

REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE

(Anthony, Pitts, Herbkersman, Hayes & Whitmire - Staff Contact: Blythe Littlefield)

HOUSE BILL 3768

H. 3768 -- Rep. G.M. Smith: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 5, TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA ABLE SAVINGS PROGRAM", TO ALLOW INDIVIDUALS WITH A DISABILITY AND THEIR FAMILIES TO SAVE PRIVATE FUNDS TO SUPPORT THE INDIVIDUAL WITH A DISABILITY, TO PROVIDE GUIDELINES TO THE STATE TREASURER FOR THE MAINTENANCE OF THESE ACCOUNTS, AND TO ESTABLISH THE SAVINGS PROGRAM TRUST FUND AND SAVINGS EXPENSE TRUST FUND; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 5, TITLE 11 AS ARTICLE 1 AND ENTITLE THEM "GENERAL PROVISIONS".

Summary of Bill:

This bill establishes the "South Carolina ABLE Savings Program" which allows individuals with a disability and their families to save private funds to support the individual with a disability. It establishes the Savings Program Trust Fund and the Savings Expense Trust Fund and provides guidelines to the State Treasurer for the maintenance and administration of these accounts.

Estimated Revenue Impact:

This bill would have a recurring and non-recurring expenditure impact on the General Fund of \$1,139,537 in FY 2015-16. Recurring expenditures of \$599,537 are anticipated in FY 2016-17 and each year thereafter. Federal Funds and Other Funds will not be affected.

This bill would reduce the General Fund individual income tax revenue by \$231,100 beginning in FY 2016-17.

Subcommittee Recommendation:

Favorable with Amendment

The amendment revises the definitions of "South Carolina ABLE Savings Program" and "account owner" and expands on the section regarding funds held in the savings account.

Full Committee Recommendation:

Pending

Other Notes:

The Achieving Better Life Experience Act, commonly known as the ABLE Act was passed by Congress and signed by President Obama in December 2014. The Department of Treasury has not issued regulations for the ABLE Act but should sometime in 2015. Although it is not required by the federal legislation for each state to offer an ABLE account, individual states would need to pass their own legislation to implement the program. Many states such as Louisiana and Massachusetts have either already passed their own bills or have had bills introduced.



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 3768 As amended by House Ways and Means Subcommittee on April 16, 2015
 Author: G.M. Smith
 Requestor: House Ways and Means
 Date: April 22, 2015
 Subject: SC ABLE Savings Program
 RFA Analyst(s): Shuford, Fulmer, Gardner, and Stein

Estimate of Fiscal Impact

	FY 2015-16	FY 2016-17
State Expenditure		
General Fund	\$1,139,537	\$599,537
Other and Federal	\$0	N/A
Full-Time Equivalent Position(s)	2.00	0.00
State Revenue		
General Fund	N/A	(\$231,100)
Other and Federal	N/A	N/A
Local Expenditure	N/A	N/A
Local Revenue	N/A	N/A

Fiscal Impact Summary

This bill would have a recurring and non-recurring expenditure impact on the General Fund of \$1,139,537 in FY 2015-16. Recurring expenditures of \$599,537 are anticipated in FY 2016-17 and each year thereafter. Federal Funds and Other Funds will not be affected.

This bill would reduce General Fund individual income tax revenue by \$231,100 beginning in FY 2016-17.

Explanation of Fiscal Impact

State Expenditure

This bill establishes the South Carolina ABLE Savings Program and authorizes the establishment of savings accounts for individuals with disabilities, which can be used to provide for disability-related expenses that supplement any private insurance, Medicaid assistance, Supplemental Security Income Program under the Social Security Act, and other income sources. The State Treasurer shall implement and administer the program. All expenses incurred by the State Treasurer must be payable from the South Carolina ABLE Savings Expense Fund. 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 bill.

Office of State Treasurer. The Treasurer's Office indicates that first year expenses for developing and administering the ABLE Program will exceed any revenue available in the South Carolina ABLE Savings Expense Fund. This fund receives revenue from the program manager, public and private grants, and General Fund appropriations. The Treasurer's Office estimates General Fund recurring expenditures of \$599,537 for salaries and fringe benefits for two new FTEs, a Program Manager at \$67,108 and a Program Coordinator at \$45,326. Other anticipated expenditures include office space, computers and equipment, printing costs, marketing costs, investment consultant expenses, and website maintenance costs. Additionally, the Treasurer's office estimates non-recurring expenditures of \$540,000 for legal analysis, contract negotiations, creation of marketing materials and disclosure documents, and creation of a website. The expenditure impact will total \$1,139,537 in FY 2015-16. Federal Funds and Other Funds will not be affected.

Department of Social Services. The department indicates that this bill would have no impact on General Fund, Other Fund, or Federal Fund expenditures.

Department of Health and Human Services. The department indicates that this bill would have no impact on General Fund, Other Fund, or Federal Fund expenditures.

Department of Disabilities and Special Needs. The department indicates this bill would have no expenditure impact on the General Fund, Federal Funds, or Other Funds.

State Revenue

This bill mandates that interest earnings and qualified distributions from the South Carolina ABLE Savings Program are not subject to South Carolina income tax. Unlike the South Carolina Future Scholar Program, contributions to the ABLE Program are not deductible from South Carolina income tax. Maximum contributions by federal law are limited to \$14,000 for 2015 and are adjusted annually for inflation.

Based on U.S. Joint Committee on Taxation revenue estimates for the Tax Increase Prevention Act of 2014 adjusted for South Carolina taxpayers only, we expect that the exclusion of interest earnings and qualified distributions from South Carolina taxable income will decrease General Fund individual income tax revenue by \$231,100 in FY 2016-17.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

ALLEN/PAIR
APRIL 15, 2015

CLERK OF THE HOUSE

THE ~~General Government, Personnel and Benefits~~ ^{Subcommittee} PROPOSES THE
FOLLOWING AMENDMENT No. TO H. 3768
(COUNCIL\DKA\3768C001.DKA.SA15):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, PAGE 1,
LINES 34-39, BY STRIKING SECTION 11-5-400 IN
ITS ENTIRETY AND INSERTING:**

**/ SECTION 11-5-400. 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. /

AMEND THE BILL FURTHER, AS AND IF AMENDED, PAGE 2, LINES 4-9, BY STRIKING SECTION 11-5-410(2) AND INSERTING:

/ (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. /

AMEND THE BILL FURTHER, AS AND IF AMENDED, PAGE 6, LINES 10-14, BY STRIKING SECTION 11-5-430(D) AND INSERTING:

/ (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. /

AMEND THE BILL FURTHER, AS AND IF AMENDED, PAGE 6, LINES 16-23, BY STRIKING THE FIRST PARAGRAPH OF SECTION 11-5-440(A) AND INSERTING:

/ SECTION 11-5-440. (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: /

AMEND THE BILL FURTHER, AS AND IF AMENDED, PAGE 7, LINES 33-40, BY STRIKING SECTION 11-5-440(F) AND INSERTING:

/ (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) MAY BE, FOLLOWING THE DEATH OF A DESIGNATED BENEFICIARY, 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 ARE NOT SUBJECT TO FEDERAL INCOME TAX, THEY WILL NOT BE SUBJECT TO STATE INCOME TAX. /

RENUMBER SECTIONS TO CONFORM.

AMEND TITLE TO CONFORM.

South Carolina General Assembly
121st Session, 2015-2016

H. 3768

STATUS INFORMATION

General Bill

Sponsors: Reps. G.M. Smith and Johnson

Document Path: I:\council\bill\dk\3062sa15.docx

Introduced in the House on March 3, 2015

Currently residing in the House Committee on **Ways and Means**

Summary: SC Able Savings Program

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/3/2015	House	Introduced and read first time (<u>House Journal-page 22</u>)
3/3/2015	House	Referred to Committee on Ways and Means (<u>House Journal-page 22</u>)
3/10/2015		Scrivener's error corrected
4/15/2015	House	Member(s) request name added as sponsor: Johnson

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VERSIONS OF THIS BILL

[3/3/2015](#)

[3/10/2015](#)

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A BILL

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TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 5, TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA ABLE SAVINGS PROGRAM", TO ALLOW INDIVIDUALS WITH A DISABILITY AND THEIR FAMILIES TO SAVE PRIVATE FUNDS TO SUPPORT THE INDIVIDUAL WITH A DISABILITY, TO PROVIDE GUIDELINES TO THE STATE TREASURER FOR THE MAINTENANCE OF THESE ACCOUNTS, AND TO ESTABLISH THE SAVINGS PROGRAM TRUST FUND AND SAVINGS EXPENSE TRUST FUND; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 5, TITLE 11 AS ARTICLE 1 AND ENTITLE THEM "GENERAL PROVISIONS".

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Be it enacted by the General Assembly of the State of South Carolina:

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SECTION 1. Chapter 5, Title 11 of the 1976 Code is amended by adding:

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32

“Article 3

ABLE Savings Program

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Section 11-5-400. 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 to support the individual with a disability and to provide guidelines for the maintenance of these accounts.

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Section 11-5-410. As used in this article:

1 (1) 'ABLE savings account' or 'account' means an individual
2 savings account established in accordance with the provisions of this
3 article.

4 (2) 'Account owner' means the person who enters into an ABLE
5 savings agreement pursuant to the provisions of this article. The
6 account owner also must be the designated beneficiary; however, a
7 trustee or guardian may be appointed as an account owner for a
8 designated beneficiary who is a minor or lacks capacity to enter into
9 an agreement.

10 (3) 'Designated beneficiary' means a South Carolina resident
11 whose qualified disability expenses may be paid from the account.
12 The designated beneficiary must be an eligible individual at the time
13 the account is established. The account owner may change the
14 designated beneficiary so long as the new beneficiary is an eligible
15 individual at the time of the change.

16 (4) 'Eligible individual' means an individual who is entitled to
17 benefits based on blindness or disability pursuant to 42 U.S.C.
18 Section 401 et seq. or 42 U.S.C. Section 1381, as amended, and the
19 blindness or disability occurred before the date on which the
20 individual attained age twenty-six, or an individual with respect to
21 which a disability certification to the satisfaction of the Secretary of
22 the United States Treasury is filed with the Secretary for a taxable
23 year.

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

- 26 (a) licensed or chartered by the Director of Insurance;
- 27 (b) licensed or chartered by the State Commissioner of
28 Banking;
- 29 (c) chartered by an agency of the federal government; or
- 30 (d) subject to the jurisdiction and regulation of the federal
31 Securities and Exchange Commission.

32 (6) 'Management contract' means the contract executed by the
33 State Treasurer and a financial organization selected to act as a
34 depository and manager of the program.

35 (7) 'Member of the family' has the meaning defined in Section
36 529A of the federal Internal Revenue Code of 1986, as amended.

37 (8) 'Nonqualified withdrawal' means a withdrawal from an
38 account which is not:

- 39 (a) a qualified withdrawal; or
- 40 (b) a rollover distribution.

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

1 (10) 'Program manager' means a financial organization selected
2 by the State Treasurer to act as a depository and manager of the
3 program.

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

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

10 (13) 'Rollover distribution' means a rollover distribution as
11 defined in Section 529A of the federal Internal Revenue Code of
12 1986, as amended.

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

15 (15) 'Secretary' means the Secretary of the United States
16 Treasury.

17

18 Section 11-5-420. (A) The State Treasurer shall implement and
19 administer the program under the terms and conditions established
20 by this article. The State Treasurer has the authority and
21 responsibility to:

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

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

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

28 (4) make changes to the program required for the participants
29 in the program to obtain the federal income tax benefits or treatment
30 provided by section 529A of the federal Internal Revenue Code of
31 1986, as amended;

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

35 (6) develop marketing plans and promotional materials;

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

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

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

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

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

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

6 (B) The State Treasurer may enter into agreements with other
7 states to either allow South Carolina residents to participate in a plan
8 operated by another state or to allow residents of other states to
9 participate in the South Carolina ABLE Savings Program.

10
11 Section 11-5-430. (A) The State Treasurer may implement the
12 program through use of financial organizations as account
13 depositories and managers. The State Treasurer may solicit
14 proposals from financial organizations to act as depositories and
15 managers of the program. Financial organizations submitting
16 proposals shall describe the investment instruments to be held in
17 accounts. The State Treasurer may select more than one financial
18 organization and investment instrument for the program. The State
19 Treasurer shall select as program depositories and managers the
20 financial organization, from among the bidding financial
21 organizations, that demonstrates the most advantageous
22 combination, both to potential program participants and this State,
23 of the following factors:

24 (1) financial stability and integrity of the financial
25 organization;

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

27 (3) the ability of the financial organization to satisfy
28 recordkeeping and reporting requirements;

29 (4) the financial organization's plan for promoting the
30 program and the investment the organization is willing to make to
31 promote the program;

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

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

36 (7) the ability of the financial organization to accept
37 electronic withdrawals, including payroll deduction plans; and

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

41 (B) The State Treasurer may enter into contracts with a financial
42 organization necessary to effectuate the provisions of this article. A

1 management contract must include, at a minimum, terms requiring
2 the financial organization to:

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

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

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

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

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

21 (6) hold all accounts for the benefit of the account owner or
22 owners;

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

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

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

38 (C) The State Treasurer may:

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

41 (2) require that an audit be conducted of the operations and
42 financial position of the program depository and manager at any
43 time if the State Treasurer has any reason to be concerned about the

1 financial position, the recordkeeping practices, or the status of
2 accounts of the program depository and manager; and

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

10 (D) The State Treasurer, the Department of Social Services, the
11 Department of Health and Environmental Control, and the
12 Department of Disability and Special Needs are authorized to
13 exchange data regarding eligible individuals to carry out the
14 purposes of this article.

15

16 Section 11-5-440. (A) An ABLE savings account established
17 pursuant to the provisions of this article must be opened by a
18 designated beneficiary, a trustee, or a guardian of a designated
19 beneficiary who lacks capacity to enter into a contract and each
20 beneficiary may have only one account. The State Treasurer may
21 establish a nonrefundable application fee. An application for an
22 account must be in the form prescribed by the State Treasurer and
23 contain the following:

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

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

29 (3) certification relating to no excess contributions; and

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

31 (B) A person may make contributions to an ABLE savings
32 account after the account is opened, subject to the limitations
33 imposed by Section 529A of the federal Internal Revenue Code of
34 1986, as amended, or any adopted rules and regulations promulgated
35 by the State Treasurer pursuant to this article.

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

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

41 (2) the total contributions if the:

42 (a) value of the account is equal to or greater than the
43 account maximum established by the State Treasurer. The account

1 maximum must be equal to the account maximum for postsecondary
2 education savings accounts; or

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

5 (D)(1) An account owner may:

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

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

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

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

22 (2) A statement must be provided to each account owner at
23 least four times each year within thirty days after the end of the three
24 month period to which a statement relates. The statement must
25 identify the contributions made during a preceding three month
26 period, the total contributions made to the account through the end
27 of the period, the value of the account at the end of the period,
28 distributions made during the period, and other information that the
29 State Treasurer requires to be reported to the account owner.

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

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

36 (2) Monies in an ABLE savings account:

37 (a) are exempt from attachment, execution, or
38 garnishment; and

39 (b) may be claimed by the South Carolina Medicaid plan
40 subject to limitations imposed by the Secretary.

41

42 Section 11-5-450. (A) Nothing in this article may create or be
43 construed to create any obligation of the State Treasurer, the State,

1 or any agency or instrumentality of the State to guarantee for the
2 benefit of an account owner or designated beneficiary with respect
3 to the:

- 4 (1) return of principal;
- 5 (2) rate of interest or other return on an account; or
- 6 (3) payment of interest or other return on an account.

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

13
14 Section 11-5-460. (A) The South Carolina ABLE Savings
15 Program Trust Fund is established in the Office of the State
16 Treasurer. The trust fund must be utilized if the State Treasurer
17 elects to accept deposits from contributors rather than have deposits
18 sent directly to the program manager. The trust fund must consist of
19 any monies deposited by contributors pursuant to the provisions of
20 this article which are not deposited directly with the program
21 manager. All interest derived from the deposit and investment of
22 monies in the trust fund must be credited to the fund. At the end of
23 each fiscal year, all unexpended and unencumbered monies in the
24 trust fund must remain in the fund and not be credited or transferred
25 to the state general fund or to another fund.

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

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

34
35 SECTION 2. Sections 11-5-10 through 11-5-280 of the 1976 Code
36 are designated as Article 1, Chapter 5, Title 11 entitled “General
37 Provisions”. The Code Commissioner is directed to change
38 references from “chapter” to “article” as appropriate to reflect the
39 redesignated provisions.

40
41 SECTION 3. This act takes effect upon approval by the Governor
42 and applies for tax years beginning after 2015.

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