

## COLLEGE SAVINGS PLANS

### **Section 16-33C-1**

#### **Legislative intent.**

The Legislature of Alabama hereby finds and determines that the advancement and improvement of higher education in the State of Alabama is a proper governmental function and purpose of the State of Alabama. Additionally, the Legislature of Alabama intends to establish a qualified ABLE Program in this state which will encourage and assist Alabama individuals and families in saving private funds for the purpose of supporting Alabama citizens with disabilities. It is therefore the legislative intent of this chapter to establish the Wallace-Folsom Savings Investment Plan that consists of the ABLE Program, ACES Program, and the PACT Program. In establishing this plan, it is further the intent of the Legislature to encourage timely financial planning for higher education and other qualified disability expenses.

*(Acts 1989, No. 89-862, p. 1717, §1; Acts 1990, No. 90-570, p. 970, §1; Act 2001-427, p. 544, §1; Act 2015-442, §1.)*

### **Section 16-33C-2**

#### **Short title.**

This chapter shall be known as the "Wallace-Folsom Savings Investment Plan Act."

*(Acts 1989, No. 89-862, p. 1717, §2; Act 2001-427, p. 544, §1; Act 2015-442, §1.)*

### **Section 16-33C-2.1**

#### **Creation and administration of plan.**

There is hereby created the Wallace-Folsom Savings Investment Plan as an agency and instrumentality of the State of Alabama. The plan consists of the PACT Program, the ACES Program, and the ABLE Program. The plan shall be administered by the State Treasurer in accordance with the provisions of this chapter and rules, regulations, and guidelines established by the boards. The facilities and resources of the State Treasurer's office shall be used and employed in the administration of the plan. The official location of the plan shall be the State Treasurer's office.

*(Act 2001-427, p. 544, §2; Act 2015-442, §1.)*

### **Section 16-33C-3**

#### **Definitions.**

The following terms as used in this chapter shall have the meanings ascribed to them, unless the context clearly indicates otherwise:

(1) **ABLE PROGRAM.** The Achieving a Better Life Experience Program established pursuant to this chapter and defined in Section 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law, to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life.

(2) **ABLE SAVINGS ACCOUNT.** An individual ABLE trust fund account established by a contributor pursuant to this chapter to apply distributions from the account toward qualified disability expenses for an eligible designated beneficiary, both terms as defined in Section 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

(3) **ABLE TRUST FUND.** The fiduciary trust fund established pursuant to this chapter comprised of separate and segregated ABLE savings accounts as established by savings agreements.

(4) **ACES ADMINISTRATIVE FUND.** The ACES Administrative Fund created in Section 16-33C-10.

(5) **ACES PROGRAM.** The Alabama College Education Savings Program, a qualified program established pursuant to this chapter and as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law, to assist individuals and families to save funds for the purpose of meeting the qualified higher education expenses of the designated beneficiary.

(6) **ACES SAVINGS ACCOUNT.** An individual ACES account held in the ACES Trust Fund established by a contributor pursuant to this chapter in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions for an eligible designated beneficiary, with terms as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

(7) **ACES TRUST FUND.** The fiduciary trust fund created in Section 16-33C-10.

(8) **CONTRIBUTOR.** Any person who contributes money to an ACES Program savings account or an ABLE Program savings account established pursuant to this chapter on behalf of a designated beneficiary and who is listed as the owner of the savings account.

(9) **DESIGNATED BENEFICIARY.** The eligible individual named as the beneficiary of an ABLE savings account, ACES savings account, or PACT contract established pursuant to this chapter.

(10) **LEGISLATURE.** The Legislature of Alabama.

(11) **PACT ADMINISTRATIVE FUND.** The PACT Administrative Fund created in subsection (c) of Section 16-33C-6.

- (12) PACT BOARD. The board of directors and trustees of the PACT Trust Fund.
- (13) PACT CONTRACT. A contract entered into by the board and a participant in the PACT Program.
- (14) PACT PROGRAM. The Alabama Prepaid Affordable College Tuition Program created in subsection (a) of Section 16-33C-6.
- (15) PACT TRUST FUND. The fiduciary trust fund created in subsection (b) of Section 16-33C-6.
- (16) PLAN. The Wallace-Folsom Savings Investment Plan established pursuant to this chapter that consists of the PACT Program, the ACES Program, and the ABLE Program.
- (17) PURCHASER. A person who is obligated to make contract payments in accordance with a PACT contract entered into pursuant to this chapter.
- (18) SAVINGS AGREEMENT. An agreement entered into between the Savings Board and a contributor establishing an ACES or ABLE savings account.
- (19) SAVINGS BOARD. The Board of Directors of the ABLE Program and ACES Program, and trustees of the ABLE Trust Fund and ACES Trust Fund.
- (20) STATE TREASURER. The State Treasurer of Alabama.

***(Acts 1989, No. 89-862, p. 1717, §3; Acts 1990, No. 90-570, p. 970, §1; Act 2001-427, p. 544, §1; Act 2010-725, p. 1800, §7; Act 2015-442, §1.)***

#### **Section 16-33C-4**

##### **Composition of ACES board.**

- (a) The Savings Board shall consist of 11 members as follows:
- (1) The Lieutenant Governor, or his or her designee.
  - (2) The Executive Director of the Alabama Commission on Higher Education (ACHE), or his or her designee.
  - (3) The State Treasurer.
  - (4) The Chancellor of the Alabama Community College System, or his or her designee.
  - (5) One person appointed by the Council of College and University Presidents.
  - (6) One person appointed by the Speaker of the House of Representatives.

- (7) One person appointed by the Lieutenant Governor.
- (8) One person appointed by the State Treasurer.
- (9) Two persons appointed by the Governor.
- (10) One person appointed by the State Treasurer who has experience in health and disability related matters.
- (b) Members shall serve for terms of office of four years and shall be eligible for reappointment, and shall serve until a successor is appointed. Any person appointed to fill a vacancy on the Savings Board shall be appointed in a like manner and shall serve for only the unexpired term. Ex officio members of the board shall serve terms coincident with their terms of office.
- (c) Each person so appointed shall possess knowledge, skill, and experience in business or financial matters commensurate with the duties and responsibilities of the ABLE Program and ACES Program.
- (d) Members of the Savings Board shall serve without compensation, but may be reimbursed for each day's official duties of the board at the same per diem and travel rate as is paid the employees of the state.
- (e) The State Treasurer shall be the chair and presiding officer of the Savings Board, and the State Treasurer may appoint such other officers as the board may deem advisable or necessary. A majority of the members of the Savings Board shall constitute a quorum for the transaction of the business of the program.
- (f) Members of the Savings Board or any committee established by the Savings Board may participate in a meeting of the board or committee by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time. Participation by such means shall constitute presence in person at a meeting for all purposes, including the establishment of a quorum. Notice of such meetings must be given in accordance with the Alabama Open Meetings Act and such telephone or video conference or similar communications equipment shall also allow members of the public the opportunity to simultaneously listen to or observe such meetings.

***(Acts 1989, No. 89-862, p. 1717, §4; Acts 1990, No. 90-570, p. 970, §1; Act 2001-427, p. 544, §1; Act 2006-62, p. 75, §1; Act 2010-725, p. 1800, §7; Act 2015-442, §1.)***

#### **Section 16-33C-4.1**

##### **Composition of PACT board.**

- (a) The PACT board shall consist of 15 members as follows:
- (1) The Director of Finance.

- (2) The State Treasurer.
  - (3) Two persons appointed by the Governor.
  - (4) Two persons appointed by the Speaker of the House of Representatives, one of whom shall be a PACT contract holder.
  - (5) One person appointed by the Lieutenant Governor.
  - (6) One person appointed by the Senate President Pro Tempore.
  - (7) The President of the Council of College and University Presidents or his or her designee.
  - (8) The Chancellor of the Postsecondary Education Department or his or her designee.
  - (9) The Executive Director of the Alabama Commission on Higher Education.
  - (10) One member of the House of Representatives appointed by the Speaker of the House of Representatives.
  - (11) One member of the Senate appointed by the Lieutenant Governor.
  - (12) The Chief Executive Officer of the Retirement Systems of Alabama or his or her designee.
  - (13) The President of the Alabama Association of Independent Colleges and Universities or his or her designee.
- (b) Members shall serve for terms of office of four years and shall be eligible for reappointment, and shall serve until a successor is appointed. Any person appointed to fill a vacancy on the PACT board shall be appointed in a like manner and shall serve for only the unexpired term.
- (c) With the exception of those members serving on the PACT board by virtue of their respective offices, a person appointed to the PACT board shall be an expert in the field of investments, market analysis, or financial planning, or on similar matters commensurate with the duties and responsibilities of the plan. Additionally, all members of the PACT board have the fiduciary responsibility to devise and implement an investment strategy designed to maximize investment returns in a manner that correlates with future projected benefit payouts.
- (d) Members of the PACT board shall serve without compensation, but may be reimbursed for each day's official duties of the PACT board at the same per diem and travel rate as is paid the employees of the state.
- (e) The State Treasurer shall be the chair and presiding officer of the PACT board, and the State Treasurer may appoint such other officers as the PACT board may deem advisable or necessary. A majority of the members of the PACT board shall constitute a quorum for the transaction of the business of the plan.
- (f) The membership of the PACT board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The PACT board shall annually

report to the Legislature by the fifth legislative day of each regular session the extent to which the PACT board has complied with the diversity provisions provided for in this subsection.

*(Act 2010-725, p. 1800, §8.)*

### **Section 16-33C-4.2**

#### **Transition for PACT board.**

It is the intent of the Legislature that there be an orderly transition between the current PACT board and the PACT board created in Section 16-33C-4.1. As a result, on June 1, 2010, the PACT-related responsibilities of the current PACT board shall terminate and the term of office of the members of the PACT board created in Section 16-33C-4.1 shall commence. Additionally, the PACT board created in Section 16-33C-4.1 shall hold its first official meeting prior to July 1, 2010.

*(Act 2010-725, p. 1800, §9.)*

### **Section 16-33C-5**

#### **Powers of board.**

In addition to the powers granted by any other provision of this chapter, the Savings Board and PACT board shall have, as agents of the State of Alabama, the powers necessary or convenient to carry out the purposes and provisions of this chapter, to develop and implement the ABLE Program, ACES Program and the PACT Program, and the powers delegated by any other law of the state or any executive order thereof including, but not limited to, the following express powers:

- (1) To adopt and amend bylaws.
- (2) To adopt the rules and regulations necessary to implement the provisions of this chapter either with or without compliance with the state Administrative Procedure Act.
- (3) To invest as they deem appropriate any funds in the plan in any instrument, obligation, security, or property that constitutes legal investments for public funds in the state, including legal investments for the State Treasurer and the Alabama Trust Fund, and to name and use depositories for its investments and holdings.
- (4) To contract with a purchaser under the PACT Program.
- (5) To enter into savings agreements under the ABLE Program and ACES Program.
- (6) To enter into and execute contracts and other instruments for necessary goods and services, to employ necessary personnel, and to engage the services of qualified persons and

entities for administrative and technical assistance in carrying out the responsibilities of the plan, under terms and conditions that the PACT board or Savings Board deems reasonable and appropriate. All such contracts awarded by the PACT board or Savings Board may be for periods not exceeding five years, except that professional services contracts awarded by the Savings Board may be for periods not exceeding ten years.

(7) To contract with other states to participate under the rules of another state's qualified ABLE Program or to authorize the participation of a contracting state in the Alabama ABLE Program.

(8) To apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives and the purposes of this chapter.

(9) To define the terms and conditions of and enter into PACT contracts and savings agreements.

(10) To delegate to the State Treasurer the responsibilities of the day-to-day administration of the plan.

(11) To establish other policies, procedures, and criteria necessary to implement and administer the provisions of this chapter.

(12) To authorize the State Treasurer to approve marketing material produced for the plan. Neither the state, the State Treasurer, the PACT board, nor the Savings Board is liable for misrepresentation by a marketing agent.

***(Acts 1989, No. 89-862, p. 1717, §5; Acts 1990, No. 90-570, p. 970, §1; Act 2001-427, p. 544, §1; Act 2010-725, p. 1800, §7; Act 2015-442, §1.)***

### **Section 16-33C-6**

#### **PACT Program generally.**

(a) The PACT Program is established as one college savings alternative under the plan whereby purchasers enter into PACT contracts for the future payment of tuition and mandatory fees at eligible educational institutions. The PACT Program includes the PACT Trust Fund and the PACT Administrative Fund created pursuant to this chapter.

(b) The official location of the trust fund shall be the State Treasurer's office, and the facilities of the State Treasurer shall be used and employed in the administration of the fund including, but without limitation thereto, the keeping of records, the management of bank accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments. The PACT Trust Fund is hereby created as the source for payment of the PACT Program's obligations under PACT contracts. The amounts on deposit in the PACT Trust Fund shall not constitute property of the state, and the state may have no claim or interest in them. Payments which are received by the PACT Program from any public or private source, except those which are payments of administrative fees, shall be prudently placed in the PACT Trust Fund. In order to provide funds to enable the PACT Program to pay amounts due under the terms of its PACT

contracts, there is irrevocably pledged to that purpose from the PACT Trust Fund the monies necessary to pay those amounts. A PACT contract and any other contract entered into by or on behalf of the trust, does not constitute a debt or obligation of the state, and no participant is entitled to any benefits except those for which he or she contracted.

(c) Payments received by the PACT board from purchasers on behalf of designated beneficiaries or from any other source, public or private, shall be placed in the trust fund, and the fund may be divided into separate accounts as may be determined by the PACT board. The PACT Administrative Fund is hereby created as a separate fund within the State Treasurer's office for the purpose of administering the PACT Program. All administrative fees received by the PACT Program shall be deposited into the PACT Administrative Fund. All funds in the PACT Administrative Fund are hereby irrevocably pledged to the payment of administrative costs of the PACT Program. Funds in the PACT Administrative Fund may be invested by the State Treasurer in any investment facility allowed by this chapter. Any interest and earnings from the investment of funds in the PACT Administrative Fund shall be deposited to, and become a part of, the PACT Administrative Fund for use as authorized by this chapter. All funds in the PACT Administrative Fund at the end of each fiscal year of the State of Alabama shall remain in the PACT Administrative Fund and be automatically carried forward and available to be appropriated by the Alabama Legislature for the administration of the PACT Program.

(d) Gross earnings on PACT Trust Fund principal may be directly used by the PACT board to satisfy investment costs of the PACT Trust Fund and to supplement balances in the PACT Administrative Fund to cover outstanding administrative costs of the PACT Program as the board deems necessary. Gross earnings on the principal of the PACT Trust Fund remaining after payment of investment costs and deposits into the PACT Administrative Fund as authorized herein shall be deposited into, and become a part of, the principal of the PACT Trust Fund. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property of the PACT Trust Fund, the PACT board and any person or investment manager to whom the PACT board delegates any of its investment authority shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to permanent disposition of funds, considering the probable income as well as the safety of their capital. When acting within this standard of care, no PACT board member, or any person or investment manager to whom the PACT board delegates any of its investment authority, shall be held personally liable for losses suffered by the PACT Program on investments made pursuant to this chapter. No PACT board member shall be held personally liable for any losses, damages, or claims which have arisen or may arise from or are related to any act or omission of the board member taken in service as a member of the board or as a trustee, so long as the board member acted in good faith.

(e) The PACT board shall obtain appropriate actuarial assistance to establish, maintain, and certify a fund sufficient to defray the obligation of the PACT Trust Fund, and shall annually evaluate or cause to be evaluated, the actuarial soundness of the PACT Trust Fund. After that determination has been made, all monies on deposit in the PACT Trust Fund, up to and including the amount of the future obligations, shall remain on deposit in the PACT Trust Fund. If the PACT board perceives a need for additional assets in order to preserve actuarial soundness of the PACT Trust Fund, it may adjust the terms of subsequent prepaid tuition contracts to ensure the soundness.



(f) Property and income of the PACT Trust Fund and PACT Administrative Fund shall be exempt from all taxation by the state and by all of its political subdivisions.

*(Acts 1989, No. 89-862, p. 1717, §6; Acts 1990, No. 90-570, p. 970, §1; Acts 1997, No. 97-547, p. 957, §1; Act 2001-427, p. 544, §1; Act 2010-725, p. 1800, §7.)*

### **Section 16-33C-7**

#### **PACT contracts.**

(a) Each PACT contract shall include, but shall not be limited to, the following terms:

(1) The amount and the number of contract payments required from a purchaser on behalf of a designated beneficiary.

(2) The terms and conditions under which purchasers shall remit contract payments, including, but not limited to, the date or dates upon which each contract payment shall be due.

(3) Provisions for late payment charges and for default.

(4) Provisions for withdrawal from the PACT Program, including refunds and any penalty therefor.

(5) The name and date of birth of the designated beneficiary on whose behalf a contract is drawn.

(6) Terms and conditions under which another person may be subsequently substituted for the designated beneficiary originally named.

(7) The name of the person entitled to terminate the PACT contract, the terms and conditions under which a PACT contract may be terminated, and the name of the person entitled to any refund due as a result of termination of a PACT contract.

(8) The period of time during which the designated beneficiary must claim benefits through the PACT Program.

(9) The number of credit hours contracted for by the purchaser.

(10) All other rights and obligations of the purchaser and the PACT Program.

(11) Such other terms, conditions, and provisions as the board considers in its sole discretion to be necessary or appropriate.

(b) In the event a designated beneficiary is accepted by and elects to attend a college or university outside the State of Alabama, the PACT board shall, upon receipt of evidence of admission to said college or university, remit contract benefits pursuant to the terms of the PACT contract.

(c) A PACT contract shall also specifically provide that, if after ten years following the designated beneficiary's college entrance date or the actual entrance date of a designated beneficiary who is an accelerated student, neither the PACT contract has been terminated nor the designated beneficiary's rights under the contract exercised, the PACT board, after making reasonable effort to locate the purchaser, shall presume the contract purchase amount unclaimed and abandoned property, and thereafter administered in accordance with the Alabama Uniform Disposition of Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.

(d) Nothing in this chapter, nor in a PACT contract entered into pursuant to this chapter, shall be construed as a promise or guarantee by the PACT board or the state that: A person shall be admitted to a particular college or university; or that a person shall be allowed to continue to attend a college or university after having been admitted; or that a person shall be graduated from a college or university; or that Alabama resident status shall be conferred. Each state college or university shall establish its own residency requirements for matriculation.

(e) The state or any state agency, or any county, or municipality, or any other employer in the state is hereby authorized, by contract, or otherwise, to agree with any employee to remit contract payments through payroll deduction made by the appropriate official of the state, state agency, political subdivision, or other employer under the terms of an accepted PACT contract.

***(Acts 1989, No. 89-862, p. 1717, §7; Act 2001-427, p. 544, §1; Act 2010-725, p. 1800, §7.)***

### **Section 16-33C-8**

#### **Additional PACT duties of board.**

In addition to any other requirements of this chapter, the PACT board shall:

- (1) Make available summary information on the financial condition of the PACT Program to all purchasers of PACT contracts.
- (2) Prepare, or cause to be prepared, an annual report of the PACT Program, including details regarding the actuarial soundness of the program, and transmit a copy of same to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. Such report shall be submitted not later than the fifth legislative day of the regular legislative session. Additionally, such report shall be presented during annual legislative budget hearings.
- (3) Make all necessary and appropriate arrangements with colleges and universities in order to fulfill its obligations under PACT contracts.
- (4) Submit, before any PACT-related investment or administrative contract is duly executed, a request for proposals (RFP).
- (5) Require, before any PACT-related investment or administrative contract is duly executed, such contract to be approved by a majority vote of the PACT board.

(6) Prepare, or cause to be prepared, a quarterly report detailing the current projected funding status of the PACT Program, with a copy of such report transmitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.

(7) Establish specific investment guidelines that include failsafe measures designed to limit future susceptibility of PACT investments to extreme market fluctuations.

***(Acts 1989, No. 89-862, p. 1717, §8; Acts 1990, No. 90-570, p. 970, §1; Acts 1997, No. 97-547, p. 957, §1; Act 2001-427, p. 544, §1; Act 2010-725, p. 1800, §7.)***

### **Section 16-33C-9**

#### **Dissolution of PACT Program.**

Repealed by Act 2010-725, p. 1800, §10, effective April 30, 2010.

***(Act 2001-427, p. 544, §2.)***

### **Section 16-33C-10**

#### **ACES Program generally.**

(a) The ACES Program is established as one college savings alternative under the plan whereby contributors open ACES savings accounts according to savings agreements for the payment of qualified higher education costs for a designated beneficiary at eligible educational institutions, terms as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law. The ACES Program includes the ACES Trust Fund, the ACES Administrative Fund, and the ACES Opportunity Enhancement Fund created pursuant to this chapter. The ACES Program may be marketed under a different name than ACES.

(b) The ACES Trust Fund is hereby created and shall be comprised of separate ACES savings accounts held in segregated accounts as established by savings agreements. Funds contributed to the ACES savings accounts established pursuant to the ACES Program are held in trust by the Savings Board for the sole benefit of the contributor and designated beneficiary. Contributions which are received by the ACES Program from any public or private source, except those which are payments of administrative fees, shall be placed in the ACES Trust Fund.

(c) The ACES Administrative Fund is hereby created as a separate fund within the State Treasurer's office for the purpose of administering the ACES Program. The ACES Administrative Fund shall accept, deposit, and disburse funds for the purpose of administering the ACES Program. All funds in the ACES Administrative Fund are hereby irrevocably pledged to the payment of the administrative costs of the ACES Program. Funds in the ACES Administrative Fund may be invested by the State Treasurer in any investment facility allowed

by this chapter. Any interest and earnings from the investment of funds in the ACES Administrative Fund shall be deposited to, and become a part of, the ACES Administrative Fund for use as authorized by this chapter. All funds in the ACES Administrative Fund at the end of each fiscal year of the State of Alabama shall remain in that administrative fund and be automatically carried forward and available to be appropriated by the Alabama Legislature for the administration of the ACES Program.

(d) The State Treasurer is authorized to retain the services of one or more persons as staff members in order to implement and manage the ACES Program. Any expenses incurred shall be paid from the ACES Administrative Fund.

(e) Property and income of the ACES Trust Fund, ACES Administrative Fund, and the ACES Opportunity Enhancement Fund shall be exempt from all taxation by the state and by all of its political subdivisions.

(f) The ACES Opportunity Enhancement Fund is created as a separate fund within the State Treasurer's office for the purpose of enhancing and providing higher education opportunities and programs, as the Savings Board deems necessary and appropriate. The fund may receive contributions from individuals, private business entities, public corporations, and contractual agreements with service providers. The funds shall be utilized in the discretion and solely at the direction of the Savings Board. The amounts on deposit in the fund shall not constitute property of the state, and the state shall have no claim or interest in them.

***(Act 2001-427, p. 544, §2; Act 2006-62, p. 75, §1; Act 2010-725, p. 1800, §7; Act 2015-442, §1.)***

### **Section 16-33C-11**

#### **ACES savings agreements.**

(a) Each savings agreement made pursuant to this chapter shall include, but shall not be limited to, the following terms and provisions:

(1) The maximum and minimum annual contributions and maximum account balance allowed on behalf of a designated beneficiary.

(2) Provisions for withdrawals, refunds, transfers, returns of excess contributions and any penalties.

(3) The terms and conditions for remitting contributions, including, but not limited to, that contributions may be made in cash only.

(4) The name, address, date of birth, and Social Security number of the designated beneficiary on whose behalf the ABLE or ACES savings account is opened.

(5) Terms and conditions for designation of a substitute beneficiary.

(6) Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, if applicable, refunds, withdrawals, transfers, applicable penalties, the name of the person entitled to any refund due as a result of termination, and the name of the person entitled to terminate the account.

(7) The time period during which the designated beneficiary is required to use benefits from the ABLE Program or ACES Program.

(8) All other rights and obligations of the contributor and the ABLE Program or ACES Program.

(9) Any other terms and conditions which the Savings Board deems necessary or appropriate, including those necessary to conform the ACES and ABLE Programs and savings agreements with the requirements of Sections 529 and 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

(10) If, after the specified time period determined by the Savings Board under which the designated beneficiary is required to use benefits from the ABLE Program or ACES Program, the savings agreement has not been terminated nor the designated beneficiary's rights exercised, the Savings Board, after making reasonable effort to contact the contributor, shall presume the savings account monies unclaimed and abandoned property, and thereafter administered in accordance with the Alabama Uniform Disposition of Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.

(11) Participation in the ACES Program does not guarantee that sufficient funds will be available to cover qualified higher education expenses of a designated beneficiary.

(12) Notwithstanding any provision of any law to the contrary, money in the ABLE Program or ACES Program shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any contributor or beneficiary, provided, however, that the state of residency of the designated beneficiary of an ABLE savings account shall be a creditor of such account in the event of the death of the designated beneficiary.

(b) Nothing in this chapter shall make any provisions or warranties except as provided in savings agreements, including that a person shall be admitted to, allowed to continue in, graduated from a college or university, or conferred Alabama resident status.

(c) The state or any state agency, county, municipality, or any other employer in the state is hereby authorized, by contract, or otherwise, to agree with any employee to remit contributions through payroll deduction made by the appropriate official of the state, state agency, political subdivision, or other employer under the terms of a savings agreement.

***(Act 2001-427, p. 544, §2; Act 2010-725, p. 1800, §7; Act 2015-442, §1.)***

## **Section 16-33C-12**

### **Additional duties of Savings Board.**

In addition to any other requirements of this chapter, the Savings Board shall:

- (1) Make available summary information on the ABLE Program and ACES Program to all contributors to savings agreements.
- (2) Prepare, or cause to be prepared, an annual accounting of the ABLE Program and ACES Program and transmit a copy of same to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.
- (3) Make all necessary and appropriate arrangements with colleges and universities in order to fulfill its obligations under savings agreements.

*(Act 2001-427, p. 544, §2; Act 2010-725, p. 1800, §7; Act 2015-442, §1.)*

### **Section 16-33C-13**

#### **Dissolution of ACES Program.**

In the event of dissolution of the ACES Program by the Alabama Legislature, any balances which remain in the ACES Trust Fund and in the ACES Administrative Fund after all costs and liabilities of the ACES Program have been paid, shall be returned to contributors according to savings agreements. Any unclaimed assets remaining in the ACES Program thereafter shall be administered in accordance with the Alabama Uniform Disposition of Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.

*(Act 2001-427, p. 544, §2.)*

### **Section 16-33C-14**

#### **Appropriations from the Education Trust Fund to the PACT Program.**

Repealed by Act 2015-538, 2nd Sp. Sess., §2, effective September 17, 2015.

*(Act 2010-725, p. 1800, §1.)*

### **Section 16-33C-15**

#### **Appropriations from the Education Trust Fund to the PACT Trust Fund; purpose.**

Repealed by Act 2015-538, 2nd Sp. Sess., §2, effective September 17, 2015.

***(Act 2010-725, p. 1800, §2.)***

**Section 16-33C-16**

**Appropriations from the Education Trust Fund to the PACT Trust Fund.**

(a) There is annually appropriated from the Education Trust Fund to the PACT Trust Fund the following amounts in the following fiscal years:

- (1) For the fiscal year ending 2016 -- \$33,952,000;
- (2) For the fiscal year ending 2017 -- \$63,622,000;
- (3) For the fiscal year ending 2018 -- \$62,783,000;
- (4) For the fiscal year ending 2019 -- \$61,539,000.
- (5) For the fiscal year ending 2020 -- \$60,738,300;
- (6) For the fiscal year ending 2021 -- \$31,881,600;
- (7) For the fiscal year ending 2022 -- \$32,181,600;
- (8) For the fiscal year ending 2023 -- \$33,494,400;
- (9) For the fiscal year ending 2024 -- \$33,728,700;
- (10) For the fiscal year ending 2025 -- \$38,449,500;
- (11) For the fiscal year ending 2026 -- \$39,201,000;
- (12) For the fiscal year ending 2027 -- \$32,500,000.

(b) Beginning with the fiscal year ending September 30, 2017, for budgetary purposes and annual budget calculations, fifty-five percent (55%) of the appropriations made in this section shall be considered to be a portion of the funding received by colleges and universities, and the remainder shall be considered to be the same as appropriations made for debt service.

***(Act 2010-725, p. 1800, §3; Act 2012-198, p. 328, §1; Act 2015-538, 2nd Ex. Sess., §3.)***

**Section 16-33C-17**

**Charge of mandatory fees or tuition per credit hour.**

Repealed by Act 2012-198, §3, effective April 12, 2012.

*(Act 2010-725, p. 1800, §4.)*

### **Section 16-33C-18**

#### **Limits on increase in mandatory fees and tuition.**

On behalf of all current and future postsecondary students, the Legislature strongly encourages all public institutions of higher education to limit any annual percentage increases in mandatory fees and tuition to the average percentage amount such fees and tuition were annually increased over the previous 10-year period, to the extent such limitation is possible.

*(Act 2010-725, p. 1800, §11.)*

### **Section 16-33C-19**

#### **Changes to PACT rules, procedures, or policies.**

Repealed by Act 2012-198, §3, effective April 12, 2012.

*(Act 2010-725, p. 1800, §12.)*

### **Section 16-33C-20**

#### **Certification that appropriations no longer necessary.**

In the event that the PACT Program's Board of Directors receives an actuarial report certifying that any appropriation made in Section 16-33C-14, Section 16-33C-15, or Section 16-33C-16 is no longer necessary, the PACT Program's Board of Directors shall certify to the Legislature that no future appropriations are necessary.

*(Act 2010-725, p. 1800, §5; Act 2012-198, p. 328, §1.)*

### **Section 16-33C-21**

#### **Disposition of funds.**

Any funds in the PACT Trust Fund remaining after the payment of all of the obligations of the fund shall be transferred to the Education Trust Fund in the fiscal year immediately following the year in which the last obligations are met.



*(Act 2010-725, p. 1800, §6.)*

### **Section 16-33C-22**

#### **Dissolution of PACT Program.**

Once all benefits or obligations owed to the PACT contract holders have been paid, the PACT Program shall be dissolved and the provisions of this chapter shall be void.

*(Act 2010-725, p. 1800, §13.)*

### **Section 16-33C-23**

#### **Actuary deficits.**

The PACT Board is expressly authorized to negotiate, accept, and implement a legally binding resolution with PACT purchasers and beneficiaries to address any actuarial deficit in the PACT Trust Fund, which includes all powers granted elsewhere in this chapter and all other powers necessary or convenient under this section.

*(Act 2012-198, p. 328, §2.)*

### **Section 16-33C-24**

#### **ABLE Program generally.**

(a) The ABLE Program includes the ABLE Trust Fund, and may be marketed under a different name than ABLE. The ABLE Trust Fund is hereby created and comprised of separate ABLE Savings Accounts established pursuant to this chapter. The ABLE Trust Fund receives contributions to ABLE Savings Accounts. One or more persons may make contributions to an ABLE Savings Account.

(b) Available sources of funds, public or private, including any administrative fees received from ABLE contracting parties, shall be deposited in the State Treasury Operations Fund. All ABLE Program expenses, including operating, administrative and marketing, shall be paid from the State Treasury Operations Fund. For reporting purposes, ABLE Program expenses will be segregated by unit or such other accounting method as provided in the State's STAARS system, or similar system.

(c) Property and income of the ABLE Program and ABLE Trust Fund shall be exempt from all taxation by the state and by all of its political subdivisions.

(d) The Examiners of Public Accounts shall annually audit the ABLE Program.

**(Act 2015-442, §2.)**

**Section 16-33C-25**

**Administration of programs.**

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the ABLE Program and ACES Program, the Savings Board, and any person, investment manager or committee to whom the Savings Board delegates any of its investment authority, shall act as trustee and shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to permanent disposition of funds, considering the probable income as well as the safety of their capital.

(b) No Savings Board member nor any person, investment manager or committee to whom the Savings Board delegates any of its investment authority who acts within the standard of care set forth in subsection (a) shall be held personally liable for any losses, damages, or claims suffered by the ABLE Program or ACES Program on investments made pursuant to the chapter.

(c) The assets of the ABLE Program and the ACES Program shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the State for any other purpose. A savings agreement, or any other agreement entered into by or on behalf of the ABLE Program or the ACES Program, does not constitute a debt or obligation of the state. A contributor is solely entitled to amounts on deposit in or accrued to the respective savings account.

(d) To the extent necessary to administer the ABLE Program and ACES Program or to comply with federal, state, or local tax reporting requirements, the programs shall obtain all necessary social security numbers and such other data as the Savings Board deems necessary for such purposes, whether from a contributor or from another state agency.

**(Act 2015-442, §3.)**