CHAPTER 33

Employment and Workforce—Funds

Code Commissioner’s Note

At the direction of the Code Commissioner “Employment and Workforce” substituted for “Employment Security”, to bring the chapter title in conformance with 2010 Act No. 146.

CROSS REFERENCES

Corporate officers exempt from unemployment benefits absent employer election, procedure, exceptions, see Section 41‑27‑265.

Department of Employment and Workforce integrity fund, see Section 41‑33‑910.

ARTICLE 1

Unemployment Compensation Fund

**SECTION 41‑33‑10.** Creation and content of unemployment compensation fund.

There is established a special fund, to be known as the unemployment compensation fund, which must be administered separate and apart from all public monies or funds of the State. This fund must consist of:

(1) all contributions and payments in lieu of contributions collected under Chapters 27 through 41 of this title;

(2) interest earned on any money in the fund;

(3) property or securities acquired through the use of money belonging to the fund;

(4) earnings of those properties or securities;

(5) money credited to this State’s account in the unemployment trust fund pursuant to Section 903 of the Social Security Act, as amended;

(6) money received from the federal government as reimbursements pursuant to Section 204 of the Federal‑State Extended Compensation Act of 1970; and

(7) money received for the fund from another source. Money in the fund must be comingled and undivided.

HISTORY: 1962 Code Section 68‑301; 1952 Code Section 68‑301; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 1969 (56) 268; 1973 (58) 248; 2010 Act No. 146, Section 53, eff March 30, 2010.

Effect of Amendment

The 2010 amendment made nonsubstantive changes to this section.

CROSS REFERENCES

Deposit of state funds, see Sections 11‑13‑10 et seq.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

Trust fund reserve defined, see S.C. Code of Regulations R. 47‑500.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 209.

NOTES OF DECISIONS

In general 1

1. In general

The construction of Section 41‑35‑120 by the South Carolina Employment Security Commission so as to disqualify any claimant who voluntarily leaves her most recent employment because of pregnancy violates the prohibition against denial of unemployment compensation solely on the basis of pregnancy or termination of pregnancy contained in 26 USCA Section 3304(a)(12); the award of compensation, retroactive to January 1, 1978, the effective date of the federal statute, does not violate the Eleventh Amendment of the United States Constitution. Brown v. Porcher (C.A.4 (S.C.) 1981) 660 F.2d 1001, certiorari denied 103 S.Ct. 796, 459 U.S. 1150, 74 L.Ed.2d 1000. Unemployment Compensation 112

**SECTION 41‑33‑20.** Department to control fund.

Subject to the provisions of Chapters 27 through 41 of this title, the department is invested with the full power, authority, and jurisdiction over the fund, including all money, property, and securities belonging to it, and may perform any and all acts, whether or not specifically designated in this title, which are necessary or convenient in the administration of this title consistent with the provisions of those chapters.

HISTORY: 1962 Code Section 68‑302; 1952 Code Section 68‑302; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 54, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑30.** State Treasurer shall handle fund and issue warrants upon it.

The State Treasurer is ex officio treasurer and custodian of the fund and shall administer it pursuant to the directions of the department and shall issue his warrants upon it pursuant to regulations promulgated by the department.

HISTORY: 1962 Code Section 68‑303; 1952 Code Section 68‑303; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 55, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “Commission”; and made other nonsubstantive changes.

CROSS REFERENCES

State treasurer, see Sections 11‑5‑10 et seq.

**SECTION 41‑33‑40.** Three separate accounts; collections credited to clearing account.

All money in the fund must be comingled and undivided, but the State Treasurer shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

All money payable to the fund, upon receipt of the money by the department, must be forwarded to the State Treasurer who immediately shall credit it to the clearing account.

HISTORY: 1962 Code Section 68‑304; 1952 Code Section 68‑304; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 56, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑45.** Annual reports; trend charts; cost analysis.

(A) The department shall report, by October first of each year, to the General Assembly, the Review Committee, and to the Governor the amount in the unemployment trust fund and make an assessment of its funding level.

(B)(1) The annual assessment report must contain a trend chart concerning the unemployment trust fund’s annual balance each year for at least the previous five years. The chart must compare the ending balance for each year with the minimum reserves needed to withstand an average recession and a severe recession.

(2) The annual assessment report also must contain an analysis of the cost paid to beneficiaries and cost‑shifting, if any, from companies without a negative balance in their account fund to companies with a negative balance in their fund account. The analysis must be conducted with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. The analysis also must include recommendations for adjusting the tax structure to address inequities that arise due to cost‑shifting.

HISTORY: 1999 Act No. 73, Section 3, eff June 11, 1999; 2010 Act No. 146, Section 8, eff March 30, 2010.

Effect of Amendment

The 2010 amendment rewrote this section to require the Department of Workforce to file annual reports including trend charts and cost analyses.

**SECTION 41‑33‑50.** Transfer of funds to United States Secretary of the Treasury for Federal unemployment trust fund.

After clearance thereof, all moneys in the clearing account other than such as may have been refunded pursuant to Section 41‑31‑360 or item (6) of Section 41‑27‑260 shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding.

HISTORY: 1962 Code Section 68‑305; 1952 Code Section 68‑305; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 209.

**SECTION 41‑33‑60.** Withdrawals from unemployment trust fund shall constitute benefit account.

The benefit account consists of all monies requisitioned from this state’s account in the unemployment trust fund and no monies may be withdrawn from the unemployment trust fund for the payment of any interest accrued on advances granted to the State under Title XII of the Social Security Act for the purposes of this chapter, and this interest must be paid from sources other than the unemployment trust fund.

HISTORY: 1962 Code Section 68‑306; 1952 Code Section 68‑306; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1984 Act No. 406, Section 2.

**SECTION 41‑33‑70.** Deposit of moneys in clearing and benefit accounts.

Except as otherwise provided in Chapters 27 through 41 of this Title, moneys in the clearing and benefit accounts may be deposited in any depository bank in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys of the unemployment compensation fund when in the clearing account or benefit account shall not be commingled with other State funds but shall be maintained in separate accounts on the books of the depository bank or banks handling these accounts and shall be secured by such bank or banks by such securities or surety bond as are required by law of depositories of State funds and the collateral pledged shall be maintained in a separate custody account.

HISTORY: 1962 Code Section 68‑307; 1952 Code Section 68‑307; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

**SECTION 41‑33‑80.** Moneys shall be requisitioned from State’s account in unemployment trust fund for payment of benefits and refunds.

Except as provided in Section 41‑33‑180, money must be requisitioned from this State’s account in the unemployment trust fund solely for the payment of benefits or refunds pursuant to Section 41‑31‑360 or item (6) of Section 41‑27‑260 and in accordance with regulations prescribed by the department; except that money credited to this account pursuant to Section 903 of the Social Security Act, as amended, must be used exclusively as provided in Sections 41‑33‑130 to 41‑33‑160.

HISTORY: 1962 Code Section 68‑308; 1952 Code Section 68‑308; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2002 Act No. 306, Section 8, eff June 5, 2002; 2010 Act No. 146, Section 57, eff March 30, 2010.

Effect of Amendment

The 2002 amendment substituted “must” for “shall” in two places, and “41‑31‑360” for “41‑33‑360”.

The 2010 amendment substituted “department” for “commission”; and made one other nonsubstantive change.

**SECTION 41‑33‑90.** Requisitions by Department on State Treasurer.

The department shall from time to time issue its requisition for a lump sum amount for the payment of benefits or refunds upon the Comptroller General who shall draw his warrant on the State Treasurer in the form provided by law. The Treasurer shall pay this amount to the department by a check drawn on the benefit account, notwithstanding any provisions of law in this State relating to deposit, administration, release and disbursement of money in the possession or custody of this State to the contrary. The department in requisitioning lump sum withdrawals from the State Treasurer for the payment of individual benefit claims shall not exceed in any event the balance of funds in the benefit account, and the requisition must be in an amount estimated to be necessary for benefit payments for a period that the department may prescribe by regulation.

HISTORY: 1962 Code Section 68‑309; 1952 Code Section 68‑309; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 58, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for four occurrences of “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑100.** Deposit of amounts drawn by Department; security.

Such lump sum amounts when received by the department from the State Treasurer must be immediately deposited by the department in a benefit payment account maintained in the name of the department in that bank or public depository and under conditions the department determines necessary. The bank or public depository must be one in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund or benefit payment account. The department shall require the bank or depository it selects as the depository of the benefit payment account security in an amount equal to the amount on deposit. This security must consist of securities or a surety bond required by law of depositories of state funds.

HISTORY: 1962 Code Section 68‑310; 1952 Code Section 68‑310; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 59, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for five occurrences of “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑110.** Representatives of Department shall sign checks; bonds of representatives.

The department shall delegate to designated representatives the authority to sign checks on the benefit payment account and the signature of one of the designated representatives must be required on each check. The department shall require the representative to give a bond in an amount the department determines for his faithful performance of his duties in connection with the benefit payment account in a form prescribed by law or approved by the Attorney General. Premiums for these bonds must be paid from the unemployment compensation administration fund. A duly authorized representative of the department may draw and issue its checks on the benefit payment account for the payment of individual benefit claims.

HISTORY: 1962 Code Section 68‑311; 1952 Code Section 68‑311; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 60, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for four occurrences of “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑120.** Payment of refunds.

A refund payable pursuant to Section 41‑31‑360 or item (6) of Section 41‑27‑260 may be paid from the clearing or benefit accounts upon requisition by the department to the Comptroller General, who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay the refund from the proper account.

HISTORY: 1962 Code Section 68‑312; 1952 Code Section 68‑312; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 61, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑130.** Appropriation or formal release not required for expenditures from benefit account or refunds from clearing account.

An expenditure of money in the benefit account and a refund from the clearing account must not be subject to a provision of law requiring a specific appropriation or other formal release by state officers of money in their custody. A warrant issued for the payment of a benefit and a refund must bear the signature of the department or a duly authorized agent for that purpose.

HISTORY: 1962 Code Section 68‑313; 1952 Code Section 68‑313; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2010 Act No. 146, Section 62, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑140.** Withdrawal and use of money credited to State’s account in unemployment trust fund.

Money credited to the account of this State pursuant to Section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of Chapters 27 through 41 of this Title. Amounts credited to this State’s account in the unemployment trust fund under Section 903 of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve‑month period specified in Section 41‑33‑150 (3) may be charged against any amount credited during such a twelve‑month period earlier than the twenty‑fourth preceding such period.

HISTORY: 1962 Code Section 68‑313.1; 1952 Code Section 68‑313; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 1959 (51) 286; 1964 (53) 2089; 1969 (56) 248; 1973 (58) 248.

**SECTION 41‑33‑150.** Appropriation law required for requisitions from unemployment trust fund for payment of administrative expenses; warrants.

Money credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to Section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of Chapters 27 through 41 of this title pursuant to a specific appropriation by the General Assembly, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(1) specifies the purposes for which the money is appropriated and the amounts appropriated therefor;

(2) limits the period within which the money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law;

(3) limits the amount which may be obligated during any twelve‑month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which (a) the aggregate of the amounts credited to the account of this State pursuant to Section 903 of the Social Security Act, as amended, during the same twelve‑month period and the twenty‑fourth preceding twelve‑month periods, exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this State during the twenty‑five twelve‑month periods; and

(4) an appropriation pursuant to this section also shall incorporate those requirements specified in Section 903(c) of the Social Security Act, as amended, as a condition of payment of expenses of administration.

HISTORY: 1962 Code Section 68‑313.2; 1952 Code Section 68‑313; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 1959 (51) 286; 1964 (53) 2089; 1969 (56) 248; 1973 (58) 248; 1991 Act No. 167, Section 1, eff June 12, 1991.

Effect of Amendment

The 1991 amendment in the first paragraph changed the word “legislature” to “General Assembly”; added item (4); and made grammatical changes.

Federal Aspects

Section 903 of the Social Security Act is codified in 42 U.S.C.A. Section 1103.

**SECTION 41‑33‑160.** Disposition of money appropriated from unemployment trust fund for administrative expenses.

Money appropriated as provided in Section 41‑33‑150 for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the employment security administration fund from which such payment shall be made. Money so deposited shall, until expended, remain a part of the employment fund and, if it will not be expended, shall be returned promptly to the account of this State in the unemployment trust fund.

HISTORY: 1962 Code Section 68‑313.3; 1952 Code Section 68‑313; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 1959 (51) 286; 1964 (53) 2089.

**SECTION 41‑33‑170.** Disposition of unused amounts in benefit payment account.

A balance of money requisitioned from the unemployment trust fund under Section 41‑33‑80 which remains unclaimed or unpaid in the benefit account and the benefit payment account after the expiration of the period for which those sums were requisitioned either must be deducted from an estimate for, and may be used for the payment of, a benefit during a succeeding period or, in the discretion of the department, must be redeposited with the Secretary of the Treasury of the United States to the credit of this State’s account in the unemployment trust fund, as provided in Section 41‑33‑50.

HISTORY: 1962 Code Section 68‑314; 1952 Code Section 68‑314; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 63, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑180.** Withdrawals from unemployment trust fund for certain Federal benefits.

Money also may be requisitioned from this State’s account in the unemployment trust fund for the payment of benefits under an unemployment compensation, unemployment insurance, or unemployment benefit law administered by a bureau, department, division, agency, or instrumentality of the United States to which the department has made available its personnel and facilities for the taking, processing, determination, and paying of claims pursuant to Section 41‑29‑230. No money may be drawn from the unemployment trust fund for the purpose of paying benefits for or on behalf of the United States unless a provision first is made by law, agreement, or contract for the reimbursement of the money by the bureau, department, division, agency, or instrumentality of the United States for or on behalf of which the benefits have been paid.

HISTORY: 1962 Code Section 68‑315; 1952 Code Section 68‑315; 1945 (44) 45; 2010 Act No. 146, Section 64, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑190.** Bank account for payment of certain Federal benefits.

The department may establish bank accounts other than the benefit payment account and deposit in them money requisitioned from the unemployment trust fund for the payment of benefits for or on behalf of the United States as provided in Section 41‑33‑180. All provisions of this article governing the deposit, administration, mode of check signing, and safeguarding of the benefit payment account must apply to an account established by the department under this section.

HISTORY: 1962 Code Section 68‑316; 1952 Code Section 68‑316; 1945 (44) 45; 2010 Act No. 146, Section 65, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑200.** Disposition of unused funds withdrawn for certain Federal benefits.

A balance of money requisitioned from the unemployment trust fund under Section 41‑33‑180 which remains unclaimed or not disbursed in those accounts after the expiration of the period for which the sums were requisitioned either must be deducted from estimates for, and used in the payment of, benefits during succeeding periods or, in the discretion of the department, must be redeposited with the Secretary of the Treasury of the United States to the credit of this State’s account in the unemployment trust fund, as provided in Section 41‑33‑50.

HISTORY: 1962 Code Section 68‑317; 1952 Code Section 68‑317; 1945 (44) 45; 2010 Act No. 146, Section 66, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑210.** Management of funds upon discontinuance of unemployment trust funds.

The provisions of this article to the extent that they relate to the unemployment trust fund must be operative only so long as the Secretary of the Treasury of the United States continues to maintain for this State a separate book account of all funds deposited in the trust fund by this State for benefit purposes, together with this State’s proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals. If and when the unemployment trust fund ceases to exist or a separate book account is no longer maintained, all money, properties, or securities in the trust fund belonging to the unemployment compensation fund of this State must be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release the money, properties, or securities in a manner approved by the department in accordance with the provisions of Chapters 27 through 41 of this title. This money must be invested only in readily marketable bonds or other interest bearing obligations of the United States or of this State or a political subdivision of this State and these investments at all times must be made so that all the assets of the fund always must be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the department in accordance with the purposes and provisions of Chapters 27 through 41 of this title.

HISTORY: 1962 Code Section 68‑318; 1952 Code Section 68‑318; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 67, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “Commission”; and made other nonsubstantive changes.

**SECTION 41‑33‑220.** Liability of State Treasurer on bond.

The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation fund under Chapters 27 through 41 of this Title. All sums recovered for losses sustained by the fund shall be deposited therein.

HISTORY: 1962 Code Section 68‑319; 1952 Code Section 68‑319; 1942 Code Section 7035‑89; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

ARTICLE 3

Department of Employment and Workforce Administration Fund

Effect of Amendment

The 2011 amendment substituted “Department of Employment and Workforce” for “Employment Security”.

**SECTION 41‑33‑410.** Creation and contents of Department of Employment and Workforce administration fund.

There is hereby created in the State Treasury a special fund to be known as the Department of Employment and Workforce administration fund. The fund shall consist of any money appropriated by this State in accordance with Section 41‑33‑460; all money received from the United States, or any agency thereof, and all money received from any other source for the administration of Chapters 27 through 41 of this title; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Department of Employment and Workforce administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of Chapters 27 through 41 of this title. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to Section 41‑33‑160 shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in Sections 41‑33‑130 to 41‑33‑160.

HISTORY: 1962 Code Section 68‑331; 1952 Code Section 68‑331; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2011 amendment, in the first and second sentences, substituted “Department of Employment and Workforce” for “employment security” and “this title” for “this Title”.

CROSS REFERENCES

Department of Employment and Workforce, see Sections 41‑29‑10 et seq.

Deposit of state funds, see Sections 11‑13‑10 et seq.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 209.

**SECTION 41‑33‑420.** Deposit, administration and disbursement of fund.

All money in the Department of Employment and Workforce administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depository bank. They shall be secured by such bank or banks by such securities or surety bond as required by law of depositories of state funds.

HISTORY: 1962 Code Section 68‑332; 1952 Code Section 68‑332; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2011 amendment, in the first sentence, substituted “Department of Employment and Workforce” for “employment security”; and in the first and second sentences, substituted “state funds” for “State funds”.

CROSS REFERENCES

Deposit, administration, and disbursement of money in the Employment Security Administration Contingency Fund in accordance with this section, see Section 41‑33‑710.

**SECTION 41‑33‑430.** Use of fund; requisitions and warrants.

Monies deposited or paid into the fund are appropriated and made available to the department. Money in this fund must be expended solely for the purpose of defraying the cost of the administration of Chapters 27 through 41 of this title and for no other purpose. A balance in the fund may not lapse at any time but continuously must be available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by the director or a designated individual, officer, or agent for payment of the costs of administration to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the Department of Employment and Workforce administration fund.

HISTORY: 1962 Code Section 68‑333; 1952 Code Section 68‑333; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2010 Act No. 146, Section 68, eff March 30, 2010; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for three occurrences of “Commission”; and made other nonsubstantive changes.

The 2011 amendment, in the fourth sentence, substituted “director” for “chairman”, “individual” for “member”, and “Department of Employment and Workforce” for “employment security”.

**SECTION 41‑33‑440.** Expenditure of moneys in fund.

All monies in the Department of Employment and Workforce administration fund except money received pursuant to Section 41‑33‑160 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor, or his successors, for the proper and efficient administration of Chapters 27 through 41 of this title.

HISTORY: 1962 Code Section 68‑334; 1952 Code Section 68‑334; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2011 amendment substituted “Department of Employment and Workforce” for “employment security”, and “title” for “Title” at the end.

**SECTION 41‑33‑450.** Liability of State Treasurer on bond.

The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Department of Employment and Workforce administration fund.

HISTORY: 1962 Code Section 68‑335; 1952 Code Section 68‑335; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2011 amendment substituted “Department of Employment and Workforce” for “employment security”.

**SECTION 41‑33‑460.** State shall replace funds lost or improperly spent.

Money in the Department of Employment and Workforce administration fund, paid to this State under Title III of the Social Security Act and the Wagner‑Peyser Act, found by the Secretary of Labor, or his successors, because of an action or contingency, to have been lost or expended for a purpose other than, or in an amount in excess of, those found necessary by the Secretary of Labor, for the proper administration of the department’s employment and workforce program, it is the policy of this State that the money must be replaced by money appropriated for this purpose from the general funds of this State to the Department of Employment and Workforce administration fund for expenditures as provided in Section 41‑33‑430. Funds that have been expended by the department or its agents pursuant to a budget approved by the Secretary of Labor, pursuant to the general standards and limitations promulgated by the Secretary of Labor, before this expenditure, when proposed expenditures have not been specifically disapproved by the Secretary of Labor, must not be considered to require replacement.

HISTORY: 1962 Code Section 68‑336; 1952 Code Section 68‑336; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2010 Act No. 146, Section 69, eff March 30, 2010; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

The 2011 amendment twice substituted “Department of Employment and Workforce” for “employment security”, and substituted “department’s employment and workforce program” for “employment security program”.

**SECTION 41‑33‑470.** Reports to State Fiscal Accountability Authority and the Department of Administration.

The department shall report to the State Fiscal Accountability Authority and the Department of Administration in the same manner as is required generally for the submission of financial requirements for the ensuing year and the board shall include in its request for general appropriations presented to the General Assembly at its next regular session a statement of the amounts required for any replacement required by Section 41‑33‑460.

HISTORY: 1962 Code Section 68‑337; 1952 Code Section 68‑337; 1942 Code Section 7035‑93; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 70, eff March 30, 2010; 2011 Act No. 3, Section 12, eff March 14, 2011.

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.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”.

The 2011 amendment made no apparent changes.

ARTICLE 5

Department of Employment and Workforce Special Administration Fund

Effect of Amendment

The 2011 amendment substituted “Department of Employment and Workforce” for “Employment Security”.

**SECTION 41‑33‑610.** Department of Employment and Workforce special administration fund.

(A) There is created in the State Treasury a special fund to be known as the Department of Employment and Workforce special administration fund, which must consist of all penalties and interest collected on contributions due pursuant to Sections 41‑31‑330 and 41‑31‑350 and interest collected on unpaid contributions pursuant to Section 41‑31‑370. Money in the fund must be deposited, administered, and disbursed pursuant to the provisions of Section 41‑33‑420 applicable to the Department of Employment and Workforce administration fund.

(B) Money deposited in the special administration fund is appropriated and made available to the department. Money in the fund must be expended solely for:

(1) replacements in the Department of Employment and Workforce administration fund as provided in Section 41‑33‑460;

(2) refunds pursuant to Section 41‑31‑360 of interest erroneously collected; and

(3) special, extraordinary, and incidental expenses incurred in the administration of Chapters 27 through 41 of this title not provided for in the Department of Employment and Workforce administration fund and for which federal funds are not granted by the federal government through the Secretary of Labor or its other agencies.

(C) A balance in the fund shall not lapse at any time, but must be continuously available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund.

HISTORY: 1962 Code Section 68‑332.1; 1969 (56) 268; 2010 Act No. 146, Section 71, eff March 30, 2010; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission” throughout this section; redesignated subsections (a) and (b) as (A) and (B), respectively; designated the last paragraph of the section as subsection (C), and substituted “its director” for “the chairman” following “issue its requisition approved by” therein; and made other nonsubstantive changes throughout the section.

The 2011 amendment four times substituted “Department of Employment and Workforce” for “Employment Security”.

CROSS REFERENCES

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

**SECTION 41‑33‑710.** Department of Employment and Workforce administrative contingency fund.

(A) There is created in the State Treasury a special fund to be known as the Department of Employment and Workforce administrative contingency fund, which consists of all assessments collected pursuant to Section 41‑27‑410. Money in the Department of Employment and Workforce administrative contingency fund must be deposited, administered, and disbursed in accordance with the provisions of Section 41‑33‑420 applicable to the Department of Employment and Workforce administration fund.

(B) Money deposited in the Department of Employment and Workforce administrative contingency fund is appropriate and made available to the department. Money in the fund must be expended to:

(1) assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery;

(2) undertake a program or activity that furthers the goal of the department as provided in Chapter 42 of this title;

(3) supplement basic employment security services with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(4) provide employment services, like recruitment, screening, and referral of qualified workers to agricultural areas where those services have in the past contributed to positive economic conditions for the agricultural industry; and

(5) provide otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment.

(C) A balance in the fund does not lapse, but is continuously available to the department for expenditure consistent with Chapter 42 of this title. The department must issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund.

HISTORY: 1986 Act No. 362, Section 14, eff April 3, 1986; 2010 Act No. 146, Section 72, eff March 30, 2010; 2011 Act No. 3, Section 12, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” throughout this section; redesignated subsections (a) and (b) as (A) and (B), respectively; designated the last paragraph of the section as subsection (C), and substituted “its director” for “the chairman” following “issue its requisition approved by” therein; and made other nonsubstantive changes throughout the section.

The 2011 amendment four times substituted “Department of Employment and Workforce” for “Employment Security”.

**SECTION 41‑33‑810.** Department of Employment and Workforce interest assessment fund.

(A) There is hereby created in the State Treasury a special fund to be known as the Department of Employment and Workforce interest assessment fund.

(B) The fund shall consist of all assessments collected pursuant to Section 41‑31‑55(A).

(C) All money in the interest assessment fund must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depository bank. They shall be secured by such bank or banks by such securities or surety bond as required by law of depositories of state funds.

(D) All monies which are deposited or paid into the fund are appropriated and made available to the department. All monies in this fund shall be expended solely for the purpose of defraying the cost of interest on advances from the federal Unemployment Trust Fund as provided in the Social Security Act, Section 1202(b)(3)(A).

(E) Any balances in the fund shall not lapse at any time but shall be continuously available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by the executive director or any designated individual, officer, or agent for payment of such costs of interest to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the interest assessment fund.

HISTORY: 2011 Act No. 3, Section 12, eff March 14, 2011.

Federal Aspects

Repayment by State of advances to State Unemployment Funds, see 42 U.S.C.A. Section 1322.

Social Security Act (Old Age Pension Act) (Aug. 14, 1935, ch. 531, 49 Stat. 620), see 42 U.S.C.A. Section 301 et seq.

**SECTION 41‑33‑910.** Department of Employment and Workforce integrity fund.

(A) There is created in the State Treasury a special fund to be known as the Department of Employment and Workforce integrity fund.

(B) The fund shall consist of monetary penalties collected pursuant to Section 41‑41‑45(C)(3) for the purpose of promoting unemployment compensation integrity. The Department of Employment and Workforce integrity fund shall be used for the purpose of preserving the integrity of the unemployment compensation fund. These efforts may include, but are not limited to, identifying overpayments, verifying eligibility, determining status, and updating technology and educational tools to support integrity activities.

(C) All money collected in the integrity fund must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in this fund must not be commingled with other state funds, but must be maintained in a separate account on the books of a depository bank. These funds must be secured by the bank by securities or surety bonds as required by law of depositories of state funds.

(D) All money that is deposited or paid into the fund is appropriated and made available to the department. All money in this fund must be expended solely for the purpose of promoting unemployment insurance integrity efforts by the department as provided in Section 41‑41‑45.

(E) All balances in this fund must not lapse at any time but must be continuously available to the department by expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition, which must be approved by the executive director or any designated officer, agent, or other individual for payment of the costs of interest to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the integrity fund.

HISTORY: 2013 Act No. 53, Section 4.A, eff October 1, 2013.