t) Solicit proposals and contract, pursuant to s.  
2 287.057, for the services of a records administrator. The  
3 goals of the board in selecting a records administrator shall  
4 be to provide all participants with the most secure,  
5 well-diversified, and beneficially administered postsecondary  
6 education expense plan possible, to allow all qualified firms  
7 interested in providing such services equal consideration, and  
8 to provide such services to the state at no cost and to  
9 participants at the lowest cost possible. Evaluations of  
10 proposals submitted under this paragraph must include, but  
11 need not be limited to, the following criteria:

12           1. Fees and other costs charged to purchasers which  
13 affect account values or operational costs related to the  
14 program.

15           2. Past experience in records administration and  
16 current ability to provide timely and accurate service in the  
17 areas of records administration, audit and reconciliation,  
18 plan communication, participant service, and complaint  
19 resolution.

20           3. Sufficient staff and computer capability for the  
21 scope and level of service expected by the board.

22           4. Financial history and current financial strength  
23 and capital adequacy to provide administrative services  
24 required by the board.

25           (u) Solicit proposals and contract, pursuant to s.  
26 287.057, for the marketing of the Florida College Savings  
27 Program. Any materials produced for the purpose of marketing  
28 the program must be submitted to the board for review. Such  
29 materials may not be made available to the public before the  
30 materials are approved by the board. An educational  
31 institution may distribute marketing materials produced for

1 the program; however, all such materials must be approved by  
2 the board prior to distribution. Neither the state nor the  
3 board is liable for misrepresentation by a marketing agent.

4 (v) Establish other policies, procedures, and criteria  
5 to implement and administer the provisions of this section.

6 (7) "QUALIFIED STATE TUITION PROGRAM"  
7 STATUS.--Notwithstanding any other provision of this section,  
8 the board may adopt rules necessary to enable the program to  
9 obtain and retain status as a "qualified state tuition  
10 program" for federal tax purposes under the Internal Revenue  
11 Code of 1986, as defined in s. 220.03(1). The board shall  
12 inform participants of changes to the tax or securities status  
13 of participation agreements.

14 (8) PARTICIPATION AGREEMENTS.--

15 (a) A participation agreement may be freely amended  
16 throughout its term in order to enable the benefactor to  
17 increase or decrease the level of participation, change  
18 designated beneficiaries, and carry out similar matters  
19 permitted by this section and the Internal Revenue Code. A  
20 participation agreement may provide for periodic deposits by  
21 the benefactor.

22 (b) Deposits to the program by benefactors may only be  
23 in cash. Benefactors may contribute in a lump sum, in  
24 installments, or through electronic funds transfer or employer  
25 payroll deductions.

26 (c) The board may establish plans to permit  
27 benefactors to prepay the qualified higher education expenses  
28 associated with enrollment in state public and private  
29 colleges or universities and may establish a procedure to  
30 permit account contributions in excess of such projected  
31 expenses. The board shall prescribe by rule the methodology

1 and information sources that shall be used to determine the  
2 projected costs of qualified higher education expenses for  
3 designated beneficiaries of prescribed ages. Decisions by the  
4 board regarding the need for excess account contributions are  
5 subject to chapter 120.

6 (d) The board shall establish consistent provisions  
7 for each participation agreement, including, but not limited  
8 to:

9 1. The name, date of birth, and social security number  
10 of the designated beneficiary. For newborns, the social  
11 security number must be provided within 6 months after the  
12 date the participation agreement is submitted.

13 2. The amount of the contribution or contributions and  
14 number of contributions required from a benefactor on behalf  
15 of a designated beneficiary.

16 3. The terms and conditions under which benefactors  
17 shall remit contributions, including, but not limited to, the  
18 date or dates upon which each contribution is due.

19 4. Provisions for late contribution charges and for  
20 default.

21 5. Provisions for penalty fees for withdrawals from  
22 the program.

23 6. The name of the person who may terminate  
24 participation in the program. The participation agreement must  
25 specify whether the account may be terminated by the  
26 benefactor, the designated beneficiary, a specific designated  
27 person, or any combination of these persons.

28 7. The terms and conditions under which an account may  
29 be terminated, modified, or converted, the name of the person  
30 entitled to any refund due as a result of termination of the  
31



1 account pursuant to such terms and conditions, and the amount  
2 of refund, if any, due to the person so named.

3 8. Penalties for distributions not used or made in  
4 accordance with s. 529 of the Internal Revenue Code.

5 9. Any charges or fees in connection with the  
6 administration of the trust.

7 10. Other terms and conditions deemed by the board to  
8 be necessary or proper.

9 (e) Each participation agreement must clearly state  
10 that participation in the program does not guarantee that  
11 sufficient funds will be available to cover all qualified  
12 higher education expenses for any designated beneficiary.

13 (f) Each participation agreement must clearly state  
14 that participation in the program does not guarantee admission  
15 to or continued enrollment at an eligible educational  
16 institution.

17 (9) DURATION OF PARTICIPATION AGREEMENT.--The board  
18 shall specify a period of time after which each participation  
19 agreement shall be considered to be terminated. Upon  
20 termination of an agreement, the balance of the account, after  
21 notice to the benefactor, shall be declared unclaimed and  
22 abandoned property and subject to disposition as such under  
23 chapter 717. Time expended by a designated beneficiary as an  
24 active-duty member of any of the armed services of the United  
25 States shall be added to the period specified pursuant to this  
26 subsection.

27 (10) DISTRIBUTIONS FOR QUALIFIED HIGHER EDUCATION  
28 EXPENSES.--

29 (a) The board shall establish requirements and  
30 procedures for beneficiaries to realize the benefits of  
31 participation agreements. In establishing such requirements

1 and procedures, the board shall make distributions in as  
2 efficient and expeditious manner as is prudent and possible.

3 (b) Each distribution of benefits from a participation  
4 agreement shall consist of a pro rata distribution of  
5 contributions and investment earnings or investment losses and  
6 shall be consistent with the regulations of the United States  
7 Treasury Department or Internal Revenue Service.

8 (c) All distributions made during a taxable year shall  
9 be treated as one distribution.

10 (d) Distributions from accounts that lack a valid  
11 social security number are subject to penalties and  
12 withholding taxes at the time of distribution.

13 (11) REFUNDS.--

14 (a) A benefactor may request a refund of the principal  
15 amount of his or her contributions, plus actual investment  
16 earnings or minus actual investment losses on the  
17 contributions, less any applicable penalty, and less any  
18 amounts used to provide benefits to the designated  
19 beneficiary.

20 (b) Notwithstanding paragraph (a), a penalty may not  
21 be levied if a benefactor requests a refund from the program  
22 due to:

- 23 1. Death of the beneficiary.  
24 2. Total disability of the beneficiary.  
25 3. Scholarship, allowance, or payment received by the  
26 beneficiary to the extent that the amount of the refund does  
27 not exceed the amount of the scholarship, allowance, or  
28 payment in accordance with federal law.

29 (c) If a benefactor requests a refund of funds  
30 contributed to the program for any cause other than those  
31 listed in paragraph (b), there shall be imposed a penalty of

1 10 percent of the earnings of the account and any applicable  
2 taxes, or the penalty prescribed in the Internal Revenue Code  
3 or by rule of the Internal Revenue Service. Earnings shall be  
4 calculated as the total value of the participation agreement,  
5 less the aggregate contributions, or in the manner prescribed  
6 in the Internal Revenue Code or by rule of the Internal  
7 Revenue Service.

8 (12) MATERIAL MISREPRESENTATION; PENALTY.--If the  
9 benefactor or the designated beneficiary makes any material  
10 misrepresentation in the application for a participation  
11 agreement or in any communication with the board regarding the  
12 program, especially regarding the withdrawal or distribution  
13 of funds therefrom, the account may be involuntarily  
14 liquidated by the board. If the account is so liquidated, the  
15 benefactor is entitled to a refund, subject to a 10-percent  
16 penalty or the amount required by the Internal Revenue Code.

17 (13) ASSETS OF THE FUND; EXPENDITURE PRIORITY.--The  
18 assets of the fund shall be maintained, invested, and expended  
19 solely for the purposes of this section and may not be loaned,  
20 transferred, or otherwise used by the state for any purpose  
21 other than the purposes of this section. This subsection does  
22 not prohibit the board from investing in, by purchase or  
23 otherwise, bonds, notes, or other obligations of the state or  
24 an agency or instrumentality of the state. Unless otherwise  
25 specified by the board, assets of the fund shall be expended  
26 in the following order of priority:

27 (a) To make payments on behalf of designated  
28 beneficiaries.

29 (b) To make refunds upon termination of participation  
30 in the program.

31

1           (c) To pay the costs of program administration and  
2 operations.

3           (14) EXEMPTION FROM CLAIMS OF CREDITORS.--Moneys paid  
4 into or out of the program by or on behalf of a benefactor or  
5 designated beneficiary of a participation agreement whose  
6 account has not been terminated, are exempt, as provided by s.  
7 222.22 from all claims of creditors of the benefactor or the  
8 designated beneficiary.

9           (15) PAYROLL DEDUCTION AUTHORITY.--The state or any  
10 state agency, county, municipality, or other political  
11 subdivision may, by contract or collective bargaining  
12 agreement, agree with any employee to remit payments toward  
13 participation agreements through payroll deductions made by  
14 the appropriate officer or officers of the state, state  
15 agency, county, municipality, or political subdivision. Such  
16 payments shall be held and administered in accordance with  
17 this section.

18           (16) DISCLAIMER.--This section or any participation  
19 agreement does not constitute, and may not be deemed to  
20 constitute, an agreement, pledge, promise, or guarantee of  
21 admission or continued enrollment of any designated  
22 beneficiary or any other person to or in any eligible  
23 educational institution.

24           (17) PROGRAM TERMINATION.--The program shall continue  
25 in existence until its existence is terminated by law. Upon  
26 termination of the program, all deposits shall be returned to  
27 benefactors, to the extent possible, and any unclaimed assets  
28 in the program shall revert to the state in accordance with  
29 general law regarding unclaimed property. If the state  
30 determines that the program is financially infeasible, the  
31 state may discontinue the the program.

1           (18) STATE PLEDGE.--The state pledges to benefactors  
2 and designated beneficiaries of the program that the state  
3 will not limit or alter the rights under this section which  
4 are vested in the program until such obligations are met and  
5 discharged. However, this subsection does not preclude such  
6 limitation if adequate provision is made by law for the  
7 protection of the benefactors and designated beneficiaries  
8 pursuant to the obligations of the board, and, if the state or  
9 the board determines that the program is not financially  
10 feasible, the state or the board may discontinue the program.  
11 If the program is discontinued, the board shall refund to  
12 benefactors their contributions to the program, plus any  
13 investment earnings or minus any investment losses. The board,  
14 on behalf of the state, may include this pledge and  
15 undertaking by the state in participation agreements.

16           (19) ANNUAL REPORT.--On or before March 31 each year,  
17 the board shall prepare, or cause to be prepared, a report  
18 setting forth in appropriate detail an accounting of the  
19 program and a description of the financial condition of the  
20 program at the close of the fiscal year. The board shall  
21 submit a copy of the report to the Governor, the President of  
22 the Senate, the Speaker of the House of Representatives, and  
23 the minority leaders of the House and Senate and shall make  
24 the report available to each benefactor and designated  
25 beneficiary. The accounts of the fund are subject to annual  
26 audits by the Auditor General or his or her designee.

27           (20) PROGRAM IMPLEMENTATION  
28 RESTRICTIONS.--Implementation of the program may not begin  
29 until the board has received the following:

30           (a) A favorable written and unqualified opinion from  
31 counsel specializing in federal tax matters indicating that

1 the program constitutes a qualified state tuition program  
2 under s. 529 of the Internal Revenue Code;

3 (b) A written and unqualified opinion from a qualified  
4 member of the United States Patent Bar indicating that the  
5 implementation of the program or the operation of the program  
6 will not infringe upon any patent or copyright;

7 (c) A written and unqualified opinion of qualified  
8 counsel specializing in federal securities law that the  
9 program and the offering of participation in the program are  
10 not subject to federal securities law; and

11 (d) A written and unqualified opinion from the board's  
12 litigation counsel indicating that the implementation or  
13 operation of the program will not adversely impact any pending  
14 litigation against the board.

15 Section 2. Subsection (1) of section 222.22, Florida  
16 Statutes, 1998 Supplement, is amended to read:

17 222.22 Exemption of moneys in the Prepaid  
18 Postsecondary Education Expense Trust Fund and in a Medical  
19 Savings Account from legal process.--

20 (1)(a) Moneys paid into or out of the Florida Prepaid  
21 College Trust Fund by or on behalf of a purchaser or qualified  
22 beneficiary pursuant to an advance payment contract made under  
23 s. 240.551, which contract has not been terminated, are not  
24 liable to attachment, garnishment, or legal process in the  
25 state in favor of any creditor of the purchaser or beneficiary  
26 of such advance payment contract.

27 (b) Moneys paid into or out of the Prepaid College  
28 Trust Fund by or on behalf of a benefactor or designated  
29 beneficiary pursuant to a participation agreement made under  
30 s. 240.553, which agreement has not been terminated, are not  
31 liable to attachment, garnishment, or legal process in the

1 state in favor of any creditor of the purchaser or beneficiary  
2 of such participation agreement.

3 Section 3. Paragraph (c) of subsection (2) of section  
4 732.402, Florida Statutes, 1998 Supplement, is amended to  
5 read:

6 732.402 Exempt property.--

7 (2) Exempt property shall consist of:

8 (c) Florida Prepaid College Program contracts  
9 purchased under ~~pursuant to~~ s. 240.551 and Florida College  
10 Savings agreements established under s. 240.553.

11 Section 4. If any provision of this act or the  
12 application thereof to any person or circumstance is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the act which can be given effect without the  
15 invalid provision or application, and to this end the  
16 provisions of this act are declared severable.

17 Section 5. This act shall take effect upon becoming a  
18 law.