CHAPTER 2

South Carolina College Investment Program

**SECTION 59‑2‑10.** Short title.

 This chapter shall be known and may be cited as "South Carolina College Investment Program", hereinafter referred to as SCCIP.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑20.** Purpose.

 The General Assembly finds and declares as follows:

 (1) Education costs at institutions of higher learning are difficult for many to afford and difficult to predict. As a result, the ability of individuals and families to plan for future educational expenses has been adversely affected.

 (2) It is in the best interest of the citizens of this State to foster higher education in order to provide well‑educated citizens.

 (3) It is in the best interest of the citizens of this State to encourage state residents to enroll in institutions of higher learning.

 (4) Providing a mechanism to help assure the higher education of the citizens of this State is necessary and desirable for the public health, safety, and welfare.

 (5) The purposes of this chapter are to:

 (a) provide wide and affordable access to the public institutions of higher learning for the residents of this State;

 (b) encourage attendance at institutions of higher learning and help individuals plan for educational expenses;

 (c) provide a program of investment trust agreements to apply distributions toward qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;

 (d) provide for the creation of a trust fund, as an instrumentality of the State of South Carolina, to assist qualified students in financing costs of attending institutions of higher education;

 (e) encourage timely financial planning for higher education by the creation of investment trust accounts;

 (f) provide a choice of programs to persons who determine that the overall educational needs of their families are best suited to a prepaid tuition contract under the South Carolina Tuition Prepayment Program, or an investment trust agreement under this chapter, or both;

 (g) provide an investment program for those who wish to save to meet postsecondary educational needs beyond the traditional baccalaureate curriculum.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑30.** Definitions.

 The following terms have the meanings below unless the context clearly indicates otherwise:

 (1) "SCCIP Trust Fund" means the special fund designated as the "South Carolina College Investment Trust Fund" and administered by the Office of State Treasurer.

 (2) "Account owner" means a person, corporation, trust, charitable organization or other such entity who contributes to or invests money in an investment trust account under SCCIP established pursuant to this chapter on behalf of a beneficiary and who is listed as the owner of the investment trust account.

 (3) "Beneficiary" means a beneficiary of an investment trust agreement who meets the requirements of Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law, as well as any regulations established by the Office of State Treasurer.

 (4) "Contributor" means any person, corporation, trust, charitable organization, or other such entity who contributes money or makes a payment to an investment trust account established pursuant to this chapter on behalf of a beneficiary.

 (5) "Director" means the head of the South Carolina Tuition Prepayment Program SCCIP and who is appointed and supervised by the State Treasurer.

 (6) "Institution of higher learning" means any institution of higher learning which is an eligible education institution as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or any other applicable federal law.

 (7) "Tuition" means the quarter, semester, or term charges and all required fees imposed by an institution of higher learning as a condition of enrollment by all students.

 (8) "Investment trust account" means an account established by an account owner pursuant to this chapter on behalf of a beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

 (9) "Investment Trust Agreement" means the agreement entered into between the Office of State Treasurer and the account owner establishing an investment trust account.

 (10) "State Treasurer" means the South Carolina State Treasurer.

 (11) "Qualified higher education expense" means any higher education expense as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

 (12) "Qualified withdrawal" means a withdrawal by an account owner or beneficiary for qualified higher education expenses or as otherwise permitted under Section 529 of the Internal Revenue Code of 1986, as amended, without a penalty required by the section.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑40.** State Treasurer responsible for SCCIP and SCTPP programs.

 The Office of State Treasurer shall have responsibility over both the SCCIP and the South Carolina Tuition Prepayment Program (SCTPP) established under Chapter 4 of this title.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑50.** Powers of State Treasurer.

 In addition to the powers granted by any other provision of this chapter, the Office of State Treasurer shall have the powers necessary to carry out the purposes and provisions of this chapter and the purposes and objectives of the trust fund including, but not limited to, the following:

 (1) adopt those regulations as are necessary to implement the provisions of this chapter, subject to applicable federal laws and regulations, including regulations regarding transfers of funds between accounts established under prepaid tuition contracts and investment trust agreements;

 (2) execute contracts and other necessary instruments;

 (3) impose reasonable limits on the number of contract participants in the trust fund at any given period of time;

 (4) contract for necessary goods and services, to employ necessary personnel, and to engage the services of consultants and other qualified persons and entities for administrative and technical assistance in carrying out the responsibilities of the trust funds under terms and conditions that the State Treasurer deems reasonable, to include contract terms for periods of up to ten years which contract may be terminated, extended, or renewed with these entities for a term determined by the State Treasurer, but in no event shall such contract exceed a term of ten years at any one time;

 (5) solicit and accept gifts, as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law, as well as any regulations established by the Office of State Treasurer, and to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this chapter;

 (6) define the terms and conditions under which payments may be withdrawn or refunded from the trust fund and impose reasonable charges for such withdrawal or refund;

 (7) impose reasonable time limits on the use of investment trust account distributions provided by the program;

 (8) regulate the receipt of contributions or payments to the trust fund;

 (9) establish agreements or other transactions with federal, state, and local agencies, including state institutions of higher learning;

 (10) segregate contributions and payments to the fund into various accounts and funds;

 (11) require and collect administrative fees and impose reasonable penalties, not to exceed the minimum penalties required under Section 529 of the Internal Revenue Code of 1986, as amended, for withdrawal of funds for nonqualified higher educational expenses or for entering into an investment trust agreement on a fraudulent basis;

 (12) require that account owners of investment trust agreements verify, under oath, any requests for contract conversions, substitutions, transfers, cancellations, or refund requests;

 (13) solicit proposals and contract for the marketing of SCCIP, provided that any materials produced by a marketing contractor for the purpose of marketing the program must be approved by the State Treasurer prior to being made available to the public, and neither the State nor the Office of State Treasurer shall be liable for misrepresentation of the program by a marketing contractor;

 (14) delegate responsibility for administration of the comprehensive investment plan to contractors or consultants the State Treasurer determines to be qualified;

 (15) create as a part of the comprehensive investment plan various age‑based investment options for the contributor to choose among and to transfer qualified college investment account assets among these options, within the limitation of Section 529 of the Internal Revenue Code of 1986, as amended, if the investment options meet the requirements of Section 529 of the Internal Revenue Code of 1986, as amended, and neither a contributor nor beneficiary is directly or indirectly directing the investment of any contribution to the program;

 (16) establish procedures to allow for transfer of funds from an existing South Carolina Tuition Prepayment Program account or any other college investment account as allowable under Section 529 of the Internal Revenue Code of 1986, as amended;

 (17) to make all necessary and appropriate arrangements with colleges and universities or other entities in order to fulfill its obligations under investment trust agreements;

 (18) establish other policies, procedures, and criteria necessary to implement and administer the provisions of this chapter in compliance with Section 529 of the Internal Revenue Code of 1986, as amended, and other applicable provisions of federal and state law.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑60.** Investment trust agreements.

 (A) The Office of State Treasurer shall make investment trust agreements available to the public, under which account owners or other contributors may make contributions on behalf of beneficiaries. These contributions and investment earnings on these contributions may be used for any qualified higher educational expenses of a designated beneficiary. There is no guarantee by the State that the contributions, together with the investment return on the contributions, if any, will be adequate to pay for qualified education expenses in full.

 (B) Each investment trust agreement made pursuant to this chapter must include the following terms and provisions:

 (1) the maximum and minimum contributions allowed on behalf of each beneficiary for the payment of qualified higher education expenses at eligible institutions, both as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law, so that in no case shall the maximum allowable contribution be less than the amount allowable for the gift tax exclusion under Section 529 of the Internal Revenue Code of 1986, as amended;

 (2) provisions for withdrawals, refunds, transfers, and any penalties;

 (3) the name, address, and date of birth of the beneficiary on whose behalf the investment trust account is opened;

 (4) terms and conditions for a substitution of the beneficiary originally named;

 (5) terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, applicable penalties, and the name of the person entitled to terminate the account;

 (6) the time Period during which the beneficiary must use benefits from the investment trust account;

 (7) all other rights and obligations of the account owner and the SCCIP trust fund; and

 (8) any other terms and conditions which the State Treasurer deems necessary or appropriate, including those necessary to conform the investment trust account with the requirements of Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law or regulations.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑70.** South Carolina College Investment Trust Fund.

 (A) There is created a South Carolina College Investment Trust Fund separate and distinct from the state general fund (hereinafter referred to as the "SCCIP trust fund") to be administered by the Office of State Treasurer. The SCCIP trust fund shall consist of money remitted in accordance with investment trust agreements. The trust fund shall receive and hold all payments, contributions, and deposits intended for it as well as all earnings thereon until disbursed as provided hereunder.

 (B) The amounts on deposit in the trust fund do not constitute property of the State. Amounts on deposit in the trust fund must not be commingled with other state funds and the State shall have no claim to or interest in such funds. Investment trust agreements or any other contract entered into by or on behalf of the trust fund do not constitute a debt or obligation of the State and no account owner shall be entitled to any amounts except for those amounts on deposit in or accrued to their account.

 (C) The SCCIP trust fund shall continue in existence as long as it holds any funds belonging to an account owner or otherwise has any obligations to any person or entity until its existence is terminated by law and remaining assets on deposit are returned to account owners or transferred to the State as provided by law.

 (D) The Office of State Treasurer shall administer the fund, including, without limitation, the keeping of records, the management of bank accounts and other investments, the transfer of funds and the safekeeping of securities evidencing investments. These functions may be administered pursuant to a management agreement with a qualified entity or entities.

 (E) Payments received by the Office of State Treasurer on behalf of beneficiaries from account owners and other contributors shall be placed in the trust fund.

 (F) The director shall cause there to be maintained separate records and accounts for individual beneficiaries as may be required under Section 529 of the Internal Revenue Code of 1986, as amended, and any other applicable federal law.

 (G) Account owners and any other contributors shall only be permitted to contribute cash or any other form of payment or contribution as may be permitted under Section 529 of the Internal Revenue Code of 1986, as amended, and approved by the State Treasurer. The director shall cause the program to maintain adequate safeguards against contributions in excess of what may be required for qualified higher education expenses. The trust fund is specifically authorized to receive and deposit into the trust fund any monetary gift made by an individual by testamentary disposition, including, without limitation, any specific gift or bequeath made by will, trust, or other disposition to the extent permitted under Section 529 of the Internal Revenue Code of 1986, as amended. The trust fund may receive amounts transferred from an UGMA, UTMA, or other account established for the benefit of a minor provided that the beneficiary of such an account is identified as the legal owner of the SCCIP Trust Fund account upon attaining majority age.

 (H) The account owner retains ownership of all amounts on deposit in his or her account with the program up to the date of distribution on behalf of a designated beneficiary unless otherwise provided herein. Earnings derived from investment of the contributions shall be considered to be held in trust in the same manner as contributions, except as applied for purposes of the designated beneficiary. Amounts on deposit therein shall be available for expenses and penalties imposed by the Office of State Treasurer for the program as disclosed in the investment trust agreement.

 (I) The assets of the SCCIP trust fund 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 of South Carolina for any other purpose.

 (J) Beneficiaries may be changed in any account by an account owner as desired to the extent not prohibited by federal law.

HISTORY: 2001 Act No. 72, Section 3(A); 2002 Act No. 334, Section 19A.

**SECTION 59‑2‑80.** Tax exemptions, exclusions, and deductions; withdrawals other than qualified withdrawals to be included in gross income.

 (A) All property and income of the SCCIP trust fund, as an instrumentality of the State, shall be exempt from all taxation by the State and by its political subdivisions.

 (B) Any interest, dividends, gains, or income accruing on the payments made pursuant to an investment trust agreement under the terms of this chapter or on any account in the SCCIP Trust Fund shall be excluded from the gross income of any such account owner, contributor, or beneficiary for purposes of South Carolina income taxes, to the extent such amounts remain on deposit in the SCCIP Trust Fund or are withdrawn pursuant to a Qualified Withdrawal. The SCCIP Trust Fund and Tuition Prepayment Program under Chapter 4 of this title shall constitute the only programs established pursuant to Section 529 of the Internal Revenue Code of 1986, as amended.

 (C) The earnings portion of any withdrawals from an account that are not qualified withdrawals shall be included in the gross income of the resident recipient of the withdrawal for purposes of South Carolina income taxes in the year of the withdrawal. Withdrawals of the principal amount of contributions that are not qualified withdrawals must be recaptured into South Carolina income subject to tax to the extent the contributions were previously deducted from South Carolina taxable income.

 (D) Contributions to each investment trust account created under this chapter by a resident of this State or a nonresident required to file a State of South Carolina income tax return are deductible from South Carolina income subject to tax up to the limit of maximum contributions allowed to such accounts under Section 529 of the Internal Revenue Code of 1986, as amended, including funds transferred to an investment trust account from another qualified plan, as allowable under Section 529 of the Internal Revenue Code of 1986, as amended, and to the extent that the transferred funds were not permitted a state income tax deduction previously under South Carolina law.

 For purposes of this subsection, the term "qualified plan" means any plan qualified under Section 529 of the Internal Revenue Code of 1986, as amended.

 State income tax deductions as provided for in this section may be taken in any taxable year for contributions and rollovers made during that taxable year, and up to April fifteenth of the succeeding year, or the due date of a taxpayer's state income tax return excluding extensions, whichever is longer.

HISTORY: 2001 Act No. 72, Section 3(A); 2002 Act No. 334, Sections 19B, 19C.

**SECTION 59‑2‑85.** Contributions through payroll deductions.

 The Comptroller General and the chief financial officers of state agencies, departments, and institutions maintaining separate payroll accounts, at the request of a state employee, may arrange for contributions through payroll deduction to the program. The State Treasurer is authorized to devise a method whereby private and nonprofit businesses or organizations may arrange for employees to contribute through payroll deduction to the program.

HISTORY: 2002 Act No. 334, Section 19D.

**SECTION 59‑2‑90.** Investment of trust funds.

 (A) The Office of State Treasurer has authority to establish a comprehensive investment plan for the purposes of this chapter, to invest any funds of the trust fund in any instrument, obligation, security, or property that constitutes legal investments, and to name and use depositories for its investments and holdings. The comprehensive investment plan shall specify the investment policies to be utilized by the State Treasurer in its administration of the funds.

 Notwithstanding any provisions of law, the Office of State Treasurer shall invest or cause to be invested amounts on deposit in the trust fund in a manner reasonable and appropriate to achieve the objectives of the program, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. The Office of State Treasurer shall give due consideration to the risk, expected rate of return, term or maturity, diversification of total investments, liquidity, and anticipated investments in and withdrawals from the trust fund.

 (B) All investments shall be acquired at prices not exceeding the prevailing market values for such securities.

 (C) Any limitations herein set forth shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time. All investments shall be clearly marked to indicate ownership by the trust fund and to the extent possible shall be registered in the name of the trust fund.

 (D) Subject to the above terms, conditions, limitations, and restrictions, the Office of State Treasurer shall have power to sell, assign, transfer, and dispose of any of the securities and investments of the trust fund. The State Treasurer may employ or contract with investment managers, evaluation services, or other such services as determined by the Office of State Treasurer to be necessary for the effective and efficient operation of the trust fund.

 (E) Except as otherwise provided herein, no employee of the trust fund shall have any direct or indirect interest in the income, gains, or profits of any investment made by the trust fund, nor shall any such person receive any pay or emolument for his services in connection with any investment made by the trust fund.

 (F) Under the authority granted in Section 59‑2‑50, the State Treasurer may establish criteria for investment managers, mutual funds, or other entities to act as contractors or consultants to the Office of State Treasurer. The State Treasurer may contract, either directly or through these contractors or consultants, to provide such services as may be a part of the comprehensive investment plan or as may be deemed necessary or proper by the State Treasurer including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accounting, and asset purchase, control, and safekeeping.

 (G) No account owner, contributor, or beneficiary may directly or indirectly direct the investment of any account except as may be permitted under Section 529 of the Internal Revenue Code of 1986, as amended.

 (H) The Office of State Treasurer may approve different investment plans and options to be offered to participants to the extent permitted under Section 529 of the Internal Revenue Code of 1986, as amended, and consistent with the objectives of this chapter and may require the assistance of investment counseling prior to participation in different options.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑100.** Annual statements to account holders; additional statements upon request; fees; annual reports.

 (A) The State Treasurer shall furnish without charge to each account owner an annual statement of:

 (1) the amount contributed by the account owner under the investment trust agreement;

 (2) the annual earnings and accumulated earnings on the investment trust account; and

 (3) any other terms and conditions which the director deems necessary or appropriate, including those necessary to conform the investment trust account with the requirements of Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law or regulations.

 (B) The director shall furnish an additional statement complying with subsection (A) to an account owner or beneficiary on written request. The State Treasurer may charge a reasonable fee for each statement furnished under this subsection.

 (C) The Office of State Treasurer shall prepare or cause to be prepared an annual report setting forth in appropriate detail an accounting of the funds and a description of the financial condition of the program at the close of each fiscal year. The report must be submitted to the Governor and the General Assembly. In addition, the Office of State Treasurer shall make the report available to account owners of investment trust agreements.

HISTORY: 2001 Act No. 72, Section 3(A); 2005 Act No. 164, Section 31, eff June 10, 2005.

Effect of Amendment

The 2005 amendment, in subsection (C), deleted the fourth sentence relating to annual audits by the State Auditor and made a nonsubstantive change in the second sentence.

**SECTION 59‑2‑110.** Disclaimer as to admission, continued enrollment, or graduation.

 This chapter is not a promise or guarantee that the beneficiary will be:

 (a) admitted to any institution of higher learning;

 (b) allowed to continue enrollment at an institution of higher learning; or

 (c) graduated from an institution of higher learning.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑120.** No promise or guarantee that higher education expenses will be covered in full by trust account; trust accounts and agreements not guaranteed by full faith and credit of the State of South Carolina.

 Nothing in this chapter or in any investment trust agreement entered into pursuant to this chapter shall be construed as a promise or guarantee by the State or any agency thereof that either qualified higher education expenses in general or any specific qualified higher education expense shall be covered in full by contributions or earnings on any investment trust account. Investment trust accounts and agreements entered into pursuant to this chapter are not guaranteed by the full faith and credit of the State of South Carolina.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑130.** SCCIP Trust Fund monies not to be considered an asset for purposes of eligibility for grant, scholarship or work opportunity except as required by funding source.

 Notwithstanding any provision of law, no monies on deposit in the SCCIP Trust Fund shall be considered an asset of either the parent, guardian, or student for purposes of determining an individual's eligibility for a need based grant, a need based scholarship, or a need based work opportunity offered or administered by any state agency except as may be required by the funding source of such financial aid.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑140.** SCCIP trust fund exempt from legal process, unassignable.

 The SCCIP trust fund, contributions to the SCCIP trust fund, and the right of a person to a refund of contributions or any other right accrued or accruing to any person under the provisions of this chapter are exempt from attachment, garnishment, levy, and sale under any means or final process issued by any court or bankruptcy proceeding and are unassignable except as specifically otherwise provided in this chapter.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑150.** State Treasurer, others not responsible for determining specified information.

 Neither the State Treasurer nor any transfer agent, administrator, bank, broker, or other financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a contributor, beneficiary, or account owner is responsible for determining the following:

 (1) whether the contributor, beneficiary, account owner, or person purporting to act as such has been duly designated;

 (2) whether any purchase, sale, transfer, or other action to or by a person purporting to act in the capacity of an account owner is in accordance with or authorized by this chapter; or

 (3) the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a contributor, beneficiary, or account owner.

HISTORY: 2001 Act No. 72, Section 3(A).

**SECTION 59‑2‑160.** Severability.

 The provisions of this chapter are severable. If any part of this chapter is declared invalid or unconstitutional, such declaration shall not affect the parts which remain.

HISTORY: 2001 Act No. 72, Section 3(A).