

By Senator Benacquisto

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1 A bill to be entitled
2 An act relating to the Florida ABLE program; amending
3 s. 1009.986, F.S.; abrogating the future repeal of
4 provisions relating to the Florida ABLE program;
5 providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsection (12) of section 1009.986, Florida
10 Statutes, is amended, and subsections (1) through (11) of that
11 section are republished, to read:

12 1009.986 Florida ABLE program.—

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

21 (2) DEFINITIONS.—As used in ss. 1009.987 and 1009.988 and
22 this section, the term:

23 (a) "ABLE account" means an account established and
24 maintained under the Florida ABLE program.

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

28 (c) "Designated beneficiary" means the eligible individual
29 who established an ABLE account or the eligible individual to

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30 whom an ABLE account was transferred.

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

33 (e) "Florida ABLE program" means the qualified ABLE program
34 established and maintained under this section by Florida ABLE,
35 Inc.

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

39 (g) "Participation agreement" means the agreement between
40 Florida ABLE, Inc., and a participant in the Florida ABLE
41 program.

42 (h) "Qualified ABLE program" means the program authorized
43 under s. 529A of the Internal Revenue Code which may be
44 established by a state or agency, or instrumentality thereof, to
45 allow a person to make contributions for a taxable year to an
46 ABLE account established for the purpose of meeting the
47 qualified disability expenses of the designated beneficiary of
48 the ABLE account.

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

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

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

55 1. A Florida not-for-profit corporation registered,
56 incorporated, organized, and operated in compliance with chapter
57 617.

58 2. Organized and operated to receive, hold, invest, and

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59 administer property and to make expenditures for the benefit of
60 the Florida ABLE program.

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

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

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

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

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

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

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

85 7. The disclosure of material provisions in the contract
86 and of the distinction between the Florida Prepaid College Board
87 and Florida ABLE, Inc., to donors of gifts, contributions, or

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88 bequests, and the inclusion of such disclosure on all
89 promotional and fundraising publications.

90 8. The fiscal year for Florida ABLE, Inc., to begin on July
91 1 and end on June 30 of the following year.

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

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

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

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

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

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

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117 in s. 393.063.

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

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

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

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

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

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

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

139 6. Members of the board of directors of Florida ABLE, Inc.,
140 and the board's subcommittees or other subdivisions shall serve
141 without compensation; however, the members may be reimbursed for
142 reasonable, necessary, and actual travel expenses pursuant to s.
143 112.061.

144 (e) Subject to rule adopted by the Florida Prepaid College
145 Board, Florida ABLE, Inc., may use property, other than money,

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146 facilities, and personal services of the Florida Prepaid College
147 Board, provided that Florida ABLE, Inc., offers equal employment
148 opportunities to all persons regardless of race, color,
149 religion, sex, age, or national origin. As used in this
150 paragraph, the term "personal services" means use of the Florida
151 Prepaid College Board's full-time and part-time personnel,
152 payroll processing services, and other services prescribed by
153 rule of the Florida Prepaid College Board.

154 (4) FLORIDA ABLE PROGRAM.—

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

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

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

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

168 1. The participation agreement is only a debt or obligation
169 of the Florida ABLE program and the Florida ABLE Program Trust
170 Fund and, as provided under paragraph (f), is not a debt or
171 obligation of the Florida Prepaid College Board or the state.

172 2. Participation in the Florida ABLE program does not
173 guarantee that sufficient funds will be available to cover all
174 qualified disability expenses for any designated beneficiary and

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175 does not guarantee the receipt or continuation of any product or
176 service for the designated beneficiary.

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

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

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

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

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

195 (c) The participation agreement may include provisions
196 specifying:

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

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

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

203 4. The requirements and applicable restrictions for

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204 directing the investment of the contributions or balance of the
205 ABLE account.

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

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

211 7. The disposition of abandoned ABLE accounts.

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

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

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

224 (f) A contract or participation agreement entered into by
225 or an obligation of Florida ABLE, Inc., on behalf of and for the
226 benefit of the Florida ABLE program does not constitute a debt
227 or obligation of the Florida Prepaid College Board or the state,
228 but is only a debt or obligation of the Florida ABLE program and
229 the Florida ABLE Program Trust Fund. The state does not have an
230 obligation to a designated beneficiary or any other person as a
231 result of the Florida ABLE program. The obligation of the
232 Florida ABLE program is limited solely to amounts in the Florida

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233 ABLE Program Trust Fund. All amounts obligated to be paid from
234 the Florida ABLE Program Trust Fund are limited to the amounts
235 available for such obligation. The amounts held in the Florida
236 ABLE program may be disbursed only in accordance with this
237 section.

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

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

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

261 (5) COMPREHENSIVE INVESTMENT PLAN.—Florida ABLE, Inc.,

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262 shall establish a comprehensive investment plan for the Florida
263 ABLE program, subject to the approval of the Florida Prepaid
264 College Board. The comprehensive investment plan must specify
265 the investment policies to be used by Florida ABLE, Inc., in its
266 administration of the program. Florida ABLE, Inc., may place
267 assets of the program in investment products and in such
268 proportions as may be designated or approved in the
269 comprehensive investment plan. Such products shall be
270 underwritten and offered in compliance with the applicable
271 federal and state laws or regulations or exemptions therefrom. A
272 designated beneficiary may not direct the investment of any
273 contributions to the Florida ABLE program, unless specific fund
274 options are offered by Florida ABLE, Inc. Directors, officers,
275 and employees of Florida ABLE, Inc., may enter into
276 participation agreements, notwithstanding their fiduciary
277 responsibilities or official duties related to the Florida ABLE
278 program.

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

286 (7) MEDICAID RECOVERY; PRIORITY OF DISTRIBUTIONS.—

287 (a) Unless prohibited by federal law, upon the death of a
288 designated beneficiary, funds in the ABLE account must first be
289 distributed for qualified disability expenses then transferred
290 to the estate of the designated beneficiary or an ABLE account

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291 of another eligible individual specified by the designated
292 beneficiary or by the estate of the designated beneficiary.

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

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

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

305 (9) REPORTS.—

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

314 (b) On or before March 31 of each year, Florida ABLE, Inc.,
315 shall prepare or cause to be prepared a report setting forth in
316 appropriate detail an accounting of the Florida ABLE program
317 which includes a description of the financial condition of the
318 program at the close of the fiscal year. Florida ABLE, Inc.,
319 shall submit copies of the report to the Governor, the President

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320 of the Senate, the Speaker of the House of Representatives, and
321 the minority leaders of the Senate and the House of
322 Representatives and shall make the report available to each
323 designated beneficiary. The accounts of the Florida ABLE program
324 are subject to annual audit by the Auditor General.

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

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

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

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

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

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

352 Section 2. This act shall take effect upon becoming a law.