

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. It is therefore the legislative intent of this chapter to establish the Wallace-Folsom College Savings Investment Plan that consists of two alternatives to assist individuals in paying costs and expenses of attending colleges and universities and thereby encourage students to attend colleges and universities. In establishing this plan, it is further the intent of the Legislature to encourage timely financial planning for higher education.

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

Section 16-33C-2

Short title.

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

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

Section 16-33C-2.1

Creation and administration of plan.

There is hereby created the Wallace-Folsom College Savings Investment Plan (plan) as an agency and instrumentality of the State of Alabama. The plan consists of the PACT Program and the ACES 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 board. 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.)

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

- (2) ACES PROGRAM. The Alabama College Education Savings Program created under subsection (a) of Section 16-33C-10.
- (3) ACES TRUST FUND. The fiduciary trust fund created in Section 16-33C-10.
- (4) ADMINISTRATIVE COST. Any expense of administering the PACT or ACES Programs, including, but not limited to, the costs associated with administering the programs throughout the State Treasurer's office, and any records administration expense.
- (5) ADMINISTRATIVE FEE. Any fee or penalty required by the board to be paid by a participant in the plan.
- (6) BOARD. The board of directors of the plan and trustees of the PACT and ACES Trust Funds.
- (7) CONTRACT PAYMENT. Any amount paid to the PACT Trust Fund toward the purchase of a PACT contract.
- (8) CONTRIBUTION. Any amount paid to the ACES Trust Fund for deposit into an ACES savings account.
- (9) CONTRIBUTOR. Any person who contributes money to an ACES Program savings account on behalf of a designated beneficiary and who is listed as the owner of the savings account.
- (10) DESIGNATED BENEFICIARY. The person designated at the time the PACT contract is entered into or ACES savings account opened as the person who benefits from payments of qualified higher education costs at eligible educational institutions, or that person's replacement.
- (11) ELIGIBLE EDUCATIONAL INSTITUTION. An institution defined in Section 529 of the Internal Revenue Code of 1986, as amended, and in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1988) which is eligible to participate in a program under Title IV of the act.
- (12) INVESTMENT COST. Any expense of the PACT or ACES Trust Funds, including, but not limited to, investment manager fees, actuary fees, custodial fees, brokerage commissions, and transactional costs.
- (13) LEGISLATURE. The Legislature of Alabama.
- (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) PACT ADMINISTRATIVE FUND. The PACT Administrative Fund created in subsection (c) of Section 16-33C-6.

(17) PACT CONTRACT. A contract entered into by the board and a participant in the PACT Program.

(18) PLAN. The Wallace-Folsom College Savings Investment Plan created under Section 16-33C-2.1 that consists of the PACT Program and the ACES Program.

(19) PURCHASER. A person who is obligated to make contract payments in accordance with a PACT contract entered into pursuant to this chapter.

(20) QUALIFIED HIGHER EDUCATION COST. Any higher education expense permitted under Section 529 of the Internal Revenue Code of 1986, as amended, and required for the enrollment or attendance of a designated beneficiary at an eligible educational institution. These expenses include tuition, fees, books, supplies, equipment, and, subject to certain limits, room and board.

(21) SAVINGS ACCOUNT. An individual ACES Trust Fund account established by a contributor pursuant to this chapter on behalf of a designated beneficiary in order to apply distributions from the account toward qualified higher education costs at eligible educational institutions.

(22) SAVINGS AGREEMENT. An agreement entered into between the board and a contributor establishing a savings account.

(23) 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.)

Section 16-33C-4

Composition of board.

(a) The board shall consist of 10 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 Department of Postsecondary Education, 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.

(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 board shall be appointed in a like manner and shall serve for only the unexpired term.

(c) Each person so appointed shall possess knowledge, skill, and experience in business or financial matters commensurate with the duties and responsibilities of the plan. No person holding a full-time office or position of employment with the state, any county or municipality in the state, any educational institution, or any instrumentality, agency, or subdivision of the foregoing, shall be eligible for appointment to the board.

(d) Members of the 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 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 board shall constitute a quorum for the transaction of the business of the plan.

(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, §1.)

Section 16-33C-5

Powers of board.

In addition to the powers granted by any other provision of this chapter, the 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 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 it deems appropriate any funds in the PACT Trust Fund and ACES Trust Fund 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 execute contracts and other necessary instruments.

(5) To contract with a purchaser under the PACT Program.

(6) To enter into savings agreements under the ACES Program.

(7) To contract 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, including the PACT Trust Fund and ACES Trust Fund, under terms and conditions that the board deems reasonable and appropriate. All such contracts awarded by the board may be for periods not exceeding five years, except that professional services contracts awarded by the board for the ACES Program may be for periods not exceeding ten years.

(8) To solicit and accept gifts, including bequeathments or other testamentary gifts made by will, trust or other disposition, grants, loans, and other aids from any personal source for deposit into the PACT or ACES Trust Fund as designated by the donor, or if no such designation is made, into either as determined by the board, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this chapter.

(9) To define the terms and conditions of and enter into PACT contracts and ACES 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, nor the 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.)

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 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 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 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 board and any person or investment manager to whom the 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 board member, or any person or investment manager to whom the 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.

(e) The 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 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.)

Section 16-33C-7

PACT contract.

(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 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 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 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.)

Section 16-33C-8

Additional PACT duties of board.

In addition to any other requirements of this chapter, the 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 accounting of the PACT 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 PACT contracts.

(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.)

Section 16-33C-9

Dissolution of PACT Program.

In the event of dissolution of the PACT Program by the Alabama Legislature, any balances which remain in the PACT Trust Fund and in the PACT Administrative Fund after all costs and liabilities of the PACT Program have been paid, shall be transferred to the control of the Alabama Commission on Higher Education or its successor for use in the establishment of a higher education scholarship program to be administered at the commission's discretion pursuant to its statutes.

(Act 2001-427, p. 544, §2.)