

1 SB189
2 188969-3
3 By Senator Brewbaker
4 RFD: Education and Youth Affairs
5 First Read: 16-JAN-18

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8 SYNOPSIS: Under existing law, the Wallace-Folsom
9 Savings Investment Plan, administered by the State
10 Treasurer, consists of the ABLE Program, ACES
11 Program, and the PACT Program.

12 This bill would authorize a contribution to,
13 and continued investment in, an ACES Program or
14 ABLE Program savings account for a designated
15 beneficiary by the guardian or conservator of the
16 designated beneficiary.

17 This bill would also conform the applicable
18 code sections to the recent amendments to Section
19 529 of the Internal Revenue Service Code.

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21 A BILL
22 TO BE ENTITLED
23 AN ACT

24
25 Relating to the Wallace-Folsom Savings Investment
26 Plan; to amend Sections 16-33C-1, 16-33C-3, 16-33C-10, and
27 16-33C-25, Code of Alabama 1975, to authorize certain

1 contributions to, and investments in, ACES Program or ABLE
2 Program savings accounts; and to conform the applicable code
3 sections to the recent amendments to Section 529 of the
4 Internal Revenue Service Code.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 16-33C-1, 16-33C-3, 16-33C-10,
7 and 16-33C-25, Code of Alabama 1975, are amended to read as
8 follows:

9 "§16-33C-1.

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

24 "§16-33C-3.

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

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

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

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

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

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

1 Internal Revenue Code of 1986, as amended, or other applicable
2 law.

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

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

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

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

22 "(10) LEGISLATURE. The Legislature of Alabama.

23 "(11) PACT ADMINISTRATIVE FUND. The PACT
24 Administrative Fund created in subsection (c) of Section
25 16-33C-6.

26 "(12) PACT BOARD. The board of directors and
27 trustees of the PACT Trust Fund.

1 "(13) PACT CONTRACT. A contract entered into by the
2 board and a participant in the PACT Program.

3 "(14) PACT PROGRAM. The Alabama Prepaid Affordable
4 College Tuition Program created in subsection (a) of Section
5 16-33C-6.

6 "(15) PACT TRUST FUND. The fiduciary trust fund
7 created in subsection (b) of Section 16-33C-6.

8 "(16) PLAN. The Wallace-Folsom Savings Investment
9 Plan established pursuant to this chapter that consists of the
10 PACT Program, the ACES Program, and the ABLE Program.

11 "(17) PURCHASER. A person who is obligated to make
12 contract payments in accordance with a PACT contract entered
13 into pursuant to this chapter.

14 "(18) SAVINGS AGREEMENT. An agreement entered into
15 between the Savings Board and a contributor establishing an
16 ACES or ABLE savings account.

17 "(19) SAVINGS BOARD. The Board of Directors of the
18 ABLE Program and ACES Program, and trustees of the ABLE Trust
19 Fund and ACES Trust Fund.

20 "(20) STATE TREASURER. The State Treasurer of
21 Alabama.

22 "§16-33C-10.

23 "(a) The ACES Program is established as one ~~college~~
24 educational savings alternative under the plan whereby
25 contributors open ACES savings accounts according to savings
26 agreements for the payment of qualified higher education ~~costs~~
27 expenses for a designated beneficiary ~~at eligible educational~~

1 ~~institutions, as such terms as are~~ defined in Section 529 of
2 the Internal Revenue Code of 1986, as amended, or other
3 applicable federal law. The ACES Program includes the ACES
4 Trust Fund, the ACES Administrative Fund, and the ACES
5 Opportunity Enhancement Fund created pursuant to this chapter.
6 The ACES Program may be marketed under a different name than
7 ACES.

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

18 "(c) The ACES Administrative Fund is hereby created
19 as a separate fund within the State Treasurer's office for the
20 purpose of administering the ACES Program. The ACES
21 Administrative Fund shall accept, deposit, and disburse funds
22 for the purpose of administering the ACES Program. All funds
23 in the ACES Administrative Fund are hereby irrevocably pledged
24 to the payment of the administrative costs of the ACES
25 Program. Funds in the ACES Administrative Fund may be invested
26 by the State Treasurer in any investment facility allowed by
27 this chapter. Any interest and earnings from the investment of

1 funds in the ACES Administrative Fund shall be deposited to,
2 and become a part of, the ACES Administrative Fund for use as
3 authorized by this chapter. All funds in the ACES
4 Administrative Fund at the end of each fiscal year of the
5 State of Alabama shall remain in that administrative fund and
6 be automatically carried forward and available to be
7 appropriated by the Alabama Legislature for the administration
8 of the ACES Program.

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

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

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

1 "§16-33C-25.

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

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

20 "(c) The assets of the ABLE Program and the ACES
21 Program shall be preserved, invested, and expended solely
22 pursuant to and for the purposes of this chapter and shall not
23 be loaned or otherwise transferred or used by the State for
24 any other purpose. A savings agreement, or any other agreement
25 entered into by or on behalf of the ABLE Program or the ACES
26 Program, does not constitute a debt or obligation of the

1 state. A contributor is solely entitled to amounts on deposit
2 in or accrued to the respective savings account.

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

9 "(e) Notwithstanding any other law to the contrary,
10 a contribution to, and continued investment in, an ACES
11 savings account under the ACES Program and a contribution to,
12 and continued investment in, an ABLE savings account under the
13 ABLE Program for a designated beneficiary by the guardian or
14 conservator of that designated beneficiary are permitted for
15 all purposes under state law."

16 Section 2. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.