AMENDED

April 29, 2015

**H. 3768**

Introduced by Reps. G.M. Smith, Johnson and Willis

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Read the first time March 3, 2015.

**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”.

Amend Title To Conform

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

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

“Article 3

ABLE Savings Program

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a qualified withdrawal; or

(b) a rollover distribution.

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

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

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

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

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

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

(15) ‘Secretary’ means the Secretary of the United States Treasury.

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

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

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

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

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

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

(6) develop marketing plans and promotional materials;

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

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

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

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

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

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

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

Section 11‑5‑430. (A) The State Treasurer may implement the program through use of program managers as account depositories or managers, or both. The State Treasurer may solicit proposals from program managers to act as depositories or managers of the program, or both. Program managers submitting proposals shall describe the investment instruments to be held in accounts. The State Treasurer may select more than one program manager and investment instrument for the program. The State Treasurer may select as program depositories or managers the program managers, from among the bidding program managers, that demonstrate the most advantageous combination, both to potential program participants and this State, of the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) The State Treasurer may:

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

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

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

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

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:

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

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

(3) certification relating to no excess contributions; and

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

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

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

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

(2) the total contributions if the:

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

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

(D)(1) An account owner may:

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

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

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

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

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

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

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

(2) Funds held in an ABLE savings account:

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

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

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

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

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

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

(G) To the extent earnings in an ABLE savings account and distributions from an ABLE savings account are not subject to federal income tax, they will not be subject to state income tax.

Section 11‑5‑450. (A) Nothing in this article may create or be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of an account owner or designated beneficiary with respect to the:

(1) return of principal;

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

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

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

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

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

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

SECTION 2. Section 12‑6‑1140 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( )(a) Contributions made to each investment trust account created pursuant to Article 3, Chapter 5, Title 11, by a resident of this State or a nonresident required to file a State of South Carolina income tax return up to the limit of maximum contributions allowed to such accounts under Section 529A of the federal 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 federal Internal Revenue Code of 1986, as amended.

(b) Any interest, dividends, gains, property, or income accruing on the payments made to an investment trust agreement pursuant to Article 3, Chapter 5, Title 11 or on any account in the South Carolina ABLE Savings Expense Fund must be excluded from the gross income of any such account owner, contributor, or beneficiary for purposes of South Carolina income taxes, to the extent the amounts remain on deposit in the South Carolina ABLE Savings Expense Fund or are withdrawn pursuant to a Qualified Withdrawal.

(c) The earnings portion of any withdrawals from an account that are not qualified withdrawals must 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.

SECTION 3. Sections 11‑5‑10 through 11‑5‑280 of the 1976 Code are designated as Article 1, Chapter 5, Title 11 entitled “General Provisions”. The Code Commissioner is directed to change references from “chapter” to “article” as appropriate to reflect the redesignated provisions.

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

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