

"CHAPTER 4

South Carolina Tuition Prepayment Program

Section 59-4-10. This chapter may be cited as the 'South Carolina Tuition Prepayment Program Act'. The South Carolina Tuition Prepayment Program is established to assist the citizens of South Carolina with the expense of college by providing an advanced payment program for tuition at a fixed and guaranteed level for public colleges and universities.

Section 59-4-20. As used in this chapter:

(1) 'College or university' means a state-chartered public educational institution of higher learning located in this state.

(2) 'Contributor' means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract.

(3) 'Director' means the head of the South Carolina Tuition Prepayment Program.

(4) 'Designated beneficiary' means the individual who is designated as the beneficiary of amounts paid or to be paid to the South Carolina Tuition Prepayment Program or, in the case of a change in beneficiaries as permitted under this chapter, the individual who is the new beneficiary.

(5) 'Fund' means the South Carolina Tuition Prepayment Program Fund.

(6) 'Independent institution of higher education' means any independent eleemosynary junior or senior college in South Carolina whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Secondary Schools.

(7) 'Program' means the South Carolina Tuition Prepayment Program.

(8) 'The Tuition Prepayment Contract' means the contract entered into by the Director of the South Carolina Tuition Prepayment Program or his designee on behalf of the Program and a contributor pursuant to this chapter for the advance payment by the contributor of undergraduate tuition at a fixed, guaranteed level for a designated beneficiary to attend a public educational institution of higher learning in the State or to another educational institution of higher learning that may be provided in this chapter to which the designated beneficiary is admitted.

(9) 'Treasurer' means the South Carolina State Treasurer.

(10) 'Tuition', for the purposes of this chapter only, means the registration or matriculation, credit-hour charges, and mandatory college fees, including athletic or activity, medical or infirmary and capital improvement fees, imposed by a public higher education institution in this State as a condition of enrollment of all full-time, undergraduate students regardless of class. Tuition does not under any circumstance include the expenses for student housing, meal plans, books, class or lab supplies and equipment, uniforms and laundry, transportation, course-specific fees, or any other fees or charges the program did not consider in the determination of the annual contract pricing structure, regardless of how these fees are characterized by the institution.

Section 59-4-30. (A) The South Carolina Tuition Prepayment Program is created as a program within the Office of State Treasurer. The chief administrative and operating official for the program is the director, who must be appointed and supervised by the Treasurer. The director must be a state official or employee.

(B) The Treasurer is responsible for developing and adopting the investment policies, guidelines, and strategies for the fund and determining the costs, termination, and withdrawal options of the prepaid tuition contracts. The Treasurer shall promulgate regulations in accordance with the Administrative Procedures Act which:

(1) provide for the number and types of contract plans to be offered, to include both public and independent colleges and universities;

(2) prescribe the terms and conditions of the prepaid tuition contracts, including the terms and conditions under which funds may be withdrawn or refunds made from the fund;

(3) prescribe the requirements, procedures, and guidelines regarding prepaid tuition contracts;

(4) provide for the contract contents to include, at a minimum, tuition and credit hour guarantees, beneficiary substitutions, default, withdrawal, refund, termination and penalty information, and contributor payment amounts and conditions;

(5) provide for the receipt of advance payments;

(6) prescribe guidelines governing the program;

(7) provide for the charging and retention of fees for the cost of services and administration of the fund;

(8) prescribe the investment and management policies of the fund; and

(9) prescribe other policies, procedures, and criteria necessary to implement and administer the program.

These regulations shall be developed in consultation with the chairmen or their designees of the Senate Finance Committee, the Senate Education Committee, the House Ways and Means Committee and the House Education and Public Works Committee and submitted in sufficient time for the General Assembly to begin their approval process by January 15, 1998. It is the intent of the General Assembly to have these regulations in force in time so that the program may begin to offer contracts by July 1, 1998.

Section 59-4-40. (A) The fund is created as a nonpublic special, revolving fund to be established and maintained by the State of South Carolina. The fund shall consist of monies received from contributors, other monies acquired from governmental and private sources, and proceeds from the investments of the fund. The fund is to expend funds only for the purposes of this chapter and is at no time to be considered public funds. There must be a separate accounting for each designated beneficiary.

(B) The fund must be invested as directed by the Treasurer. However, earnings in the fund or any portion of the fund must not be used as security for a loan. An attempt to use the fund, a contract, or a portion of either as security for a loan is void. The fund may receive amounts transferred from an UGMA, UTMA, or other account established for the benefit of a minor provided that the beneficiary of such an account is identified as the legal owner of the South Carolina Tuition Prepayment contract upon attaining majority age. The fund, contributions to the fund, and the right of a person to a refund of contributions or any other right accrued or accruing to any person under the provisions of this chapter are exempt from attachment, garnishment, levy, and sale under any means or final process issued by any court or bankruptcy proceeding and are unassignable except as specifically otherwise provided in this chapter. The funds may be invested and reinvested in any of the following:

(1) securities authorized pursuant to Article 7, Chapter 9, Title 11;

(2) equity securities of a corporation that is registered on a national securities exchange, as provided in the Securities Exchange Act, 1934, or a successor act, or quoted through the National Association of Securities Dealers Automatic Quotations System, or a similar service; and

(3) securities issued by an investment company registered under the Investment Company Act of 1940, or a successor act.

(C) The custody and management of the fund must be directed by the treasurer and invested in accordance with the written investment policies approved by the treasurer. The earnings from fund investments become a part of the fund and may be expended only for the purposes of this chapter.

Section 59-4-50. An act or undertaking of the program shall not constitute a debt of the State or any agency, department, institution, or political subdivision thereof, or a pledge of the full faith and credit of the State or any agency, department, institution, or political subdivision, but is payable solely from the monies in the fund.

Section 59-4-60. All of the agencies, departments, and institutions of higher learning of the State are required to provide reasonable cooperation and assistance to the Treasurer and the director in the implementation of the program under this chapter. Colleges and universities shall make every effort to restrict tuition increases to no more than the annual higher education price index.

Section 59-4-65. In the event the State of South Carolina determines by law or otherwise that the fund should be discontinued and all tuition prepayment contracts canceled, contributors shall be entitled to a refund of all payments to the fund plus interest on these contributions from the date payment is made at the rate of four percent per annum. Notwithstanding any other provision of this chapter or of law, if the fund does not have sufficient monies to make such refunds, the deficiencies shall be paid from the general fund of the State.

Section 59-4-70. Upon implementation of the program, the director or his designee shall prepare an annual financial report of the fund and the program. This report must be submitted to the Treasurer on the date and in the format prescribed by the Treasurer. The program and the fund also must be subject to audit by the State Auditor or his designee. The director or his designee annually shall evaluate the actuarial soundness of the fund and report this information to the Treasurer.

Section 59-4-80. The director shall solicit answers to applicable ruling requests from the Internal Revenue Service regarding the tax status of fees paid pursuant to a prepaid tuition contract to the contributor and to the designated beneficiary and from the Securities and Exchange Commission regarding the application of federal securities laws to the program. The director shall make the status of these requests known to the board. In accordance with any applicable law or Internal Revenue Service ruling, the board shall structure the program in order to allow for federal tax deferral on contributions to the fund.

Section 59-4-90. The Comptroller General and the chief finance officers of state agencies, departments, and institutions maintaining separate payroll accounts, at the request of a state employee, may arrange for contributions through payroll deduction to the fund the appropriate payment in accordance with a tuition prepayment contract.

Section 59-4-100. Notwithstanding any other provision of law, neither the program nor the fund is liable for income taxes, and neither the program nor the fund is liable for local taxes, fees, or assessments. In addition, contributions to the fund credited to a beneficiary's account entitle the contributor to a deduction for purposes of the state

individual income tax, and these contributions must not be included in the South Carolina gross income of the beneficiary or anyone required to support the beneficiary. Furthermore, earnings on the account, tuition waivers, credits or payments for tuition, or any money or payout that the designated beneficiary receives or from which he benefits to the extent that the payments are used for tuition expenses during the same calendar year in which they are received shall not be included in the South Carolina gross income of the beneficiary or anyone required to support the beneficiary."