CHAPTER 5

State Treasurer

ARTICLE 1

General Provisions

Editor's Note

2016 Act No. 165, Section 3, added this article with the instruction to include Sections 11‑5‑10 through 11‑5‑280 to the new article.

**SECTION 11‑5‑10.** Salary and personnel.

The State Treasurer shall receive such annual salary as may be provided by the General Assembly. He may employ such personnel as may be authorized by law.

HISTORY: 1962 Code Section 1‑841; 1952 Code Section 1‑841; 1942 Code Section 3159; 1932 Code Section 3159; Civ. C. '22 Section 854; Civ. C. '12 Section 770; Civ. C. '02 Section 696; G. S. 555; R. S. 613; 1879 (17) 128; 1893 (21) 416; 1919 (31) 4; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566; 1958 (50) 1721; 1969 (56) 444; 1973 (58) 623.

Editor's Note

1991 Act No. 50, Section 7, effective July 1, 1991, provides as follows:

"Except where inappropriate, a reference in a law, regulation, or other document to Chapters 1 and 3 of Title 12 of the 1976 Code, is considered a reference to the appropriate provisions of Chapters 2 and 4 of Title 12, Chapter 5 of Title 11, and Section 12‑54‑227, all of the 1976 Code."

**SECTION 11‑5‑20.** Bond.

The Treasurer shall, before entering on the duties of his office, give bond with two or more good and sufficient sureties approved by the Governor, with a condition for the faithful discharge of his duties and in the penal sum of ninety thousand dollars.

HISTORY: 1962 Code Section 1‑842; 1952 Code Section 1‑842; 1942 Code Section 3160; 1932 Code Section 3160; Civ. C. '22 Section 855; Civ. C. '12 Section 771; Civ. C. '02 Section 697; G. S. 556; R. S. 614; 1865 (13) 350.

**SECTION 11‑5‑50.** Duties as to defaulting county treasurers; warrants for arrest.

Any county treasurer who shall neglect to pay over to the Treasurer the amount in his hands belonging to the State or for which he has made himself liable, as required by law, shall be liable to be committed to jail by warrant from the Treasurer. Any such warrant shall be directed to all the sheriffs of the State, who shall be bound in their several counties to yield strict obedience to it, under penalty of liability for neglect of duty. Any such county treasurer shall remain in strict custody until he shall have rendered a full account and paid over the taxes for which he is accountable.

HISTORY: 1962 Code Section 1‑845; 1952 Code Section 1‑845; 1942 Code Section 3168; 1932 Code Section 3168; Civ. C. '22 Section 863; Civ. C. '12 Section 781; Civ. C. '02 Section 707; G. S. 564; R. S. 623; 1788 (5) 54.

**SECTION 11‑5‑60.** County treasurer to be charged interest for refusal or neglecting to pay taxes.

If any treasurer shall refuse or neglect to pay the taxes received by him within the time required by law, the State Treasurer shall, in addition to the coercive power which he now possesses, charge the county treasurer with interest, at the rate of five per cent per month, from the time he ought to have paid the taxes to the time of payment.

HISTORY: 1962 Code Section 1‑846; 1952 Code Section 1‑846; 1942 Code Section 3169; 1932 Code Section 3169; Civ. C. '22 Section 864; Civ. C. '12 Section 782; Civ. C. '02 Section 708; G. S. 565; R. S. 624; 1843 (11) 247.

**SECTION 11‑5‑70.** Report of names of defaulting county treasurers.

The Treasurer shall report to the General Assembly, at its annual session, every instance of default in the county treasurers and state particularly the means which he has made use of against such defaulters, so that the General Assembly may be fully informed of any omission of duty, wheresoever and by whomsoever, in the punctual and due collection of taxes.

HISTORY: 1962 Code Section 1‑847; 1952 Code Section 1‑847; 1942 Code Section 3170; 1932 Code Section 3170; Civ. C. '22 Section 865; Civ. C. '12 Section 783; Civ. C. '02 Section 709; G. S. 566; R. S. 625; 1824 (6) 259.

**SECTION 11‑5‑80.** Proceedings against defaulting treasurers.

The Treasurer shall instruct the Attorney General and solicitors to proceed against all such defaulters, as soon as such defaults occur. And he shall enforce all legal means against defaulting county treasurers; in failure whereof, he shall be held to make good any loss which the State may sustain thereby and be, moreover, liable to be deemed guilty of a violation of his official duty.

HISTORY: 1962 Code Section 1‑848; 1952 Code Section 1‑848; 1942 Code Section 3170; 1932 Code Section 3170; Civ. C. '22 Section 865; Civ. C. '12 Section 783; Civ. C. '02 Section 709; G. S. 566; R. S. 625; 1824 (6) 259.

**SECTION 11‑5‑90.** Remitting funds from United States property in Clarks Hill project area to counties.

The Treasurer shall remit all funds received by him from the United States Government, or any agency thereof, when such funds are derived from the sale or lease of any property belonging to the United States Government and located in the Clarks Hill project area, to the treasurer of the county in which the transaction arose. Any funds received by the county treasurer shall be placed in the general county fund.

HISTORY: 1962 Code Section 1‑849; 1952 (47) 2169.

**SECTION 11‑5‑100.** Account in books for appropriations.

The Treasurer shall raise an account in the Treasury books in every instance for the several appropriations made by the General Assembly, so that the appropriations of money and application thereof conformably thereto may appear clearly and distinctly on the Treasury books.

HISTORY: 1962 Code Section 1‑851; 1952 Code Section 1‑851; 1942 Code Section 3173; 1932 Code Section 3173; Civ. C. '22 Section 868; Civ. C. '12 Section 786; Civ. C. '02 Section 712; G. S. 570; R. S. 628; 1803 (5) 458.

**SECTION 11‑5‑120.** Publication of quarterly statements.

The State Treasurer shall publish, quarterly, by electronic means and in a manner that allows for public review, a statement showing the amount of money on hand and in what financial institution it is deposited and the respective funds to which it belongs.

HISTORY: 1962 Code Section 1‑855; 1952 Code Section 1‑855; 1942 Code Section 3181; 1932 Code Section 3181; Civ. C. '22 Section 876; Civ. C. '12 Section 794; 1903 (24) 21; 2008 Act No. 353, Section 2, Part 29B.1.

**SECTION 11‑5‑130.** Payment of appropriations to state institutions.

The appropriation made for a state institution shall be paid to the treasurer of the institution, who shall be a bonded officer. The bond shall be approved by the Attorney General as to its form and execution and by the Governor as to its sufficiency and shall be filed with the State Treasurer. The treasurer of the institution shall draw his receipt warrant upon the Comptroller General for the amount as needed. Such receipt warrant shall be countersigned by the president or superintendent of the institution and have attached thereto an itemized sworn statement showing the purposes in detail for which the money to be drawn is to be used. All money shall be drawn only when actually owing and due.

Upon the receipt by the Comptroller General of the receipt warrant, signed and countersigned and with the statement attached as above provided, the Comptroller General shall issue his warrant on the State Treasurer in favor of the treasurer of the institution for the amount drawn, and the State Treasurer shall pay the warrant, the amount thereof to be charged to the appropriation account of such institution by the Comptroller General and the State Treasurer.

HISTORY: 1962 Code Section 1‑856; 1952 Code Section 1‑856; 1942 Code Section 3186; 1932 Code Section 3186; Civ. C. '22 Section 880; Civ. C. '12 Section 801; Civ. C. '02 Section 724; 1900 (23) 356; 1972 (57) 2149.

**SECTION 11‑5‑140.** Payment of appropriations to meet ordinary expenses.

The several amounts appropriated from year to year to meet the ordinary expenses of the State shall be paid by the Treasurer out of the usual income of the State and any unexpended balance in his hands not otherwise appropriated, in the manner prescribed by Section 11‑3‑130, and conformably with the terms of Sections 11‑5‑150 and 11‑5‑160.

HISTORY: 1962 Code Section 1‑857; 1952 Code Section 1‑857; 1942 Code Section 3189; 1932 Code Section 3189; Civ. C. '22 Section 885; Civ. C. '12 Section 805; 1909 (26) 280.

**SECTION 11‑5‑150.** Monies appropriated for erection of state college buildings.

All monies appropriated to provide buildings for any of the state colleges shall remain in the State Treasury until they shall be needed for the actual erection of the respective buildings for which the appropriations are made.

HISTORY: 1962 Code Section 1‑859; 1952 Code Section 1‑859; 1942 Code Section 3201; 1932 Code Section 3201; Civ. C. '22 Section 898; Civ. C. '12 Section 818; 1909 (26) 282.

**SECTION 11‑5‑160.** Payment of appropriations when no direction is given.

When no direction is given herein as to the manner in which a specific appropriation shall be paid, it shall be paid under the direction of the Governor and the Attorney General in such manner as will safeguard the interests of the State.

HISTORY: 1962 Code Section 1‑861; 1952 Code Section 1‑861; 1942 Code Section 3210; 1932 Code Section 3210; Civ. C. '22 Section 907; Civ. C. '12 Section 832; 1909 (26) 286.

**SECTION 11‑5‑170.** State Treasurer to send daily reports to Comptroller General.

The State Treasurer shall, at the close of business on each day, send to the Comptroller General a report of all monies paid out by him, to whom paid and on what account, except that paid upon warrants of the Comptroller General.

HISTORY: 1962 Code Section 1‑862; 1952 Code Section 1‑862; 1942 Code Section 3176; 1932 Code Section 3176; Civ. C. '22 Section 871; Civ. C. '12 Section 789; Civ. C. '02 Section 715; G. S. 572a; R. S. 631; 1889 (20) 366.

**SECTION 11‑5‑175.** State Treasurer, quarterly report to departments and agencies receiving monies pursuant to Sections 14‑1‑205, 14‑1‑206, 14‑1‑207, and 14‑1‑208.

The State Treasurer shall report quarterly to the departments or agencies receiving monies from fines or assessments the amount received from the county treasurers and city treasurers for fines and assessments received pursuant to Sections 14‑1‑205, 14‑1‑206, 14‑1‑207, and 14‑1‑208. The State Treasurer also must include in this report the amount of money credited by the State Treasurer to the department or agency. A copy of the State Treasurer's report must be made available to the chief administrator of a county and municipality upon request.

HISTORY: 1994 Act No. 497, Part II, Section 36F.

**SECTION 11‑5‑180.** Monthly reports to Comptroller General of cash transactions.

The State Treasurer shall, at the end of every month, report to the Comptroller General an accurate statement of the cash transactions of the Treasury, of every description, stating therein every sum of money received or paid away in behalf of the State, particularizing the person and his office of whom received and to whom paid, as also on what account received and for what purpose paid.

He shall, at all times, when required by the Comptroller General, produce to him satisfactory statements of the cash in hand and furnish him promptly with the official information, duly certified, relative to any matter connected with the revenue and finance of the State.

HISTORY: 1962 Code Section 1‑863; 1952 Code Section 1‑863; 1942 Code Section 3167; 1932 Code Section 3167; Civ. C. '22 Section 862; Civ. C. '12 Section 779; Civ. C. '02 Section 705; G. S. 562; R. S. 622; 1801 (5) 409; 1803 (5) 458.

**SECTION 11‑5‑185.** Treasurer's annual report to the General Assembly.

In addition to other reports required by law to be made, by the State Treasurer, he shall also report annually to the General Assembly in the month of January on the following matters:

(1) The amount of state revenue collected in the previous fiscal year.

(2) The amount of such revenue deposited in the state general fund.

(3) The location of general fund revenue in banks and other financial institutions including invested funds, as of the end of the previous fiscal year.

(4) The interest accrued from deposits and investments for the previous fiscal year and the use of such interest.

(5) The amount expended for debt service in the previous fiscal year.

(6) The current status of the general fund reserve including any expenditure or reimbursement thereof.

(7) Any other information relating to state revenue which the Treasurer deems pertinent and of value to the General Assembly, including such items as special state funds, the highway fund and other funds not specified herein, as may be deemed appropriate by the Treasurer.

The General Assembly shall provide in the annual general appropriations act for the cost of preparing this report.

HISTORY: 1980 Act No. 517, Part II, Section 27.

**SECTION 11‑5‑190.** Fund for insurance and postage on securities in transit.

The State Treasurer may set up from any funds now in his office the sum of twenty‑five dollars, which shall be used as a perpetual fund for the purpose of paying postage and insurance on securities in transit. All payments from this fund shall be reimbursed as the postage and insurance are collected from the bank or banks to whom the securities are sent.

HISTORY: 1962 Code Section 1‑864; 1952 Code Section 1‑864; 1942 Code Section 3212; 1932 (37) 1310.

**SECTION 11‑5‑200.** Payroll payments by Electronic Funds Transfer System.

The State Treasurer may make periodic payroll payments by Electronic Funds Transfer Systems when requested by the payee.

HISTORY: 1978 Act No. 644, Part II, Section 12.

**SECTION 11‑5‑210.** Licensing fees and other income of Professional and Occupational Licensing Agencies.

(A) Except for the provisions of Sections 27‑32‑200, et seq., relating to the Vacation Time Sharing Recovery Fund, all revenues and income from licenses, examination fees, sale of commodities and services, and income derived from any other board or commission source or activity of the following boards and commissions for which General Fund appropriations are made in all general appropriations acts must be remitted to the State Treasurer as collected when practicable, but at least once each week and must be credited to the General Fund of the State:

South Carolina Board of Accountancy

State Board of Architectural Examiners

South Carolina Auctioneers' Commission

State Board of Barber Examiners

State Cemetery Board

South Carolina Board of Chiropractic Examiners

State Licensing Board for Contractors

State Board of Cosmetology

South Carolina State Board of Dentistry

State Board of Registration for Professional Engineers and Land Surveyors

South Carolina Board of Certification of Environmental Systems Operators

State Board of Registration for Foresters

South Carolina State Board of Funeral Services

State Board of Registration for Geologists

State Board of Landscape Architectural Examiners

State Board of Medical Examiners

State Board of Nursing for South Carolina

State Board of Examiners for Nursing Home Administrators and Community

Residential Care Facility Administrators

South Carolina Board of Occupational Therapy

South Carolina Board of Examiners in Opticianry

South Carolina Board of Examiners in Optometry

Board of Pharmacy

State Board of Physical Therapy Examiners

Board of Podiatry Examiners

State Board of Examiners for Professional Counselors, Associate Counselors, and Marital and Family Therapists

State Board of Examiners in Psychology

Real Estate Commission of South Carolina

South Carolina Residential Home Builders Commission

South Carolina State Board of Examiners for Registered Sanitarians

State Board of Social Work Examiners

State Board of Registration for Professional Soil Classifiers

State Board of Examiners in Speech Pathology and Audiology

South Carolina State Board of Veterinary Medical Examiners.

(B) The agencies listed in this section whose revenue and income are collected on a two‑year basis, for the purposes of this provision, may average their income for the appropriate fiscal years.

(C) All assessments, fees, and licenses must be levied in an amount sufficient to at least equal the amount appropriated annually in the general appropriations act for those boards and commissions.

(D) The boards and commissions listed in subsection (A) are known as Professional and Occupational Licensing Agencies (POLA).

HISTORY: 1981 Act No. 178, Part II, Section 3; 1984 Act No. 512, Part II, Section 5; 1990 Act No. 494, Section 1; 1991 Act No. 171, Part II, Section 13; 1993 Act No. 164, Part II, Section 6D(1); 1993 Act No. 181, Section 1617(F).

Editor's Note

1992 Act No. 535, Section 1 , eff May 4, 1992, provides as follows:

"SECTION 1. Professional and Licensing Agencies (POLA's) as specified in Section 11‑5‑210 of the 1976 Code may establish special comptroller general accounts for crediting testing fees received in excess of amounts appropriated to these agencies before July 1, 1992, for test expenses. Funds credited to these accounts may be used only to pay test expenses. Any account balance at the close of the fiscal year must be remitted to the general fund of the State. These accounts must be designated 'earmarked other fund accounts' and funds credited to these accounts must be expended according to the JARC process. These accounts may not be used to defer revenue."

**SECTION 11‑5‑220.** Report required after sale of bonds or notes.

The State Treasurer shall report to the Joint Bond Review Committee, the House Ways and Means Committee, and the Senate Finance Committee immediately after selling any General Obligation Bonds or Anticipation Notes. This report shall include the total amount of the issue, the interest rate charged (specified by year if the rate is not the same each year), the time contracted to pay the debt service, and the principal payment schedule.

HISTORY: 1981 Act No. 179 Section 2.

**SECTION 11‑5‑230.** Account for provision of matching disaster assistance funds as required by federal agencies.

There is established in the Office of the State Treasurer a continuing account to be used to match disaster assistance funds when required by the federal entity providing the funds. The fund must be established and maintained with appropriations as the General Assembly may authorize in the annual General Appropriations Act and as otherwise provided herein and shall continue from year to year. The State Treasurer shall hold the funds in a separate and distinct account and all interest and other income accruing on the funds must be retained in the account. The funds in the continuing account may be disbursed only upon the authorization of the Governor.

In a Presidentially declared disaster it is the intent of the General Assembly that the Governor's recourse is to funds approved by the General Assembly into the Disaster Trust Fund. If the Governor finds that the demand upon this fund is unreasonably great and insufficient to meet immediate disaster needs (and the General Assembly is not in session), he may request through the State Fiscal Accountability Authority a transfer into the Disaster Trust Fund monies appropriated for other purposes and in amounts not to exceed five million dollars in any fiscal year of the State.

HISTORY: 1984 Act No. 512, Part II, Section 31; 1985 Act No. 110, Sections 1, 2.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 11‑5‑240.** Data to be furnished to rating services.

In order to maintain the high credit rating of the State, the State Treasurer shall furnish the rating services, from time to time, such reports and data as may be required and he considers appropriate.

HISTORY: 1984 Act No. 512, Part II, Section 40, became law on June 28, 1984.

**SECTION 11‑5‑245.** State Treasurer reports to boards of trustees of institutions of higher learning.

The State Treasurer shall report no less than quarterly to the respective boards of trustees of the institutions of higher learning the status of all funds invested pursuant to Section 11‑9‑665 on behalf of each institution. At a minimum the report must contain such information as to allow the trustee to comply on a timely basis with Section 59‑153‑90.

HISTORY: 1999 Act No. 122, Section 3.

**SECTION 11‑5‑250.** Office of State Treasurer to be considered limited trust company in connection with banking activities with Federal Reserve Board.

The office of the State Treasurer is a limited trust company in connection with banking activities with the Federal Reserve Board and meets the requirements and responsibilities of a limited trust company as defined by the Federal Reserve Board.

HISTORY: 1986 Act No. 372.

**SECTION 11‑5‑260.** Check for payment of claim not presented for payment within two years; reissuance upon proof of nonpayment.

If a check issued by the Treasurer for the payment of a claim is not presented for payment within two years from the date of the check, the amount of the check must be credited back into the State Treasury and the check written off the books of the Treasurer. However, a check may be reissued upon satisfactory proof of nonpayment.

HISTORY: 1994 Act No. 497, Section 62A.

**SECTION 11‑5‑270.** Investment of endowment funds of institutions of higher learning by State Treasurer.

(A) With respect to endowment funds owned or controlled by the various state‑supported institutions of higher learning, the State Treasurer shall invest these funds in accordance with investment plans submitted to the State Treasurer as approved by the boards of trustees of the institutions, pursuant to Title 59, Chapter 153.

(B) The State Treasurer is authorized, in carrying out the investment plans approved by the trustees, to invest in such equity funds as authorized by the investment plan and Article 7, Chapter 9, Title 11.

HISTORY: 1999 Act No. 122, Section 3B.

**SECTION 11‑5‑280.** Acceptance of credit cards by state agencies.

The State Treasurer may enter into contracts allowing a state agency or institution to accept credit cards as payment for goods or services provided.

HISTORY: 2002 Act No. 356, Section 1, Part XI.B.

ARTICLE 3

ABLE Savings Program

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑400.** South Carolina ABLE Savings Program created.

There is established the "South Carolina ABLE Savings Program". The purpose of the South Carolina ABLE Savings Program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds which can be used to provide for disability‑related expenses in a way that supplements, but does not supplant, benefits provided through private insurance, the Medicaid program under Title XIX of the Social Security Act, the supplemental security income program under Title XVI of the Social Security Act, the beneficiary's employment, and other sources; and to provide guidelines for the maintenance of these accounts.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑410.** Definitions.

As used in this article:

(1) "ABLE savings account" or "account" means an individual savings account established in accordance with the provisions of this article and pursuant to Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) "Account owner" means the person who enters into an ABLE savings agreement pursuant to the provisions of this article. The account owner also must be the designated beneficiary; however, a trustee, guardian, or conservator may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement. Also, the agent of the designated beneficiary acting under durable power of attorney may open and manage an account on behalf of and in the name of a designated beneficiary who lacks capacity.

(3) "Designated beneficiary" means an eligible individual whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary so long as the new beneficiary is an eligible individual who is a qualified member of the family of the designated beneficiary at the time of the change.

(4) "Eligible individual", as defined in Section 529A(e)(1) of the federal Internal Revenue Code of 1986, as amended, means:

(a) an individual who is entitled to benefits based on blindness or disability pursuant to 42 U.S.C. Section 401, et seq. or 42 U.S.C. Section 1381, as amended, and the blindness or disability occurred before the date on which the individual attained age twenty‑six; or

(b) an individual with respect to which a disability certification, as defined in Section 529A(e)(2) of the federal Internal Revenue Code of 1986, as amended, to the satisfaction of the Secretary of the United States Treasury is filed with the Secretary for a taxable year and the blindness or disability occurred before the date on which the individual attained age twenty‑six.

(5) "Financial organization" means an organization authorized to do business in this State and is:

(a) licensed or chartered by the Director of Insurance;

(b) licensed or chartered by the State Commissioner of Banking;

(c) chartered by an agency of the federal government; or

(d) subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

(6) "Management contract" means a contract executed by the State Treasurer and a program manager selected to act as a depository or manager of the program, or both.

(7) "Member of the family" has the meaning defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(8) "Nonqualified withdrawal" means a withdrawal from an account which is not:

(a) a qualified withdrawal; or

(b) a rollover distribution.

(9) "Program" means the South Carolina ABLE Savings Program established pursuant to this article.

(10) "Program manager" means a financial organization or an agency or department of another state that has been designated to administer a qualified ABLE Savings Program selected by the State Treasurer to act as a depository or manager of the program, or both.

(11) "Qualified disability expense" means any qualified disability expense included in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(13) "Rollover distribution" means a rollover distribution as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(14) "Savings agreement" means an agreement between the program manager or the State Treasurer and the account owner.

(15) "Secretary" means the Secretary of the United States Treasury.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑420.** Administration of program.

(A) The State Treasurer shall implement and administer the program under the terms and conditions established by this article. The State Treasurer has the authority and responsibility to:

(1) develop and implement the program in a manner consistent with the provisions of this article;

(2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(3) seek rulings and other guidance from the Secretary and the federal Internal Revenue Service relating to the program;

(4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by Section 529A of the federal Internal Revenue Code of 1986, as amended;

(5) charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program;

(6) develop marketing plans and promotional materials;

(7) establish the methods by which the funds held in accounts must be dispersed;

(8) establish the method by which funds must be allocated to pay for administrative costs;

(9) do all things necessary and proper to carry out the purposes of this article;

(10) adopt rules and promulgate regulations necessary to effectuate the provisions of this article;

(11) prepare an annual report of the ABLE Savings Program to the Governor, the Senate, and the House of Representatives; and

(12) notify the Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(B) The State Treasurer may contract with other states in developing the program.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑430.** Program managers; management contracts; exchange of data authorized.

(A) The State Treasurer may implement the program through use of program managers as account depositories or managers, or both. The State Treasurer may solicit proposals from program managers to act as depositories or managers of the program, or both. Program managers submitting proposals shall describe the investment instruments to be held in accounts. The State Treasurer may select more than one program manager and investment instrument for the program. The State Treasurer may select as program depositories or managers the program managers, from among the bidding program managers, that demonstrate the most advantageous combination, both to potential program participants and this State, of the following factors:

(1) financial stability and integrity of the program manager;

(2) the safety of the investment instrument being offered;

(3) the ability of the program manager to satisfy recordkeeping and reporting requirements;

(4) the program manager's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) the fees, if any, proposed to be charged to the account owners;

(6) the minimum initial deposit and minimum contributions that the financial organization requires;

(7) the ability of the program manager to accept electronic withdrawals, including payroll deduction plans; and

(8) other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses of the operation of the program.

(B) The State Treasurer may enter into contracts with program managers necessary to effectuate the provisions of this article. A management contract must include, at a minimum, terms requiring the program managers to:

(1) take action required to keep the program in compliance with requirements of this article and take actions not contrary to its contract to manage the program to qualify as a "qualified ABLE Savings Program" as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended;

(2) keep adequate records of each account, keep each account segregated, and provide the State Treasurer with the information necessary to prepare the statements required by Section 11‑5‑440;

(3) compile and total information contained in statements required to be prepared under Section 11‑5‑440 and provide compilations to the State Treasurer;

(4) if there is more than one program manager, provide the State Treasurer with information as is necessary to determine compliance with Section 11‑5‑440;

(5) provide the State Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article, and Section 529A of the federal Internal Revenue Code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner, owners, or the designated beneficiary;

(7) be audited at least annually by a firm of certified public accountants selected by the program manager, with the approval of the State Treasurer, and provide the results of the audit to the State Treasurer;

(8) provide the State Treasurer with copies of all regulatory filings and reports made by the program manager during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports that are not part of the program. The program manager shall make available for review by the State Treasurer the results of the periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that a report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(C) The State Treasurer may:

(1) enter into contracts as he considers necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the State Treasurer has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository and manager; and

(3) terminate or not renew a management agreement. If the State Treasurer terminates or does not renew a management agreement, the State Treasurer shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(D) The State Treasurer, the Department of Social Services, the Department of Health and Human Services, and the Department of Disability and Special Needs are authorized to exchange data regarding eligible individuals to carry out the purposes of this article.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑440.** Opening of account by designated beneficiary; contributions; account owner powers; distributions; accounting; tax exemption.

(A) An ABLE savings account established pursuant to the provisions of this article must be opened by a designated beneficiary, a designated beneficiary's agent under a durable power of attorney, a trustee holding funds for the benefit of a designated beneficiary, or a court‑appointed guardian or conservator of a designated beneficiary. Each designated beneficiary may have only one account. The State Treasurer may establish a nonrefundable application fee. An application for an account must be in the form prescribed by the State Treasurer and contain the following:

(1) name, address, and social security number of the account owner;

(2) name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the State Treasurer may require.

(B) A person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by Section 529A of the federal Internal Revenue Code of 1986, as amended, or any adopted rules and regulations promulgated by the State Treasurer pursuant to this article.

(C) Contributions to an ABLE savings account may be made only in cash. The State Treasurer or program manager shall reject or withdraw contributions promptly:

(1) in excess of the limits established pursuant to subsection (B); or

(2) the total contributions if the:

(a) value of the account is equal to or greater than the account maximum established by the State Treasurer. The account maximum must be equal to the account maximum for post‑secondary education savings accounts; or

(b) designated beneficiary is not an eligible individual in the current calendar year.

(D)(1) An account owner may:

(a) change the designated beneficiary of an account to an individual who is a qualified member of the family of the prior designated beneficiary in accordance with procedures established by the State Treasurer; and

(b) transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) An account owner may not use an interest in an account as security for a loan. A pledge of an interest in an account is of no effect.

(E)(1) If there is any distribution from an account to an individual or for the benefit of an individual during a calendar year, the distribution must be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary, or the distributee to the extent required by state or federal law.

(2) A statement must be provided to each account owner annually and at other increments established by the State Treasurer in the program guidelines. The statement must contain the information the State Treasurer requires to be reported to the account owner.

(3) A statement and information relating to an account must be prepared and filed to the extent required by this article and other state or federal law.

(F)(1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Funds held in an ABLE savings account:

(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary;

(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid; and

(c) following the death of a designated beneficiary, may be subject to recovery by the South Carolina Department of Health and Human Services up to an amount equal to the total of Medicaid benefits, if any, paid on behalf of the designated beneficiary by the state Medicaid program, but only to the extent recovery is required by state or federal law. Recovery by the State is subject to regulations imposed by the Secretary.

(3) The amount distributed from an ABLE savings account for the purposes of paying qualified disability expenses:

(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary; and

(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid.

(G) To the extent earnings in an ABLE savings account and distributions from an ABLE savings account, or a qualified account under Section 529A located in another state, are not subject to federal income tax, they will not be subject to state income tax.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑450.** Accounts not guaranteed by the State; rules and regulations.

(A) Nothing in this article may create or be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of an account owner or designated beneficiary with respect to the:

(1) return of principal;

(2) rate of interest or other return on an account; or

(3) payment of interest or other return on an account.

(B) The State Treasurer may adopt rules and promulgate regulations to provide that each contract, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the State and that the principal deposited and the investment return are not guaranteed by the State.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."

**SECTION 11‑5‑460.** South Carolina ABLE Savings Program Trust Fund established; South Carolina ABLE Savings Expense Fund established.

(A) The South Carolina ABLE Savings Program Trust Fund is established in the Office of the State Treasurer. The trust fund must be utilized if the State Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. The trust fund must consist of any monies deposited by account owners and other contributors pursuant to the provisions of this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of monies in the trust fund must be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered monies in the trust fund must remain in the fund and not be credited or transferred to the state general fund or to another fund.

(B)(1) The South Carolina ABLE Savings Expense Fund is established in the Office of the State Treasurer. The expense fund must consist of monies received from the ABLE Savings Program manager or managers, governmental or private grants, and state general fund appropriations, if any, for the program.

(2) All expenses incurred by the State Treasurer in developing and administering the ABLE Savings Program must be payable from the South Carolina ABLE Savings Expense Fund.

HISTORY: 2016 Act No. 165 (H.3768), Section 1, eff April 29, 2016.

Editor's Note

2016 Act No. 165, Section 4, provides as follows:

"SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015."