ACTS
AND
JOINT RESOLUTIONS
SOUTH CAROLINA
2013

Volume I

REGULAR
SESSION

Pages 1-880
Acts 1-100

ACTS and JOINT RESOLUTIONS

OF THE

GENERAL ASSEMBLY

OF THE

STATE of SOUTH CAROLINA

_____

2013 REGULAR SESSION

VOLUME I

_____

First Part
of Seventy-Ninth Volume of Statutes at Large

(The Acts and Joint Resolutions of 2014
Constitute the Second Part)

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Passed at the regular session which was begun and held at the City of Columbia on the 8th day of January, A.D., 2013, and was adjourned on the 27th day of June, A.D., 2013

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PRINTED UNDER DIRECTION OF
JAMES H. HARRISON
CODE COMMISSIONER

Notice

The first regular session of the 120th South Carolina General Assembly has adjourned under the provisions of S. 744, the Sine Die Resolution.

The following acts were passed during the 2013 regular session of the General Assembly; however, they were vetoed by the Governor and action on these vetoes are pending by the General Assembly.

(R88, S707) **AN ACT TO PROVIDE FOR THE AUTHORITY OF THE CITY OF COLUMBIA TO APPOINT AND COMMISSION FIREFIGHTERS TO SERVE AS A CERTIFIED LAW ENFORCEMENT OFFICER FOR CERTAIN LIMITED PURPOSES WITH THE FULL POWERS OF A CERTIFIED LAW ENFORCEMENT OFFICER AND TO REQUIRE FIREFIGHTERS TO MEET CERTAIN QUALIFICATIONS TO BE COMMISSIONED AS A CERTIFIED LAW ENFORCEMENT OFFICER.**

(R94, H3342) **AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17-15-175 SO AS TO PROVIDE THAT AFTER AN INITIAL APPEARANCE, A CIRCUIT COURT JUDGE MAY NOT ISSUE A BENCH WARRANT FOR FAILURE TO APPEAR UPON MOTION BY A SOLICITOR UNLESS THE SOLICITOR HAS POSTED CERTAIN NOTICE BEFORE THE BENCH WARRANT IS ISSUED AND TO PROVIDE AN EXCEPTION.**

In the parenthesis to the left of the permanent numbers are two numbers of which this is an example: (R276, S424). The first number is preceded by R in every instance, and the second number is either H or S. The R indicates the ratification number of the act or joint resolution; the H is the House number as a bill or joint resolution; and the S is the Senate number as a bill or joint resolution.

TABLE OF CONTENTS

Notice ii

Ratification number to act number iv

General and permanent laws 2

Local and temporary laws 1641

Index to regulations of state agencies 1680

Index to acts and joint resolutions 1684

RATIFICATION NUMBERS

With Act Numbers Assigned

Ratification No.	Act No.	Ratification No.	Act No.
1	1	29	26
2	2	30	20
3	3	31	21
4	4	32	114
5	106	33	22
6	117	34	23
7	5	35	24
8	6	36	25
9	7	37	27
10	116	38	28
11	8	39	108
12	120	40	29
13	9	41	30
14	10	42	31
15	107	43	32
16	11	44	38
17	102	45	39
18	12	46	100
19	13	47	40
20	14	48	41
21	15	49	42
22	119	50	43
23	16	51	96
24	17	52	44
25	118	53	45
26	18	54	46
27	19	55	47
28	113	56	48

Ratification No.	Act No.	Ratification No.	Act No.
57	49	88	PENDING*
58	50	89	110
59	51	90	56
60	60	91	57
61	52	92	74
62	115	93	75
63	103	94	PENDING*
64	109	95	76
65	33	96	77
66	34	97	78
67	35	98	58
68	36	99	59
69	37	100	79
70	53	101	80
71	54	102	81
72	VETOED	103	82
73	55	104	95
74	61	105	83
75	62	106	84
76	63	107	85
77	64	108	86
78	65	109	87
79	66	110	88
80	67	111	89
81	68	112	105
82	69	113	90
83	70	114	111
84	71	115	91
85	94	116	92
86	72	117	93
87	73	118	97

Ratification No.	Act No.	Ratification No.	Act No.
119	98	122	99
120	101	123	112
121	104		

* This act or joint resolution was vetoed by the Governor. Action on this act or joint resolution is pending by the General Assembly.

ACTS

AND

JOINT RESOLUTIONS

OF THE

General Assembly

OF THE

State of South Carolina

NIKKI R. HALEY, Governor; GLENN F. McCONNELL, Lieutenant Governor and ex officio President of the Senate; JOHN E. COURSON, President Pro Tempore of the Senate; ROBERT W. HARRELL JR., Speaker of the House of Representatives; JAMES H. LUCAS, Speaker Pro Tempore of the House of Representatives; JEFFREY S. GOSSETT, Clerk of the Senate; CHARLES F. REID, Clerk of the House of Representatives.

PART I

GENERAL AND PERMANENT LAWS

No. 1

(R1, S156)

AN ACT TO AMEND SECTION 54-7-100, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE HUNLEY COMMISSION, INCLUDING ITS MEMBERS AND DUTIES, SO AS TO PROVIDE THAT AN ADDITIONAL MEMBER OF THE COMMISSION SHALL BE THE LIEUTENANT GOVERNOR TO SERVE EX OFFICIO, OR HIS DESIGNEE.

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

Member added

SECTION 1. Section 54-7-100 of the 1976 Code, as last amended by Act 361 of 1996, is further amended to read:

"Section 54-7-100. A committee of ten members of the 'Hunley Commission' shall be appointed, three of whom must be members of the House of Representatives to be appointed by the Speaker, three of whom must be members of the Senate to be appointed by the President Pro Tempore, and three members to be appointed by the Governor. The tenth member of the commission shall be the Lieutenant Governor to serve ex officio, or his designee. The committee shall make a study of the law regarding the rights to the salvage of the Hunley and any claim that a person or entity may assert with regard to ownership or control of the vessel. The committee is authorized to negotiate with appropriate representatives of the United States government concerning the recovery, curation, siting, and exhibition of the H.L. Hunley. Provided, inasmuch as actual locations or geographical coordinates of submerged archaeological historic properties are now exempt from disclosure as public records pursuant to Section 54-7-820(A), the geographical coordinates of the Hunley's location, regardless of the custodian, upon receipt from the Navy or receipt otherwise are expressly made exempt from disclosure pursuant to the Freedom of Information Act or any other law and no remedy for the disclosure of such coordinates exists pursuant to the Freedom of Information Act; and provided further, that with respect to the Hunley project, as described herein, the applicable duties and responsibilities contained in

Article 5, Chapter 7 of this title shall be vested in the Hunley Commission; and provided further, that with respect to the Hunley project that the Hunley Commission shall be exempt from compliance with the provisions of Chapter 35, Title 11. However, the committee may not negotiate any agreement which would result in the siting outside South Carolina of any remains, not claimed by direct descendants, found in the Hunley or which would relinquish South Carolina's claim of title to the Hunley unless perpetual siting of the submarine in South Carolina is assured by the federal government in the agreement.

The committee shall make recommendations regarding the appropriate method of preservation of this historic vessel and is also authorized to direct the Attorney General on behalf of South Carolina to take appropriate steps to enforce and protect the rights of the State of South Carolina to the salvage of the Hunley and to defend the State against claims regarding this vessel. The committee shall submit a recommendation for an appropriate site in South Carolina for the permanent display and exhibition of the H.L. Hunley to the General Assembly for its review and approval.

The committee members shall not receive the subsistence, mileage, and per diem as may be provided by law for members of boards, committees, and commissions."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 22nd day of January, 2013.

Approved the 23rd day of January, 2013.

No. 2

(R2, S91)

AN ACT TO AMEND SECTION 50-11-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE HUNTING AND TAKING OF ANTLERED DEER, SO AS TO DELETE A PROHIBITION ON BAITING DEER IN GAME ZONES 1 AND 2.

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

Deer

SECTION 1. Section 50-11-310(B) of the 1976 Code, as last amended by Act 286 of 2008, is further amended to read:

"(B) In Game Zones 1 and 2, it is unlawful to pursue deer with dogs."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 27th day of February, 2013.

Approved the 1st day of March, 2013.

No. 3

(R3, S165)

AN ACT TO AMEND SECTION 50-15-65, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MANAGEMENT AND CONTROL OF ALLIGATORS ON PRIVATE LANDS, SO AS TO EXTEND THE HUNTING SEASON OF ALLIGATORS ON PRIVATE LANDS TO MAY THIRTY-FIRST.

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

Alligator hunting season extended

SECTION 1. Section 50-15-65(B)(3) of the 1976 Code, as last amended by Act 183 of 2010, is further amended to read:

"(3) A landowner or lessee of property on which alligators occur may apply to the department for a permit to participate in the Private Lands Alligator Program. On those private lands the season for

hunting and taking alligators is from September first through May thirty-first. On those lands in the private lands program only, unsecured alligators may be taken by firearms, provided no alligator may be taken by use of rim fire weapons or shotguns. Unsecured alligators may be taken only by firearms from thirty minutes before sunrise until thirty minutes after sunset. A person who takes an alligator by use of firearms must make a reasonable effort to recover the carcass at the time of taking or for the next ensuing forty-eight hours. A person using a firearm to take an alligator must have a gaff or grappling hook or other similar device to immediately locate and recover the carcass."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 27th day of February, 2013.

Approved the 1st day of March, 2013.

No. 4

(R4, S244)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY REPEALING SECTION 50-11-940 RELATING TO THE DESIGNATION OF CERTAIN PROPERTY OF THE BELLE W. BARUCH FOUNDATION IN GEORGETOWN COUNTY AS A BIRD AND GAME REFUGE; AND BY REPEALING SECTION 50-11-941 PROVIDING THAT PROVISIONS OF SECTION 50-11-940 MUST NOT BE CONSTRUED TO BE IN CONFLICT WITH THE LAST WILL AND TESTAMENT OF BELLE W. BARUCH.

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

Findings for repeal

SECTION 1. The General Assembly finds that:

(1) Pursuant to a request by the trustees of the Belle W. Baruch Foundation, the General Assembly passed Act 1016 of 1974 that declared the 17,000 acres of the Belle W. Baruch Foundation property in Georgetown County a bird and game sanctuary and prohibited the hunting of any birds or game on the property.

(2) Act 1016 of 1974, codified as Section 50-11-940 of the 1976 Code, has been amended on several occasions, most recently to allow the hunting of deer, hogs, coyotes, or raccoons by "an employee or agent" of the Belle W. Baruch Foundation.

(3) The Belle W. Baruch Foundation, which at the time of enactment of Act 1016, was a New York foundation, requested that the property be declared a bird and game sanctuary in order to discourage poaching of birds and game on the property, due to the proliferation of poaching resulting from a limited presence of staff of the Belle W. Baruch Foundation and wildlife law enforcement officials on and around the property.

(4) The Belle W. Baruch Foundation is now a South Carolina foundation that employs nine people who work on and manage its property in Georgetown County, and the property is adequately patrolled and protected by staff of the Belle W. Baruch Foundation and law enforcement.

(5) The trustees of the Belle W. Baruch Foundation have undertaken a study of the wildlife management goals for the property and have determined:

(a) the designation of the property as a bird and game refuge is no longer necessary for or helpful to the management of the property;

(b) the restrictions on hunting contained in Section 50-11-940 result in increased liability to the Belle W. Baruch Foundation in its efforts to manage populations of deer, hogs, coyotes, and raccoons on the property, by requiring that anyone hunting these animals be "an employee or agent" of the Belle W. Baruch Foundation;

(c) the restrictions contained in Section 50-11-940 prevent the trustees of the Belle W. Baruch Foundation from utilizing hunting leases and paid hunts as both a management tool and a source of revenue for the Belle W. Baruch Foundation, resulting in the loss of hundreds of thousands of dollars of potential revenue to the Belle W. Baruch Foundation, the inability to create jobs in the area of the property for these purposes, and a missed opportunity for the property to be an integral part of the tourism base for the Georgetown and Grand Strand areas; and

(d) the trustees of the Belle W. Baruch Foundation have by unanimous resolution requested that the designation of the property as a bird and game refuge be removed.

Sections repealed

SECTION 2. Sections 50-11-940 and 50-11-941 of the 1976 Code are repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 27th day of February, 2013.

Approved the 4th day of March, 2013.

No. 5

(R7, S3)

AN ACT TO AMEND SECTION 61-2-180, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BINGO, RAFFLES, AND OTHER SPECIAL EVENTS, SO AS TO CLARIFY THAT THIS SECTION IS NOT AN EXCEPTION OR LIMITATION TO ACTIVITIES, DEVICES, OR MACHINES THAT ARE PROHIBITED BY SECTION 12-21-2710 OR OTHER PROVISIONS THAT PROHIBIT GAMBLING; AND TO AMEND SECTION 61-4-580, RELATING TO GAME PROMOTIONS ALLOWED BY HOLDERS OF PERMITS AUTHORIZING THE SALE OF BEER OR WINE, SO AS TO CLARIFY THAT THIS SECTION DOES NOT AUTHORIZE THE USE OF AN ACTIVITY, DEVICE, OR MACHINE THAT IS PROHIBITED BY SECTION 12-21-2710 OR BY OTHER PROVISIONS THAT PROHIBIT GAMBLING.

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

Bingo, special events or activities not an exception to gambling and other offenses

SECTION 1. Section 61-2-180 of the 1976 Code is amended to read:

"Section 61-2-180. A person or organization licensed by the department under this title may hold and advertise special events such as bingo or other similar activities intended to raise money for charitable purposes. This section does not affect the requirements for obtaining a bingo license from the department. A special event or activity that is authorized pursuant to this section is not an exception or limitation to Section 12-21-2710 or other provisions of the South Carolina Code of Laws in which gambling or games of chance are unlawful and prohibited."

Establishments licensed to sell beer and wine, certain promotions not an exception to gambling and other offenses

SECTION 2. Section 61-4-580 of the 1976 Code is amended to read:

"Section 61-4-580. No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(1) sell beer or wine to a person under twenty-one years of age;

(2) sell beer or wine to an intoxicated person;

(3) permit gambling or games of chance except game promotions including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:

(a) the game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;

(b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize;

(c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation; and

(d) this subsection is not an exception or limitation to Section 12-21-2710 or other provisions of the South Carolina Code of Laws in which gambling or games of chance are unlawful and prohibited;

(4) permit lewd, immoral, or improper entertainment, conduct, or practices. This includes, but is not limited to, entertainment, conduct, or practices where a person is in a state of undress so as to expose the human male or female genitals, pubic area, or buttocks cavity with less than a full opaque covering;

(5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State;

(6) sell, offer for sale, or possess any beverage or alcoholic liquors the sale or possession of which is prohibited on the licensed premises under the law of this State;

(7) conduct, operate, organize, promote, advertise, run, or participate in a 'drinking contest' or 'drinking game'. For purposes of this item, 'drinking contest' or 'drinking game' includes, but is not limited to, a contest, game, event, or other endeavor which encourages or promotes the consumption of beer or wine by participants at extraordinary speed or in increased quantities or in more potent form. 'Drinking contest' or 'drinking game' does not include a contest, game, event, or endeavor in which beer or wine is not used or consumed by participants as part of the contest, game, event, or endeavor, but instead is used solely as a reward or prize. Selling beer or wine in the regular course of business is not considered a violation of this section; or

(8) a violation of any provision of this section is a ground for the revocation or suspension of the holder's permit."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 21st day of March, 2013.

Approved the 22nd day of March, 2013.

No. 6

(R8, S304)

AN ACT TO AMEND SECTION 50-13-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS REGARDING GENERAL RESTRICTIONS ON FRESHWATER FISHING, SO AS TO REVISE THE DEFINITION OF THE TERM "BAIT FISH"; TO AMEND SECTION 50-13-60, AS AMENDED, RELATING TO THE LAWFUL POSSESSION OF FISH, SO AS TO MAKE A TECHNICAL CHANGE TO THE PROVISION RELATING TO THE POSSESSION OF A GAME FISH; TO AMEND SECTIONS 50-13-200, 50-13-210, 50-13-250, 50-13-260, AND 50-13-270, ALL AS AMENDED, RELATING TO THE PROTECTION OF FRESHWATER GAME FISH, SO AS TO REVISE THE AGE OF PERSONS IN A BOAT THAT MAY USE AN UNLIMITED NUMBER OF FISHING DEVICES, TO REVISE THE NUMBER OF TROUT THAT MAY BE TAKEN ON THE LOWER REACH OF THE SALUDA RIVER, TO PROVIDE THE LEGAL LENGTH OF SMALLMOUTH BASS THAT MAY BE TAKEN FROM CERTAIN LAKES, RIVERS, AND RESERVOIRS, AND TO MAKE A TECHNICAL CHANGE; TO AMEND SECTIONS 50-13-620, 50-13-625, AND 50-13-635, ALL AS AMENDED, RELATING TO THE PROTECTION OF NONGAME FISH, SO AS TO FURTHER PROVIDE FOR THE COLOR OF CERTAIN MARKINGS, TO PROVIDE THAT A COMMERCIAL TROTLINE WHICH USES FIFTY OR FEWER HOOKS MUST BE MARKED AT INTERVALS OF TWENTY-FIVE HOOKS, TO REVISE THE AGE OF PERSONS IN A BOAT THAT MAY USE AN UNLIMITED NUMBER OF GAME FISHING DEVICES, AND TO REVISE THE NUMBER OF SET HOOKS A RECREATIONAL FISHERMAN MAY USE.

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

Definition revised

SECTION 1. Section 50-13-10(B)(1) of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"(1) 'Bait fish' means a fish allowed to be used as bait in the freshwaters including: Asian clams (Corbicula spp.), crayfish, eels, herring, shad, and fathead minnows (Pimephales promelas), golden shiners (Notemigonus crysoleucas), and goldfish, including 'black salties' (Carassius auratus). Except for bream (other than redbreast), no other game fish is allowed to be used as bait, provided, trout are allowed to be used as bait only on Lakes Hartwell, Russell, Thurmond, Tugaloo, Yonah, Stevens Creek Reservoir, and the Savannah River."

Technical correction

SECTION 2. Section 50-13-60(C) of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"(C) Except as otherwise provided, it is unlawful to possess any game fish without head and tail fin intact and, where a length limit is imposed on any species, it is unlawful to possess that species without head and tail fin intact."

Age revised

SECTION 3. Section 50-13-200 of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"Section 50-13-200. It is unlawful to take freshwater game fish except by game fish devices. A fisherman only may use four game fishing devices. A fisherman fishing from a boat may use an unlimited number of game fishing devices if all persons in the boat sixteen years and older have valid fishing licenses."

Trout size limitation

SECTION 4. Section 50-13-210(A)(6) of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"(6) not more than five may be trout. However, on the lower reach of the Saluda River, only one trout out of the five possessed may be more than sixteen inches in total length. On Lake Jocassee not more than three trout may be taken;"

Smallmouth bass size limitation

SECTION 5. Section 50-13-250 of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"Section 50-13-250. It is unlawful to possess smallmouth bass less than twelve inches in total length, except on Lakes Hartwell, Russell (including the Lake Hartwell tail water), Thurmond, Tugaloo, Yonah, the Chattooga, and Savannah Rivers, and Steven Creek Reservoir where there is no length limit on smallmouth bass."

Technical change

SECTION 6. Section 50-13-260(A)(5) of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"(5) Eastatoe Creek from the backwaters of Lake Keowee upstream to S.C. State Highway S-39-143 (Roy Jones Road) in Pickens County."

Technical change

SECTION 7. Section 50-13-270(B)(4) of the 1976 Code, as last amended by Act 113 of 2012, is further amended to read:

"(4) Eastatoe Creek on Eastatoe Heritage Preserve in Pickens County."

Markings requirements revised

SECTION 8. Section 50-13-620(A) of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"(A) A trotline, trap, eel pot, gill net, and hoop net must be marked with a white floating marker not less than a capacity of one quart and not more than a capacity of one gallon and must be made of solid, buoyant material that does not sink if punctured or cracked. A floating marker must be constructed of plastic, PVC spongex, plastic foam, or cork. A hollow buoy or float, including plastic, metal, or glass bottles or jugs, must not be used, except that a manufactured buoy or float specifically designed for use with nongame fishing devices may be hollow if constructed of heavy duty plastic material and approved by the department. The owner's name and department customer

identification number must be legible on each of the white floating markers. Both commercial and recreational fishermen shall comply with provisions of this title pertaining to the marking and use of a nongame fishing device. A trotline must be marked on both ends. A commercial trotline must be marked at intervals of every fifty hooks. A commercial trotline which uses fifty or fewer hooks must be marked at intervals of twenty-five hooks. A recreational trotline must be marked at intervals of every twenty-five hooks. Each interval float must be 'International Orange' in color."

Age revised

SECTION 9. Section 50-13-625 of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"Section 50-13-625. Nongame fish may be taken with any lawful game fishing device. A fisherman only may use four game fishing devices. A fisherman fishing from a boat may use an unlimited number of game fishing devices if all persons in the boat sixteen years and older have valid fishing licenses."

Number of set hooks revised

SECTION 10. Section 50-13-635(14) of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"(14) not more than fifty set hooks;"

Savings clause

SECTION 11. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Severability clause

SECTION 12. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 13. This act takes effect upon approval by the Governor.

Ratified the 21st day of March, 2013.

Approved the 22nd day of March, 2013.

No. 7

(R9, S305)

AN ACT TO AMEND SECTION 50-1-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE GEOGRAPHIC BOUNDARIES OF THE STATE'S BODIES OF WATERS, SO AS TO REVISE THE GEOGRAPHIC BOUNDARIES OF SAINT HELENA SOUND; TO AMEND SECTION 50-5-15, AS AMENDED, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS, SO AS TO DEFINE THE TERM "TOTAL LENGTH"; TO AMEND SECTION 50-5-40, RELATING TO THE UNAUTHORIZED TAGGING OR MARKING AND RELEASING OF SALTWATER FISH, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 50-5-375, RELATING TO SEAFOOD DEALERS' RECORDS, SO AS TO PROVIDE THAT THIS SECTION APPLIES TO EVERY WHOLESALE SEAFOOD DEALER; TO AMEND SECTION

50-5-545, RELATING TO COMMERCIAL CRAB TRAPS, SO AS TO PROVIDE THAT THIS SECTION APPLIES TO TRAPS USED FOR TAKING BLUE CRABS; TO AMEND SECTION 50-5-550, RELATING TO TRAPS ATTACHED TO A BUOY, SO AS TO PROVIDE THAT CERTAIN MINNOW TRAP FLOATS DO NOT HAVE TO BE MARKED WITH THE OPERATOR'S BAIT DEALER LICENSE NUMBER; TO AMEND SECTION 50-5-705, RELATING TO THE ESTABLISHMENT OF TRAWLING ZONES, SO AS TO REVISE THE BOUNDARIES OF CERTAIN TRAWLING ZONES; TO AMEND SECTION 50-5-1330, RELATING TO THE TAKING OF HORSESHOE CRABS, SO AS TO PROVIDE THAT A PERMIT IS NOT REQUIRED TO POSSESS A CAST OFF OR MOLTED SHELL OF A HORSESHOE CRAB, AND TO PROVIDE THAT THE DEPARTMENT OF NATURAL RESOURCES MAY GRANT PERMITS TO CERTAIN INSTITUTIONS AND PERSONS TO POSSESS AN UNLIMITED NUMBER OF HORSESHOE CRABS OR THEIR PARTS; TO AMEND SECTION 50-5-1335, RELATING TO THE USE OF BLUE CRAB TRAPS, SO AS TO PROVIDE THAT IT IS UNLAWFUL TO SET A TRAP USED FOR TAKING BLUE CRAB FOR COMMERCIAL PURPOSES WITHIN CERTAIN WATERS WITHIN THIS STATE; TO AMEND SECTIONS 50-5-1705 AND 50-5-1710, BOTH AS AMENDED, RELATING TO LAWFUL SIZE AND CATCH LIMITS FOR CERTAIN FISH, SO AS PROVIDE THAT THE LIMITS ESTABLISHED IN ARTICLE 17, CHAPTER 5, TITLE 50 APPLY TO ALL STATE WATERS; AND TO REPEAL SECTION 50-5-1340 RELATING TO COMMERCIAL USE OF CRAB POTS IN LITTLE CHECHESSEE CREEK IN BEAUFORT COUNTY.

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

Geographic boundaries of Saint Helena Sound

SECTION 1. Section 50-1-50(90) of the 1976 Code, as last amended by Act 206 of 2012, is further amended to read:

"(90) 'Saint Helena Sound' means all waters of Saint Helena Sound bounded by Edisto Beach, Otter Island, Ashe Island, Morgan Island, St. Helena Island, and Harbor Island, bounded on the seaward side by the COLREG line from Edisto Beach to Hunting Island, and bounded on the inland side by the U.S. Highway 21 bridge in the mouth of Harbor River, from the northern tip of Coffin Point (latitude 32° 26.78' N, longitude 080° 29.01' W), just east of the mouth of Coffin Creek running north crossing the mouth of Morgan River to the eastern tip of Morgan Island marsh (latitude 32° 28.14' N, longitude 080° 28.63' W), and then running north across the mouth of Coosaw River to the southern tip of Ashe Island (latitude 32° 29.77' N, longitude 080° 28.35' W), and by a line running due east from the eastern tip of Ashe Island (latitude 32° 30.19' N, longitude 080° 27.33' W), crossing the mouth of Rock Creek to Hutchinson Island, and by a line running south across the mouth of the Ashepoo River to the western side of Otter Island (latitude 32° 28.72' N, longitude 080° 25.15' W) and extending to the southern tip of Edisto Beach (latitude 32° 28.64' N, longitude 080° 20.30' W)."

Definition

SECTION 2. Section 50-5-15 of the 1976 Code, as last amended by Act 15 of 2009, is further amended by adding the following appropriately numbered item:

"( ) 'Total length' means the length of a fish laid flat and measured from the closed mouth (snout) to the tip of the tail fin when pinched together. It is a straight line measure, not over the curvature of the body."

Saltwater fish

SECTION 3. Section 50-5-40 of the 1976 Code is amended to read:

"Section 50-5-40. Unless authorized by the department, no person may tag or mark and release saltwater fish or promote such activity. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than two hundred dollars or imprisoned for not more than thirty days."

Wholesale seafood dealers

SECTION 4. Section 50-5-375 of the 1976 Code is amended to read:

"Section 50-5-375. (A) Every wholesale seafood dealer must keep and retain accurate records detailing the information required by the department for a period of not less than one year and shall open the records to the department for inspection upon reasonable demand.

(B) Any wholesale seafood dealer who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned for not more than thirty days. The provisions of this section do not supersede or replace any criminal sanctions for defrauding or attempting to defraud this State."

Blue crabs

SECTION 5. Section 50-5-545 of the 1976 Code is amended to read:

"Section 50-5-545. (A) Except as provided in this section, from June 1 through March 14, a trap used for taking blue crab used for commercial purposes must have at least two unobstructed, circular escape vents (rings) which must be two and three-eighths inches or greater in inside diameter and located on vertical surfaces. At least one vent (ring) must be in the upper chamber. All vents (rings) must be within two inches of the horizontal partition or the base of the trap.

(B) A trap used for taking blue crab constructed of a single chamber must have at least one two and three-eighths inch or larger inside diameter escape vent (ring) located on a vertical surface within two inches of the base of the trap. Peeler traps are exempt year round."

Traps attached to a buoy

SECTION 6. Section 50-5-550(A) of the 1976 Code is amended to read:

"(A) Other than minnow traps not used for a commercial purpose, and traps with lines attached to a shore based structure and not used for a commercial purpose, each trap set in the waters of this State must have attached to it a buoy made of solid, buoyant material which does not sink if punctured or if cracked. A spherical or nonspherical primary buoy must be attached to each trap. A nonspherical buoy must

be at least ten inches in length and five inches in diameter or width. A spherical buoy must be at least six inches in diameter. No plastic, metal, or glass bottles or jugs may be used as a buoy, and no buoy attached may be made of a material which could sink if punctured or cracked. No floating line or rope may be used. Minnow traps used for commercial purposes must utilize floats no smaller than five inches marked with the operator's name."

Trawling zones

SECTION 7. Section 50-5-705 of the 1976 Code is amended to read:

"Section 50-5-705. The following General Trawling Zone is established: Based on National Ocean Service (NOS) chart 11513 (22nd edition, July 12, 1997), that area seaward of a line, termed the inshore trawl boundary, beginning at the point of intersection of the north jetty (Oyster Bed Island Training Wall) of the Savannah River and the shoreline ('shoreline' herein defined as the line of Mean High Water) of Oyster Bed Island at latitude 32° 02.35' N, longitude 080° 53.05' W; thence following the shoreline of Oyster Bed Island to the point at the mouth of the Wright River at latitude 32° 02.92' N, longitude 080° 54.62' W; thence following a straight line northeasterly to the southernmost point of Turtle Island at latitude 32° 03.08' N, longitude 080° 54.42' W; thence following the shoreline of Turtle Island to the point at the mouth of the New River at latitude 32° 04.80' N, longitude 080° 52.97' W; thence following a straight line easterly to the southernmost point of Daufuskie Island (Bloody Point) at latitude 32° 04.92' N, longitude 080° 52.60' W; thence following the shoreline of Daufuskie Island to the point at latitude 32° 07.30' N, longitude 080° 50.40' W; thence following a straight line easterly across Calibogue Sound to the point on Hilton Head Island at latitude 32° 07.30' N, longitude 080° 49.50' W; thence following the shoreline of Hilton Head Island and crossing the mouths of Folly and Coggin Creeks to the northernmost point of Hilton Head Island at latitude 32° 16.26' N, longitude 080° 43.72' W; thence following a straight line westerly to a green square beacon marked '5' at latitude 32° 16.10' N, longitude 080° 44.14' W; thence following a straight line northerly to a red triangular beacon marked '4' at latitude 32° 16.38' N, longitude 080° 44.14' W; thence following a straight line easterly to a red nun or conical buoy marked '2' at latitude 32° 16.40' N, longitude 080° 42.40' W; thence following a straight line easterly to the point on Parris Island Spit at latitude 32° 16.72' N, longitude 080° 40.00' W

(approximate location of flashing red day marker No. 246); thence following a straight line easterly to a red nun or conical buoy marked '26' at the mouth of the Beaufort River at latitude 32° 16.75' N, longitude 080° 39.20' W; thence following a straight line easterly to the point at the mouth of Station Creek at latitude 32° 16.72' N, longitude 080° 38.55' W; thence following the shorelines of Bay Point and St. Phillips Islands and crossing the mouth of Morse Island Creek to the point on St. Phillips Island at latitude 32° 17.00' N, longitude 080° 35.30' W; thence following a straight line easterly across Trenchards Inlet to the point at latitude 32° 17.00' N, longitude 080° 34.75' W; thence following the shorelines of Capers and Pritchards Islands and crossing the mouths of Capers, Pritchards, and Skull Inlets to the southernmost point of Fripp Island at latitude 32° 18.40' N, longitude 080° 30.05' W; thence following the shoreline of Fripp Island to its easternmost point at latitude 32° 19.35' N, longitude 080° 27.18' W; thence following a straight line northerly across Fripp Inlet to the southernmost point of Hunting Island at latitude 32° 20.32' N, longitude 080° 27.28' W; thence following the shoreline of Hunting Island to its northernmost point at the mouth of Johnson Creek at latitude 32° 23.50' N, longitude 080° 25.80' W; thence following a straight line northerly to the point on Harbor Island at latitude 32° 24.10' N, longitude 080° 25.63' W; thence following the shoreline of Harbor Island to the eastern end of the U.S. Highway 21 swing bridge at Harbor River at latitude 32° 24.20' N, longitude 080° 27.00' W; thence to the center of the swing span of the bridge at latitude 32° 24.26' N, longitude 080° 27.16' W; thence following a straight line northerly to the beacon on Combahee Bank at latitude 32° 28.07' N, longitude 080° 26.06' W; thence, based on NOS chart 11521 (22nd edition, January 20, 1996), following a straight line northeasterly to the point on Otter Island at the mouth of the Ashepoo River at latitude 32° 29.25' N, longitude 080° 25.15' W; thence following the shoreline of Otter Island to the point at the mouth of Fish Creek at latitude 32° 29.00' N, longitude 080° 23.24' W; thence following a straight line easterly across the South Edisto River to the southernmost point (Bay Point) of Edisto Beach at latitude 32° 28.66' N, longitude 080° 20.18' W; thence following the shorelines of Edisto and Edingsville Beaches and Botany Bay Island and crossing the mouths of Jeremy, Frampton, and Townsend Inlets to the point on Botany Bay Island at latitude 32° 33.50' N, longitude 080° 12.00' W; thence following a straight line easterly across the North Edisto River to the southernmost point on Seabrook Island at latitude 32° 33.55' N, longitude 080° 10.50' W; thence following the shorelines of Seabrook and Kiawah Islands and

crossing the mouth of Captain Sams Inlet to the point on Kiawah Island (Sandy Point) at latitude 32° 37.18' N, longitude 079° 59.65' W; thence following a straight line northeasterly across Stono Inlet to the southernmost point of Folly Island at latitude 32° 38.40' N, longitude 079° 58.36' W; thence following the shoreline of Folly Island to its easternmost point at latitude 32° 41.10' N, longitude 079° 53.17' W; thence following a straight line northerly across Lighthouse Inlet to the Morris Island lighthouse (abandoned) at latitude 32° 41.70' N, longitude 079° 53.03' W; thence following a straight line on a geodetic azimuth of 285 degrees to the shoreline of Morris Island; thence following the shoreline of Morris Island northerly to its point of intersection with the south jetty for Charleston Harbor at latitude 32° 43.91' N, longitude 079° 52.18' W; thence following the submerged jetty easterly to the point where its emergent portion begins at latitude 32° 43.85' N, longitude 079° 50.92' W; thence following a straight line northeasterly across the Charleston Harbor channel to the point where the emergent north jetty begins at latitude 32° 44.57' N, longitude 079° 50.00' W; thence following the submerged north jetty northerly to its point of intersection with Sullivans Island at latitude 32° 45.46' N, longitude 079° 50.40' W; thence following the shoreline of Sullivans Island, the seaward edge of the Breach Inlet bridge, and the shoreline of the Isle of Palms to its easternmost point at latitude 32° 48.90' N, longitude 079° 43.09' W; thence following a straight line northerly across Dewees Inlet to the point on Dewees Island at latitude 32° 49.65' N, longitude 079° 43.27' W; thence following the shoreline of Dewees Island to the point at latitude 32° 50.70' N, longitude 079° 42.03' W; thence following a straight line northerly across Capers Inlet to the southernmost point of Capers Island at latitude 32° 51.10' N, longitude 079° 41.87' W; thence following the shoreline of Capers Island to the point at latitude 32° 52.57' N, longitude 079° 39.30' W; thence following a straight line easterly across Price Inlet to the southernmost point of Bull Island at latitude 32° 52.57' N, longitude 079° 38.95' W; thence, based on NOS chart 11531 (19th edition, April 19, 1997), following the shoreline of Bull Island to its northernmost point at latitude 32° 55.98' N, longitude 079° 34.48' W; thence following a straight line northeasterly to the point at latitude 33° 00.38' N, longitude 079° 29.43' W; thence following a straight line in a northeasterly direction along Raccoon Key, thence crossing the mouth of Raccoon Creek to the point at latitude 33° 01.00' N, longitude 079° 25.25' W; thence following a straight line easterly across Key Inlet to the point of Cape Island at latitude 33° 00.46' N, longitude 079° 24.49' W; thence following the shoreline of Cape Island to the point at latitude

33° 00.61' N, longitude 079° 21.90' W (accretion in this area not shown on the nautical chart); thence following a straight line northeasterly to the point at latitude 33° 02.21' N, longitude 079° 21.04' W, thence following a straight line northeasterly across Cape Romain Harbor to the point on Murphy Island at latitude 33° 05.46' N, longitude 079° 19.72' W; thence following the shoreline of Murphy Island northeasterly to the point at latitude 33° 07.00' N, longitude 079° 16.97' W; thence following a straight line easterly across the South Santee River to the southwesternmost point of Cedar Island at latitude 33° 07.00' N, longitude 079° 16.58' W; thence following the shoreline of Cedar Island to the point at latitude 33° 08.36' N, longitude 079° 14.71' W; thence, based on NOS chart 11532 (18th edition, June 1, 1996), following a straight line northerly across the North Santee River to the southernmost point of Cane Island at latitude 33° 08.92' N, longitude 079° 14.92' W; thence following the eastern shoreline of Cane Island and crossing the mouth of an unnamed creek to the easternmost point of Crow Island at latitude 33° 10.04' N, longitude 079° 15.34' W; thence following a straight line northeasterly across North Santee Bay to the point on South Island at the south side of the mouth of Beach Creek at latitude 33° 10.43' N, longitude 079° 14.60' W; thence following the shoreline of South Island to its southernmost point (Santee Point) at latitude 33° 08.06' N, longitude 079° 14.38' W; thence following the shorelines of South and Sand Islands to the point of intersection with the south jetty for Winyah Bay at latitude 33° 11.43' N, longitude 079° 11.00' W; thence following the shorelines of Sand and South Islands to the point on South Island at latitude 33° 13.82' N, longitude 079° 12.16' W; thence following a straight line easterly passing approximately through the charted positions of a green light buoy marked '15' and a red nun or conical buoy marked '16' to the point on North Island at latitude 33° 14.00' N, longitude 079° 11.32' W; thence following the shoreline of North Island southerly and easterly to its intersection with the north jetty for Winyah Bay at latitude 33° 12.53' N, longitude 079° 10.43' W; thence, based on NOS chart 11535 (11th edition, April 18, 1992), following the shoreline of North Island to the point at latitude 33° 19.03' N, longitude 079° 09.57' W; thence following a straight line northerly across North Inlet to the point on the south end of *Debidue* DeBordieu Island at latitude 33° 19.98' N, longitude 079° 09.60' W; thence following the shorelines of *Debidue* DeBordieu Island, Pawley's Island, Litchfield Beach, and Magnolia Beach and crossing the mouths of Pawley's Inlet and Midway Inlet to the point on the south jetty for Murrells Inlet at latitude 33° 31.60' N, longitude 079° 01.90' W;

thence following a straight line northerly across Murrells Inlet to the point of intersection with the north jetty at latitude 33° 31.96' N, longitude 079° 01.77' W; thence following the shoreline northeasterly and crossing the mouths of Singleton Swash, White Point Swash, and Hog Inlet to the point of intersection with the south jetty for Little River on the eastern end of Waites Island at latitude 33° 50.91' N, longitude 078° 33.21' W; thence following a straight line easterly across Little River Inlet to the point on the north jetty on Bird Island at latitude 33° 50.97' N, longitude 078° 32.62' W; thence following the shoreline of Bird Island to its intersection with the South Carolina-North Carolina boundary line at latitude 33° 51.09' N, longitude 078° 32.50' W."

Horseshoe crabs

SECTION 8. Section 50-5-1330 of the 1976 Code is amended to read:

"(A) Taking or possessing horseshoe crabs (Limulus polyphemus) is unlawful except under permit granted by the department. A permit is not required to possess a cast off or molted shell (exoskeleton) of a horseshoe crab.

(B) The department may permit the taking or possession of horseshoe crabs. Permits granted under this section may include provisions as to lawful fishing areas; minimum size requirements for horseshoe crabs; mesh size and dimensions of nets and other harvesting devices; by catch requirements; fishing times or periods; catch reporting requirements; holding facilities, conditions, and periods; and other conditions the department determines.

(C) Horseshoe crabs from which blood is collected for production of amebocyte lysate may be held in facilities approved by the department and must be handled so as to minimize injury to the crab. Horseshoe crabs collected in this State must be returned unharmed to state waters of comparable salinity and water quality as soon as possible after bleeding unless subsequent retention is permitted.

(D) The taking of horseshoe crabs incidentally during legal fishing operations does not violate this section if the crabs are returned immediately to the water unharmed.

(E) The department may grant permits to institutions and persons engaged in science instruction or curation to possess horseshoe crabs or parts thereof for such purposes, and permittees are not required to be licensed under this chapter.

(F) No horseshoe crab collected in South Carolina may be removed from this State.

(G) A person who violates this section or a condition of a permit issued hereunder is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned for not more than thirty days. Each horseshoe crab or part thereof in violation is a separate offense."

Blue crab traps

SECTION 9. Section 50-5-1335 of the 1976 Code is amended to read:

"Section 50-5-1335. It is unlawful to set a trap used for taking blue crab for commercial purposes within these waters of the State:

(1) Pawley's Island Creek and Midway Creek on Pawley's Island in Georgetown County;

(2) one hundred fifty feet of the mean low tide watermark on Atlantic Ocean shoreline of Pawley's Island in Georgetown County;

(3) DeBordieu Creek and its tributaries and distributaries above the entrance to Bass Hole Creek and seaward of the causeways of Luvan Boulevard in Georgetown County;

(4) the Sampit River above a line connecting the point on the eastern shoreline of Sampit River at its confluence with Winyah Bay at latitude 33° 21.08' N, longitude 79° 16.71' W and the point on the western shoreline of Winyah Bay generally south of its confluence with Sampit River at latitude 33° 20.68' N, longitude 79° 16.90' W in Georgetown County; and

(5) Little Chechessee Creek in Beaufort County."

Lawful size and catch limits

SECTION 10. Section 50-5-1705 of the 1976 Code, as last amended by Act 210 of 2012, is further amended to read:

"Section 50-5-1705. (A) As used in this article, a day means sunrise on one day to sunrise on the following day.

(B) The limits established in this article apply to all state waters.

(C) It is unlawful for a person to take or have in possession more than ten spotted seatrout in any one day.

(D) It is unlawful for a person to take or have in possession more than three red drum in any one day.

(E) It is unlawful for a person to take or have in possession more than one tarpon in any one day.

(F) It is unlawful for a person to take or have in possession more than five black drum (Pogonias cromis) in any one day.

(G) It is unlawful for a person to take or possess more than twenty flounder (Paralichthys species) taken by means of gig, spear, hook and line, or similar device in any one day, not to exceed forty flounder in any one day on any boat.

(H) It is unlawful for a person to take or have in possession more than one weakfish (Cynoscion regalis) in any one day.

(I) It is unlawful for a person to take or possess more than ten sheepshead (Archosargus probatocephalus) in any one day, not to exceed thirty sheepshead in any one day on any boat.

(J) It is unlawful to take or possess hardhead catfish (Ariopsis felis) or gafftopsail catfish (Bagre marinus).

(K) It is unlawful to gig for spotted seatrout or red drum from December first through the last day of February, inclusive.

(L) The possession limits do not apply to the possession or sale of properly identified fish imported by seafood dealers or produced by permitted mariculture operations, or to possession as allowed under permit authorized by this chapter."

Lawful size and catch limits

SECTION 11. Section 50-5-1710 of the 1976 Code, as last amended by Act 210 of 2012, is further amended to read:

"Section 50-5-1710. (A) The limits established in this article apply to all state waters.

(B) Except as provided in Article 21, it is unlawful to take, possess, land, sell, purchase, or attempt to sell or purchase:

(1) spotted seatrout (Cynoscion nebulosus) (winter trout) of less than fourteen inches in total length;

(2) flounder (Paralichthys) of less than fourteen inches total length;

(3) red drum (Sciaenops ocellatus) (channel bass or spottail bass) of less than fifteen inches in total length, or more than twenty-three inches in total length;

(4) black drum (Pogonias cromis) of less than fourteen inches or more than twenty-seven inches in total length;

(5) weakfish (Cynoscion regalis) of less than twelve inches in total length; or

(6) sheepshead (Archosargus probatocephalus) of less than fourteen inches in total length.

(C) The finfish species named in this section must be brought to the dock or landed with head and tail fin intact except for product produced by mariculture operations permitted under this chapter, provided that returning fish of unlawful size immediately to the water does not constitute a violation. A commercial retailer or restaurant may remove the head at the request of the ultimate consumer after completion of the transaction but before transfer of the purchase or serving of the dish."

Repeal

SECTION 12. Section 50-5-1340 of the 1976 Code is repealed.

Severability clause

SECTION 13. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 14. This act takes effect upon approval by the Governor.

Ratified the 21st day of March, 2013.

Approved the 22nd day of March, 2013.

No. 8

(R11, S352)

AN ACT TO AMEND SECTION 7-7-390, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN MCCORMICK COUNTY, SO AS TO ADD THE "MONTICELLO" PRECINCT, TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, AND TO CORRECT ARCHAIC LANGUAGE.

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

McCormick County voting precincts designated

SECTION 1. Section 7-7-390 of the 1976 Code, as last amended by Act 205 of 1987, is further amended to read:

"Section 7-7-390. In McCormick County there are the following voting precincts:
Mt. Carmel
Willington
Savannah
McCormick No. 1
Bethany
McCormick No. 2
Plum Branch
Parksville
Modoc
Clarks Hill
Monticello

The precinct lines defining the above precincts are as shown on official maps on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-65-13 and as shown on certified copies provided to the State Election Commission and the McCormick County Board of Voter Registration.

Polling places must be determined by the McCormick County Election Commission with the approval of the McCormick County Legislative Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 21st day of March, 2013.

Approved the 22nd day of March, 2013.

No. 9

(R13, S230)

AN ACT TO AMEND SECTION 7-27-275, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CLARENDON COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION, SO AS TO ADJUST THE MEMBERSHIP AND COMPOSITION OF THE BOARD.

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

Clarendon County Board of Elections and Voter Registration

SECTION 1. Section 7-27-275 of the 1976 Code, as last amended by Act 214 of 2012, is further amended to read:

"Section 7-27-275. Notwithstanding another provision of law:

(A)(1) There is established the Board of Elections and Voter Registration of Clarendon County, to be composed of nine members appointed by a majority of the Clarendon County Legislative Delegation.

(2) Four of the initial appointees shall serve two-year terms, and five of the initial appointees shall serve four-year terms. Upon expiration of the terms of those members initially appointed, the term of office for the members of the board is four years, and until their successors are appointed and qualify. Members may succeed themselves.

(3) In case of a vacancy on the board, the vacancy must be filled in the same manner as an original appointment, as provided in this section, for the unexpired term.

(4) A majority of senators representing the county and a majority of members of the House of Representatives representing the county shall appoint the board's chairman. The chairman shall serve a term of four years and may be reappointed to that office for any number of successive terms without limitation.

(5) The board may choose to elect a vice chair, a secretary, and other officers the board considers appropriate. The initial director must be employed by a majority of the Clarendon County Legislative Delegation. Subsequently, the board shall employ the director, determine the compensation, and determine the number and compensation of other staff positions. Salaries must be consistent with the compensation schedules established by the county for similar positions.

(6) The director is responsible for hiring and management of the staff positions established by the board that report to the director. Staff positions are subject to the personnel system policies and procedures by which all county employees are regulated, except that the director serves at the pleasure of the board.

(B) The Clarendon County Legislative Delegation shall notify the State Election Commission in writing of the appointments made pursuant to subsection (A).

(C) The Board of Elections and Voter Registration of Clarendon County shall notify the State Election Commission in writing of the name of the person elected as chairman of the board pursuant to subsection (A).

(D) A member who misses three consecutive meetings of the board is considered to have resigned his office, and a vacancy on the board exists, which must be filled pursuant to subsection (A). This section does not apply to a member who presents a verifiable doctor's certificate that illness prevented his attendance at a meeting.

(E) Except as otherwise specifically provided in subsections (A), (B), (C), and (D), the provisions of law contained in Title 7, relating to county boards of voter registration and county election commissions, apply to the Board of Elections and Voter Registration of Clarendon County, mutatis mutandis.

(F)(1) The Clarendon County Board of Voter Registration is abolished effective within sixty days after this section is approved by the Governor, and its functions, duties, and powers are devolved upon

the Board of Elections and Voter Registration of Clarendon County as established pursuant to subsection (A).

(2) The Clarendon County Election Commission is abolished effective within sixty days after this section is approved by the Governor, and its functions, duties, and powers are devolved upon the Board of Elections and Voter Registration of Clarendon County as established pursuant to subsection (A).

(G)(1) The terms of the members of the Clarendon County Board of Voter Registration, regardless of when these members were appointed to office, or when their current terms would otherwise have expired, expire for all purposes upon the abolishment of that board pursuant to subsection (F)(1).

(2) The terms of the members of the Clarendon County Election Commission, regardless of when these members were appointed to office, or when their current terms would otherwise have expired, expire for all purposes upon abolishment of that commission pursuant to subsection (F)(2).

(3) Notwithstanding items (1) and (2) of this subsection or another provision of law, a person serving as a member of the Clarendon County Board of Voter Registration or the Clarendon County Election Commission may not be removed from office, and neither the board nor the commission may be abolished until this section has been given final approval by the United States Department of Justice."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 9th day of April, 2013.

Approved the 12th day of April, 2013.

No. 10

(R14, S261)

AN ACT TO AMEND SECTION 12-6-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO

STATE INCOME TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO JANUARY 2, 2013, AND TO DELETE AN INAPPLICABLE SUBITEM; AND TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO PROVISIONS OF THE INTERNAL REVENUE CODE NOT ADOPTED BY THIS STATE, SO AS TO NOT ADOPT CERTAIN PROVISIONS RELATING TO THE REDUCTION ON ITEMIZED DEDUCTIONS AND THE REDUCTION ON THE PERSONAL EXEMPTION.

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

Internal Revenue Code conformity

SECTION 1. Section 12-6-40(A)(1)(a) of the 1976 Code, as last amended by Act 126 of 2012, is further amended to read:

"(a) Except as otherwise provided, 'Internal Revenue Code' means the Internal Revenue Code of 1986, as amended through January 2, 2013, and includes the effective date provisions contained in it."

Deletion of Internal Revenue Code extension

SECTION 2. Section 12-6-40(A)(1) of the 1976 Code, as last amended by Act 126 of 2012, is amended by deleting subitem (c) which reads:

"(c) For Internal Revenue Code sections adopted by the State which expired or portions thereof expired on December 31, 2011, or January 1, 2012, in the event any of these expired sections or portions thereof are extended, but otherwise not amended, by the federal government during 2012, these sections or portions thereof also will be extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."

Internal Revenue Code sections not adopted

SECTION 3. A. Section 12-6-50 of the 1976 Code, as last amended by Act 126 of 2012, is further amended by adding an appropriately numbered item to read:

"( ) Section 68 relating to the reduction on itemized deductions and Section 151(d)(3) relating to the reduction on the personal exemption for:

(a) a joint return or surviving spouse with an adjusted gross income exceeding three hundred thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher;

(b) a head of household with an adjusted gross income exceeding two hundred seventy-five thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher; and

(c) an individual who is not married and who is not a surviving spouse or head of household with an adjusted gross income exceeding two hundred fifty thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher."

B. From existing funds, the Department of Revenue shall create and distribute the forms and worksheets necessary to aid taxpayers in utilizing the provisions of this SECTION.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 9th day of April, 2013.

Approved the 9th day of April, 2013.

No. 11

(R16, S213)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 57 TO TITLE 33 SO AS TO AUTHORIZE QUALIFIED NONPROFIT ORGANIZATIONS TO OPERATE AND CONDUCT RAFFLES THROUGH REGISTRATION WITH THE SOUTH CAROLINA SECRETARY OF STATE, TO PROVIDE STANDARDS FOR THESE EVENTS, TO REQUIRE PROCEEDS TO BE USED FOR CHARITABLE PURPOSES, TO PROVIDE PENALTIES FOR

VIOLATIONS, AND TO REPEAL THESE PROVISIONS JULY 1, 2020, UNLESS REAUTHORIZED BY THE GENERAL ASSEMBLY AND TO PROVIDE FOR SIMILAR REPEALS AT TEN-YEAR INTERVALS.

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

Charitable raffles allowed, requirements

SECTION 1. Title 33 of the 1976 Code is amended by adding:

"CHAPTER 57

Nonprofit Raffles for Charitable Purposes

Section 33-57-100. (A) A lottery or raffle of any type whatsoever is unlawful unless it is authorized by the following:

(1) Chapter 150, Title 59, the Education Lottery;

(2) Article 24, Chapter 21, Title 12, Charitable Bingo; or

(3) Chapter 57, Title 33, Nonprofit Raffles for Charitable Purposes.

(B) It is the intent of the General Assembly that only qualified tax-exempt entities, which are organized and operated for charitable purposes and which dedicate raffle proceeds to charitable purposes, shall operate and conduct raffles as authorized by this chapter.

(C)(1) Nothing in this chapter may be construed to allow electronic gambling devices or machines of any types, slot machines, video poker or similar electronic play devices, or to change or alter in any manner the prohibitions regarding video poker or similar electronic play devices in Chapter 21, Title 12 and Chapter 19, Title 16.

(2) No person shall conduct a fundraising event commonly known and operated as a 'casino night', 'Las Vegas night', or 'Monte Carlo night' involving live individuals playing roulette, blackjack, poker, baccarat, or other card games, or dice games, unless the event is conducted only for entertainment purposes and no prizes, financial rewards, or incentives are received by players.

(3) No events with an electronic device or machine, slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races are authorized.

(D) Except for raffles conducted by the South Carolina Lottery Commission pursuant to Chapter 150, Title 59 or Charitable Bingo authorized by Article 24, Chapter 21, Title 12, the provisions of this

chapter provide the sole means by which activities associated with conducting raffles are authorized. The provisions of this chapter must be narrowly construed to ensure that tax-exempt entities conducting a nonprofit raffle pursuant to this chapter are in strict compliance with the requirements of this chapter.

Section 33-57-110. For purposes of this chapter:

(1) 'Charitable purpose' means religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals within the meaning of Internal Revenue Code Section 170(c)(2)(B). Any interpretation of this statute with respect to charitable purpose shall be guided by the applicable Internal Revenue Code provisions and regulations of the Internal Revenue Service as interpreted by the courts.

(2) 'Adjusted gross receipts' means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased.

(3) 'Member' shall have the same meaning as defined in Chapter 31, Title 33.

(4) 'Nonprofit organization' means an organization recognized by the South Carolina Department of Revenue and the United States Internal Revenue Service as exempt from federal and state income taxation pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d), or is a class, department, or organization of an educational institution, as defined in Chapter 56, Title 33.

(5) 'Nonprofit gaming supplies and equipment' means any material, device, apparatus, or paraphernalia customarily used in the conducting of raffles, including raffle tickets, and other apparatus or paraphernalia used in conducting raffles subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the raffle, such as pencils, playing cards, or other supplies that may be purchased or leased from normal sources of supply.

(6) 'Fifty-fifty raffle' means a raffle conducted by a nonprofit organization qualified to operate raffles pursuant to Section 33-57-120 and the proceeds collected by the sale of the raffle tickets are split evenly between the prize winner and the nonprofit organization after the raffle drawing.

(7) 'Gross receipts' means all funds collected or received from the conduct of raffles.

(8) 'Net receipts' means adjusted gross receipts less all expenses, charges, fees, and deductions that are authorized under this chapter. Payment of unauthorized expenses, charges, fees, and deductions from the gross receipts is a violation of this chapter.

(9) 'Operate', 'operated', or 'operating' means the conduct, direction, supervision, management, operation, control, or guidance of activity.

(10) 'Person' means an individual, an organization, a trust, a foundation, a group, an association, a partnership, a corporation, a society, any other private entity, or a combination of them, or a manager, agent, servant, officer, or employee thereof.

(11) 'Raffle' means a game of chance in which a participant is required to pay something of value for a ticket for a chance to win a prize, with the winner to be determined by a random drawing or similar process whereby all entries have an equal chance of winning.

(12) 'Secretary' means the Office of the Secretary of State.

(13) 'Ticket' means tangible evidence issued by the nonprofit organization to provide participation in a raffle.

(14) 'Year' means a twelve-month period that is the same as a nonprofit organization's fiscal year.

Section 33-57-120. (A) A nonprofit organization is qualified to conduct raffles in accordance with the provisions of this chapter if the nonprofit organization:

(1) is recognized by the South Carolina Department of Revenue and the United States Internal Revenue Service as exempt from federal and state income taxation pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d), or is a class, department, or organization of an educational institution, as defined in Chapter 56, Title 33;

(2) is organized and operated for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; and

(3) is registered with the Secretary pursuant to the requirements of Chapter 56, Title 33, unless it is exempt from or not required to follow the registration requirements of Chapter 56, Title 33, or is a governmental unit or educational institution of this State.

(B)(1) The requirement to register with the Secretary for the purpose of operating raffles for charitable purposes shall apply to any and all nonprofit organizations that intend to operate a raffle in this State,

including those organizations that are exempt from or not required to follow the requirements for solicitation of charitable funds pursuant to Chapter 56, Title 33.

(2) An exemption from registration for the purpose of operating raffles is authorized for:

(a) raffles operated by a nonprofit organization for charitable purposes, where a noncash prize is donated for the nonprofit raffle and the total value of the prize or prizes offered for a raffle event is not more than five hundred dollars; and

(b) fifty-fifty raffles where the tickets are sold to members or guests of a nonprofit organization, and not to the general public, and the total value of proceeds collected is not more than nine hundred fifty dollars.

(3) An organization operating a raffle that is within an exemption authorized by the provisions of item (2) shall not operate more than one raffle every seven calendar days.

(C) Nonprofit organizations that comply with the requirements of Section 33-57-120(A) and intend to operate a raffle must submit an annual raffle form with a fee of fifty dollars to the Secretary. Proceeds from the fees shall be retained by the Secretary for enforcement of these provisions. This registration form shall cover all authorized raffles for that nonprofit organization's fiscal year. Registrations for raffles shall expire on the fifteenth day of the fifth month after the end of a nonprofit organization's fiscal year.

(D) The Secretary may revoke a registration issued pursuant to this chapter if an organization is not in compliance with the exemption requirements of the Internal Revenue Code. A registration revoked under this chapter must not be reissued until a new application for registration has been made and the Secretary determines that the organization is in compliance with the applicable provisions of the Internal Revenue Code.

(E) Nonprofit organizations, other organizations, and persons operating raffles for charitable purposes are subject to investigation and other actions by the Secretary and subject to all penalties contained in Chapters 56 and 57, Title 33.

(F) Nonprofit organizations, other organizations, or persons operating raffles or lotteries that violate the provisions of Chapter 19, Title 16, are subject to investigation and other actions by law enforcement.

Section 33-57-130. (A) A nonprofit organization is allowed to operate up to four raffles per year. If a nonprofit organization has

affiliates or subsidiaries that share a federal Employer's Identification Number (EIN) with a parent nonprofit organization, meet the requirements of this chapter, and are registered pursuant to Section 33-57-120(C), then each qualified affiliate or subsidiary, in addition to the raffles conducted by a parent nonprofit organization, may operate and conduct up to four raffles per year. Each nonprofit raffle shall continue for not more than nine months from the date the first raffle ticket is sold. No raffle drawing shall be conducted between the hours of midnight and 10 a.m. Local law enforcement officials are authorized to enforce the hours of operation.

(B) The restriction on numbers of raffles shall not apply to raffles held by nonprofit organizations that are exempt pursuant to Section 33-57-120(B)(2).

Section 33-57-140. (A) Except for fifty-fifty raffles, no less than ninety percent of the net receipts of a raffle authorized pursuant to this chapter must be used for the charitable purpose of the nonprofit organization.

(B) No receipts of a raffle shall be used for any expenditure or activity which would subject an organization exempt from taxation under Internal Revenue Code Section 501(c)(3) or its managers to revocation of its tax-exempt status or excise taxes under the Internal Revenue Code, including directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office or engaging in an excess benefit transaction with a person who would be a disqualified person if the nonprofit organization were exempt from taxation under Internal Revenue Code Section 501(c)(3).

(C) A nonprofit organization shall not enter into a contract with any person to have that person operate raffles on behalf of the nonprofit organization.

(D)(1) A nonprofit organization shall not lend its name nor allow its identity to be used by any person in the operating or advertising of a raffle in which the nonprofit organization is not directly and solely operating the raffle.

(2) No person shall purchase or lease the name of a nonprofit organization for the purpose of conducting a raffle.

(3) Nothing in this section, however, shall prohibit two or more qualified nonprofit organizations from participating together to conduct a raffle.

(E) A nonprofit organization conducting a raffle may advertise the event. An advertisement, in whatever form, for a raffle must name,

within the advertisement, the nonprofit organization sponsoring the event, the charitable purposes for which the net receipts shall be used, and a statement of the proportion of the gross receipts of all raffles conducted by the nonprofit organization in the most recent two years in which the nonprofit organization conducted raffles which were not applied to charitable purposes.

(F)(1) A raffle shall be conducted only by a qualified and authorized nonprofit organization through its directors, bona fide employees, and unpaid volunteers none of whom shall receive compensation for their services in conducting the raffle, except that bona fide employees of a nonprofit organization may receive their regular and ordinary compensation.

(2) Except as otherwise provided in this chapter, no member, director, officer, employee, or agent of a nonprofit organization, a member of the family of any of those persons, or an entity in which a person described in the previous two categories holds a thirty-five percent ownership interest is allowed to receive any direct or indirect economic benefit from the operation of the raffle other than being able to participate in the raffle on a basis equal to all other participants, except that bona fide employees may receive reasonable compensation for services rendered in furthering the charitable purposes of the nonprofit organization from raffle proceeds.

(3) Food and beverages served to and consumed by volunteers or staff of the sponsoring organization during a raffle are not compensation.

(4) Bona fide employees, for purposes of this section, do not include an employee whose compensation is based, in whole or in part, on the amount raised in gross or net receipts from a raffle operated by the nonprofit organization or whose job duties are significantly related to the conduct of raffles.

(G) A nonprofit organization shall not conduct raffles through any agent or third party, and shall not pay anything of value to any person for any services performed in relation to operating or conducting a nonprofit raffle except the usual and regular compensation of bona fide employees. Rental of raffle equipment from a third party and the hiring of a person to operate equipment, so long as the expense is reasonable, are not considered conducting a raffle by a third party.

(H) Noncash prizes shall not be redeemed for money from the nonprofit organization or from any other entity that redeems noncash prizes awarded by raffles for money in the ordinary course of business.

(I) No raffle drawing event shall be held on Christmas Day.

(J) Raffle drawings must be conducted in accordance with local building and fire code regulations.

(K) The provisions of this chapter are not intended and shall not be construed to allow the operation or play of raffles through electronic gambling devices, or machines, slot machines, video poker or similar electronic play devices and do not amend or alter in any manner the prohibitions on video poker or similar electronic play devices in Chapter 21, Title 12 or Chapter 19, Title 16.

(L) An individual prize awarded to each winner in a raffle shall not exceed a maximum fair market value of forty thousand dollars. No real property shall be offered as a prize in a raffle. For each raffle event, the total fair market value of all prizes offered by any nonprofit organization shall not exceed two hundred fifty thousand dollars.

(M) The purchase price for a raffle ticket may not exceed one hundred dollars.

Section 33-57-150. (A) Expenses that are reasonable and necessary to operate and conduct raffles, as authorized by this chapter, are allowable.

(B) Allowable expenses include only reasonable and necessary expenses incurred for:

(1) advertising, including the cost of printing raffle tickets and gift certificates, provided that costs of advertising are reasonable and the services are not provided, directly or indirectly, in connection with any other service related to operating or conducting a nonprofit raffle regardless of whether those services are compensated;

(2) office supplies, copying, and minor office equipment costs incurred in conducting or operating a nonprofit raffle;

(3) reasonable postage, parking, and shipping costs;

(4) costs of food and beverages, including corkage and gratuity fees, provided to the attendees and volunteers of the event;

(5) costs of materials and supplies for decorating a facility used for a nonprofit raffle drawing;

(6) entertainment-related costs, such as disc jockeys, music bands, auctioneers, waiters, bartenders, and wait staff, incurred during the conducting or operating of a nonprofit raffle drawing;

(7) repairs to premises and equipment related to conducting or operating a nonprofit raffle;

(8) door prizes or raffle prizes;

(9) stated premises' rental or insurance expenses;

(10) security expenses incurred in conducting or operating a nonprofit raffle;

(11) bookkeeping, accounting, or legal services utilized in connection with a nonprofit raffle including, but not limited to, the registration fees and the required financial reports;

(12) permit costs, fees, or taxes required by local or state government to conduct and operate a nonprofit raffle; and

(13) janitorial services and supplies incurred in conducting or operating a nonprofit raffle.

(C) A report shall be submitted annually to the Secretary no later than the fifteenth day of the fifth month after the end of the nonprofit organization's fiscal year. The report must be signed under penalty of perjury and must contain the following information for each raffle conducted within the preceding year:

(1) the amount of the gross receipts;

(2) an itemized list of expenses incurred or paid, including the name of each person, company, or governmental entity to whom an expense was paid;

(3) each item of an expenditure made or to be made, with a detailed description of the merchandise purchased or the services rendered, and the name of each person, company, or governmental entity to whom the expenditure is to be made;

(4) the amount of the net receipts;

(5) the use to which the net receipts have been or are to be applied;

(6) a list of prizes offered and given, with an estimate of their respective values; and

(7) the number of tickets sold.

(D) Records required by this chapter shall be preserved for three years, and organizations shall make available their records relating to operations of raffles at any time at the request of a member of the organization, or investigators from the Secretary or from law enforcement.

(E) No new registration shall be issued to an organization that fails to file its report as required by this section until all reports are filed, and the Secretary has confirmed that the information in the reports is in compliance with the provisions of this chapter. An organization that fails to file a timely annual report required by this section may be assessed by the Secretary administrative fines of ten dollars for each day of noncompliance for each delinquent report not to exceed two thousand dollars for each separate violation. In addition to the assessed fines, the Secretary may revoke an organization's registration for failure to file an annual report and bring an action before an

administrative law judge to enjoin the organization from conducting raffles until the required reports are filed with the Secretary.

Section 33-57-160. (A) The Secretary shall perform all functions incident to the administration, collection, enforcement, and operation of the provisions imposed pursuant to this chapter. Upon his own motion or upon complaint of any person, the Secretary may investigate an organization to determine if it has violated the provisions of this chapter or has filed an application, or other information required by this chapter, which contains false or misleading statements. The Secretary may subpoena or audit persons and organizations and require production of books, papers, and other documents to aid in the investigation of alleged violations of this chapter. By registering with the Secretary pursuant to this chapter, each nonprofit organization consents to the Secretary, as well as his agents, including local law enforcement or a circuit solicitor or his agents, entering onto the premises where a nonprofit raffle drawing is being held, for the purpose of enforcing the provisions of this chapter.

(B)(1) In addition to other actions authorized by this chapter and by law, the Secretary, if he has reason to believe that one or more of the following acts or violations listed below has occurred or may occur, may assess a fine of not more than five hundred dollars for each violation that has occurred and bring an action before an administrative law judge to enjoin a person or an organization from continuing the act or violation, or committing other acts in furtherance of it, and for other relief as the court considers appropriate:

(a) a person or organization operated in violation of the provisions of this chapter;

(b) a person or organization made a false statement in any information required to be filed by this chapter;

(c) a person or organization used a device, scheme, or artifice to defraud or to obtain money or property by means of false pretences, representation, or promise during a nonprofit raffle for charitable purposes;

(d) the officers, directors, representatives, or agents of a nonprofit organization refused or failed, after notice, to produce records of the organization; or

(e) the funds raised by the nonprofit raffles were not devoted to or distributed to the charitable purposes of the nonprofit raffle.

(2) Each violation and each day in violation of a provision of this chapter constitutes a separate offense for which an administrative fine may be assessed.

(C) A person or organization that is assessed an administrative fine, has its registration suspended or revoked, or that has its registration denied, has thirty days from receipt of certified notice from the Secretary to pay the fine or request an evidentiary hearing before an administrative law judge. If a person or organization fails to remit fines or request a hearing after the required notice is given and after thirty days from the date of receipt of certified notice has elapsed, the Secretary may suspend its registration pending final resolution and may bring an action before the administrative law judge to enjoin the person or organization from engaging in further nonprofit raffles. The decision of the administrative law judge may be appealed according to the procedures in the Administrative Procedures Act.

Section 33-57-170. (A) A person or organization that knowingly and wilfully conducts a nonprofit raffle without obtaining the necessary registration or qualifying for an exemption is guilty of conducting an illegal lottery and, upon conviction of a first offense, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. For a second or subsequent offense, a person or organization is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

(B) A person or organization that knowingly and wilfully violates a provision of this chapter with the intent to deceive or defraud an individual or nonprofit organization is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not more than five thousand dollars or imprisoned not more than one year, or both. For a second or subsequent offense, a person or organization is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

(C) A person or organization that knowingly and wilfully gives false or misleading information to the Secretary in a registration or report required by this chapter is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not more than two thousand dollars or imprisoned not more than one year, or both. For a second or subsequent offense, a person or organization is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(D) Upon the conviction of a member of a nonprofit organization or the conviction of a nonprofit organization for a violation pursuant to this section, all proceeds of the raffle from which the offense arose shall be disgorged to the Secretary. Proceeds disgorged pursuant to

this chapter shall be retained by the Secretary for purposes of enforcement of this chapter.

(E) An organization whose officer or director is convicted of a violation pursuant to this section shall be prohibited from registering to conduct a raffle for a period of no less than five calendar years after the date of the conviction.

Section 33-57-180. All administrative fines collected pursuant to this chapter must be transmitted to the State Treasurer and deposited in the state general fund.

Section 33-57-190. The Secretary of State may promulgate regulations to administer and enforce the provisions of this chapter.

Section 33-57-200. (A) The provisions of this chapter are repealed as of July 1, 2020, unless and until the General Assembly reauthorizes the provisions by joint resolution by a two-thirds vote of each body. The vote on the reauthorization may occur within two years preceding the date of repeal.

(B) The provisions of this chapter are repealed every ten years thereafter, unless reauthorized in accordance with subsection (A).”

Unrelated to Catawba settlement

SECTION 2. Nothing in the provisions of this act, including the allowance of persons to operate casino nights for entertainment purposes when no prizes, financial rewards, or incentives are received by players, shall alter or amend the terms of “The Catawba Indian Claims Settlement Agreement” or “The Catawba Indian Claims Settlement Act”, as referenced in S.C. Code Ann. Sections 27-16-10 through 27-16-140 (2010) and in 25 U.S.C. Sections 941 through 941n (2010), or the holding of the South Carolina Supreme Court in Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 642 S.E.2d 751 (2007).

Actions saved

SECTION 3. This act shall apply prospectively. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the

repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Severability

SECTION 4. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective, unless the provision prohibiting the altering or amending of the terms of "The Catawba Indian Claims Settlement Act" is held invalid or unconstitutional, so as to allow casino games in South Carolina by an Indian Tribe or any other group of individuals. The invalidity of that provision shall affect all other provisions or applications of this act, and to that end, the provisions of this act are nonseverable from that provision.

Time effective

SECTION 5. The provisions of this act become effective thirty days after ratification of an amendment to Section 7, Article XVII of the Constitution of this State allowing its terms as proposed to the qualified electors of this State at the 2014 General Election.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 12

(R18, S374)

AN ACT TO AMEND SECTION 30-5-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PERFORMANCE OF THE DUTIES OF THE REGISTER OF DEEDS, SO AS TO ADD CHEROKEE COUNTY TO THOSE COUNTIES EXEMPT FROM THE REQUIREMENT THAT THOSE DUTIES BE PERFORMED BY THE CLERK OF COURT; AND TO AMEND SECTION 30-5-12, AS AMENDED, RELATING TO THE APPOINTMENT OF THE REGISTER OF DEEDS FOR CERTAIN COUNTIES, SO AS TO ADD CHEROKEE COUNTY TO THOSE COUNTIES WHERE THE GOVERNING BODY OF THE COUNTY SHALL APPOINT THE REGISTER OF DEEDS.

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

County clerks of court exempt from register of deeds duties, Cherokee County added

SECTION 1. Section 30-5-10(A) of the 1976 Code, as last amended by Act 127 of 2010, is further amended to read:

"(A) In every county in the State other than Aiken, Anderson, Beaufort, Berkeley, Charleston, Cherokee, Chesterfield, Clarendon, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter the duties prescribed by law for the register of deeds must be performed by the clerk of court who has all the powers and emoluments given the register of deeds in Aiken, Anderson, Beaufort, Berkeley, Charleston, Cherokee, Chesterfield, Clarendon, Colleton, Dorchester, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Lexington, Oconee, Orangeburg, Pickens, Richland, Spartanburg, and Sumter counties."

County governing bodies required to appoint register of deeds, Cherokee County added

SECTION 2. Section 30-5-12(A) of the 1976 Code, as last amended by Act 127 of 2010, is further amended to read:

"(A) The governing bodies of Anderson, Beaufort, Cherokee, Chesterfield, Clarendon, Colleton, Georgetown, Horry, Jasper, Kershaw, Lancaster, Oconee, Orangeburg, and Pickens counties shall appoint the register of deeds for its county under terms and conditions as it may agree upon."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 13

(R19, S578)

AN ACT TO AMEND VARIOUS PROVISIONS OF CHAPTER 41, TITLE 11, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT, SO AS TO PROVIDE FOR THE ISSUANCE OF GENERAL OBLIGATION DEBT TO SUPPORT AN ENHANCED ECONOMIC DEVELOPMENT PROJECT, TO MAKE FINDINGS THAT THE ISSUANCE OF THE BONDED INDEBTEDNESS SUPPORTS A PUBLIC PURPOSE AND IS IN THE BEST INTEREST OF THE STATE, TO PROVIDE QUALIFYING INVESTMENT AND JOB CREATION CRITERIA, AND TO PROVIDE FOR THE TERMS, CONDITIONS, AND REQUIREMENTS FOR THE ISSUANCE OF THE BONDED INDEBTEDNESS.

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

Findings

SECTION 1. The General Assembly hereby finds, as a fact, that the construction of infrastructure, as defined in, and subject to the terms and conditions of, the State General Obligation Economic

Development Bond Act, for use by private parties enhances the recruitment of businesses to the State and the expansion of businesses within the State, facilitates the operation and growth of businesses in the State, and thereby provides significant and substantial direct and indirect benefits to the State and its residents, including employment and other opportunities; that such benefits outweigh the costs of such infrastructure; that for such reasons it is in the best interest of the State to authorize the issuance of economic development bonds as defined in, and subject to the terms and conditions of, the State General Obligation Economic Development Bond Act; and that such economic development bonds, issued for such purpose, serve a public purpose in fostering economic development and increasing employment in the State. The General Assembly further finds, as a fact, that the primary beneficiaries of the issuance of such economic development bonds and the construction of such infrastructure are the State of South Carolina and its residents.

Additional findings

SECTION 2. Section 11-41-20 of the 1976 Code is amended to read:

"Section 11-41-20. As incident to this chapter, the General Assembly finds:

(1) That by Section 4, Act 10 of 1985, the General Assembly ratified an amendment to Section 13(6)(c), Article X, of the Constitution of this State, 1895. One amendment in Section 13(6)(c), Article X limits the issuance of general obligation debt of the State such that maximum annual debt service on all general obligation bonds of the State, excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, must not exceed five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(2) That Section 13(6)(c), Article X, further provides that the percentage rate of general revenues of the State by which general obligation bond debt service is limited may be reduced to four or increased to seven percent by legislative enactment passed by a two-thirds vote of the total membership of the Senate and a two-thirds vote of the total membership of the House of Representatives.

(3) That pursuant to Section 13(6)(c), Article X, the General Assembly, in Act 254 of 2002 and Act 187 of 2004, increased to five and one-half percent the percentage rate of the general revenues of the

State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to provide infrastructure required for significant economic development projects within the State, including those related to the life sciences industry that create high-paying jobs and meet certain investment criteria.

(4) That pursuant to Section 13(6)(c), Article X, the General Assembly, in Act 187 of 2004, increased to six percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to advance economic development and to facilitate and increase research within the State at the research universities.

(5) That Section 13(6)(c), Article X, provides that if general obligation debt be authorized by two-thirds of the members of each House of the General Assembly, then there shall be no conditions or restrictions limiting the incurring of such indebtedness except those restrictions and limitations imposed in the authorization to incur such indebtedness, and the provisions of Article X, Section 13(3).

(6) That Section 13(6)(c), Article X, provides additional constitutional authority for bonds authorized by this chapter.

(7) In order to continue fostering economic development within the State as set out in subsections (3) and (4), it is in the best interest of the State that the General Assembly authorize an additional amount of general obligation debt pursuant to Section 13(5), Article X, with such indebtedness limited to a principal amount of general obligation debt not exceeding one hundred seventy million dollars at any time, provided that no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.

(8) That in order to support significant economic development projects in this State which will satisfy the investment and new jobs creation criteria set forth in Section 11-41-30(2)(a)(ii), the General Assembly finds that sufficient debt service capacity exists below the original five percent threshold established by Section 13(6)(c), Article X, to allow the issuance of general obligation debt, with such indebtedness limited to a principal amount of general obligation debt not to exceed one hundred twenty million dollars, and that the authorization of this general obligation debt supports a public purpose and is in the best interest of the State."

Definitions

SECTION 3. Section 11-41-30(2)(a) of the 1976 Code is amended to read:

"(a)(i) 'Economic development project' or 'project' means either (A) a project in this State as defined in Section 12-44-30(16) in which a total of at least four hundred million dollars is invested in the project by the sponsor and at least four hundred new jobs are created at the project by the sponsor, or (B) an expansion of an existing economic development project for which economic development bonds have previously been issued, if in connection with the expansion, in addition to and not including the investment made and new jobs created in connection with the existing project for which economic development bonds have previously been issued, a total of at least four hundred million dollars is invested in the project by the sponsor and at least four hundred new jobs are created at the project by the sponsor.

(ii) 'Enhanced economic development project' or 'enhanced project' means an economic development project for which the sponsor satisfies the jobs and investment criteria set forth in subsubitem (i), and, further, (A) the total investment in the project by the sponsor is not less than 1.1 billion dollars and (B) the total number of new jobs created at the project is not less than two thousand. Subject to the satisfaction of the additional criteria set forth in this paragraph and further subject to Sections 11-41-50(C), 11-41-60, and 11-41-70, an enhanced project constitutes an economic development project for purposes of this chapter."

Definitions

SECTION 4. Section 11-41-30(2)(c) of the 1976 Code is amended to read:

"(2)(c) To qualify as an economic development project defined in subitems (a) and (b) above for purposes of this chapter, the applicable investment and job creation requirements must be attained no later than the eighth year after the project first begins operations."

Issuance

SECTION 5. Section 11-41-40 of the 1976 Code is amended to read:

"Section 11-41-40. To obtain funds for allocation to the department or to the State or agency, instrumentality, or political subdivision, as the case may be, for financing of infrastructure, there are issued from time to time state general obligation economic development bonds under the conditions prescribed by this chapter. Subject to Section 11-41-90(6), bonds for an economic development project may be issued in one or more series, pursuant to one or more notifications required by Section 11-41-70."

Bonds authorized

SECTION 6. Section 11-41-50 of the 1976 Code is amended to read:

"Section 11-41-50. (A) Pursuant to Section 13(6)(c), Article X of the Constitution of this State, 1895, the General Assembly provides that economic development bonds may be issued pursuant to this subsection at such times as the maximum annual debt service on all general obligation bonds of the State, including economic development bonds outstanding and being issued pursuant to this subsection or pursuant to Section 11-41-50(C), but excluding economic development bonds issued pursuant to Section 11-41-50(B), research university infrastructure bonds pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, will not exceed five and one-half percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. The State at any time may not issue general obligation bonds, excluding economic development bonds issued pursuant to this chapter, but not excluding economic development bonds issued pursuant to Section 11-41-50(C), research university infrastructure bonds issued pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, if at the time of issuance the maximum annual debt service on all such general obligation bonds, outstanding and being issued exceeds five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(B) In addition to and exclusive of the economic development bonds provided for and issued pursuant to subsection (A), the General Assembly provides that pursuant to Section 13(5), Article X, (i)

additional economic development bonds may be issued under this chapter in an aggregate principal amount that does not exceed one hundred seventy million dollars, and (ii) in addition to the authorization contained in the preceding item, additional economic development bonds may be issued provided that the aggregate principal amount of economic development bonds then outstanding under items (i) and (ii), together with the economic development bonds to be issued pursuant to this item (ii), does not at any time exceed the principal amount specified in item (i). From the proceeds of the economic development bonds authorized pursuant to this subsection, no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.

(C) In addition to and exclusive of the economic development bonds provided for and issued pursuant to subsections (A) and (B) of this section, the General Assembly provides that pursuant to Section 13(6)(c), Article X, economic development bonds may be issued under this chapter in an aggregate principal amount that does not exceed one hundred twenty million dollars to support enhanced projects."

Debt service limit

SECTION 7. Section 11-41-60 of the 1976 Code is amended to read:

"Section 11-41-60. The maximum annual debt service on bonds issued pursuant to Section 11-41-50(A) must not exceed one-half of one percent of the general revenues for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. Bonds issued pursuant to Section 11-41-50(B) shall not be subject to the limitation on maximum annual debt service prescribed by Section 13(6)(c), Article X. The maximum annual debt service on bonds issued pursuant to Section 11-41-50(C), when combined with the debt service on all other general obligation bonds issued under the five percent limitation established in Section 13(6)(c), Article X, which limitation does not include bonds issued pursuant to subsection (A) or subsection (B) of Section 11-41-50, research university infrastructure bonds issued pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, must not exceed five percent of the general revenues of the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds."

Notification

SECTION 8. Section 11-41-70(2)(a) of the 1976 Code is amended to read:

"(a)(i) in the case of an economic development project as defined in Section 11-41-30(2)(a)(i), an investment by the sponsor at the project of not less than four hundred million dollars and creation by the sponsor at the project of no fewer than four hundred new jobs, or, (ii) in the case of an enhanced economic development project defined in Section 11-41-30(2)(a)(ii), an investment by the sponsor at the project of not less than four hundred million dollars, and the creation at the project of no fewer than four hundred new jobs by the sponsor, and, further, (A) the total investment at the project by the sponsor is not less than 1.1 billion dollars and (B) the total number of new jobs created at the project is not less than two thousand; or"

Authorizing resolution

SECTION 9. Section 11-41-90 of the 1976 Code is amended to read:

"Section 11-41-90. To effect the issuance of bonds, the State Budget and Control Board shall adopt a resolution providing for the issuance of bonds pursuant to the provisions of this chapter. The authorizing resolution must include:

(1) a statement of whether the bonds are being authorized and issued pursuant to Section 11-41-50(A), Section 11-41-50(B), or Section 11-41-50(C);

(2) a schedule showing the aggregate of bonds issued, the annual principal payments required to retire the bonds, and the interest on the bonds;

(3) the amount of bonds proposed to be issued;

(4) a schedule showing future annual principal requirements and estimated annual interest requirements on the bonds to be issued;

(5) certificates evidencing that the provisions of Sections 11-41-50 and 11-41-60 have been or will be met; and

(6) a statement that the resolution required by this section for the issuance of bonds pursuant to this chapter is adopted not later than eighteen months after the date of the first notification to the Joint Bond Review Committee and the State Budget and Control Board with respect to such economic development project pursuant to Section 11-41-70."

One subject

SECTION 10. The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of major economic development opportunities in this State as clearly enumerated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

Severability

SECTION 11. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 12. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

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No. 14

(R20, H3047)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-5-581 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO GIG FOR FLOUNDER IN SALT WATERS DURING DAYLIGHT HOURS, TO DEFINE THE TERM "DAYLIGHT HOURS", TO PROVIDE A PENALTY, AND TO PROVIDE THAT GIGGING DOES NOT INCLUDE UNDERWATER SPEAR FISHING.

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

Unlawful gigging for flounder

SECTION 1. Article 5, Chapter 5, Title 50 of the 1976 Code is amended by adding:

"Section 50-5-581. It is unlawful for a person to gig for flounder in the salt waters of this State during daylight hours. For the purposes of this section, 'daylight hours' means that period of time between official sunrise and official sunset. Any person violating the provisions of this section, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. For the purposes of this section, gigging does not include underwater spear fishing."

Time effective

Section 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 15

(R21, H3248)

AN ACT TO AMEND SECTION 16-13-510, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FINANCIAL IDENTITY FRAUD, SO AS TO BROADEN THE SCOPE OF FINANCIAL IDENTITY FRAUD AND REVISE THE DEFINITION OF "PERSONAL IDENTIFYING INFORMATION", TO DEFINE THE TERM "FINANCIAL RESOURCES", TO PROVIDE VENUE FOR PROSECUTION OF AN IDENTITY FRAUD OFFENSE, AND TO ADD CONFORMING LANGUAGE CONTAINED IN FINANCIAL TRANSACTION CARD CRIME TO PROVIDE THAT IT IS NOT A DEFENSE WHEN SOME OF THE ACTS OF THE CRIME DID NOT OCCUR IN THIS STATE OR WITHIN A CITY, COUNTY, OR LOCAL JURISDICTION; TO AMEND SECTION 37-20-130, RELATING TO THE INITIATION OF A LAW ENFORCEMENT INVESTIGATION OF IDENTITY THEFT, SO AS TO DELETE THE LANGUAGE ALLOWING REFERRAL OF THE MATTER TO THE LAW ENFORCEMENT AGENCY WHERE THE CRIME WAS COMMITTED FOR INVESTIGATION; AND TO AMEND SECTION 39-1-90, RELATING TO BREACH OF CERTAIN SECURITY AND BUSINESS DATA AND NOTICE TO THE CONSUMER PROTECTION DIVISION, SO AS TO REVISE THE DEFINITION OF "PERSONAL IDENTIFYING INFORMATION".

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

Financial identify fraud, offense revised

SECTION 1. Section 16-13-510 of the 1976 Code, as last amended by Act 190 of 2008, is further amended to read:

"Section 16-13-510. (A) It is unlawful for a person to commit the offense of financial identity fraud or identity fraud.

(B) A person is guilty of financial identity fraud when the person, without the authorization or permission of another individual, and with the intent of unlawfully:

(1) appropriating the financial resources of the other individual to the person's own use or the use of a third party;

(2) devising a scheme or artifice to defraud; or

(3) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises obtains or records identifying information which would assist in accessing the financial records of the other individual or accesses or attempts to access the financial resources of the other individual through the use of identifying information as defined in subsection (D).

(C) A person is guilty of identity fraud when the person uses identifying information, as defined in subsection (D), of another individual for the purpose of obtaining employment or avoiding identification by a law enforcement officer, criminal justice agency, or another governmental agency, including, but not limited to, law enforcement, detention, and correctional agencies or facilities.

(D) 'Personal identifying information' includes, but is not limited to:

(1) social security numbers;

(2) driver's license numbers or state identification card numbers issued instead of a driver's license;

(3) checking account numbers;

(4) savings account numbers;

(5) credit card numbers;

(6) debit card numbers;

(7) personal identification (PIN) numbers;

(8) electronic identification numbers;

(9) digital signatures;

(10) dates of birth;

(11) current or former names, including first and last names, middle and last names, or first, middle, and last names, but only when the names are used in combination with, and linked to, other identifying information provided in this section;

(12) current or former addresses, but only when the addresses are used in combination with, and linked to, other identifying information provided in this section; or

(13) other numbers, passwords, or information which may be used to access a person's financial resources, numbers, or information issued by a governmental or regulatory entity that uniquely will identify an individual or an individual's financial resources.

(E) 'Financial resources' includes:

(1) existing money and financial wealth contained in a checking account, savings account, line of credit, or otherwise;

(2) a pension plan, retirement fund, annuity, or other fund which makes payments monthly or periodically to the recipient; and

(3) the establishment of a line of credit or an amount of debt whether by loan, credit card, or otherwise for the purpose of obtaining goods, services, or money.

(F) A person who violates this section is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The court may order restitution to the victim pursuant to the provisions of Section 17-25-322.

(G) Venue for the prosecution of offenses pursuant to this section is in the county in which:

(1) the victim resided at the time the information was obtained or used; or

(2) the information is obtained or used.

(H) In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction."

Identity theft investigations

SECTION 2. Section 37-20-130 of the 1976 Code, as added by Act 190 of 2008, is amended to read:

"Section 37-20-130. A person who learns or reasonably suspects that the person is the victim of identity theft may initiate a law enforcement investigation by reporting to a local law enforcement agency that has jurisdiction over the person's actual legal residence. The law enforcement agency shall take the report, provide the complainant with a copy of the report, and begin an investigation."

Breach of security and business data, definition revised

SECTION 3. Section 39-1-90(D) of the 1976 Code, as added by Act 190 of 2008, is amended to read:

"(D) For purposes of this section:

(1) 'Breach of the security of the system' means unauthorized access to and acquisition of computerized data that was not rendered unusable through encryption, redaction, or other methods that compromises the security, confidentiality, or integrity of personal

identifying information maintained by the person, when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to a resident. Good faith acquisition of personal identifying information by an employee or agent of the person for the purposes of its business is not a breach of the security of the system if the personal identifying information is not used or subject to further unauthorized disclosure.

(2) 'Person' has the same meaning as in Section 37-20-110(10).

(3) 'Personal identifying information' means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted:

(a) social security number;

(b) driver's license number or state identification card number issued instead of a driver's license;

(c) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or

(d) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local governmental records lawfully made available to the general public."

Savings clause

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 16

(R23, H3571)

AN ACT TO AMEND SECTION 50-13-665, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BAIT THAT MAY BE USED WITH TROTLINES, SET HOOKS, AND JUGS, SO AS TO REVISE THE SIZE OF HOOKS THAT MAY BE USED TO FISH ALONG CERTAIN RIVERS.

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

Hooks used to fish along certain rivers

SECTION 1. Section 50-13-665 of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"Section 50-13-665. (A) Except as provided in subsections (B) and (C), and the bait listed below, no other bait may be used with trotlines, set hooks, and jugs:

(1) soap;

(2) dough balls;

(3) nongame fish or bream cut into two or more equal parts;

(4) shrimp;

(5) meat scraps which may not include insects, worms, or other invertebrates;

(6) grapes.

(B) Notwithstanding another provision of law, on the Black, Edisto, Great Pee Dee (including the navigable oxbows and sloughs), Little Pee Dee (including the navigable oxbows and sloughs), Lumber, Lynches (including Clarks, Mill, and Muddy Creeks), Sampit, and Waccamaw Rivers, live nongame fish and live bream may be used with

single-barbed set hooks that have a shank-to-point gap of fifteen-sixteenths inches or greater. However, it is unlawful for a person to have in possession more than the lawful creel limit of bream while fishing with nongame devices on these rivers.

(C) Live nongame fish and live bream may be used on a trotline having not more than twenty hooks that have a shank-to-point gap of fifteen-sixteenths inches or greater on the Black, Great Pee Dee (including the navigable oxbows and sloughs), Little Pee Dee (including the navigable oxbows and sloughs), Lumber, Lynches (including Clarks, Mill, and Muddy Creeks) and Waccamaw Rivers. However, it is unlawful for a person to have in possession more than the lawful creel limit of bream while fishing with nongame devices on these rivers.

(D) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 17

(R24, H3579)

AN ACT TO AMEND SECTION 50-13-325, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAKING OF NONGAME FISH IN GILL NETS, SO AS TO REDUCE THE MINIMUM DISTANCE REQUIRED BETWEEN NETS PLACED ON THE LITTLE PEE DEE RIVER UPSTREAM OF PUNCH BOWL LANDING.

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

Taking of nongame fish in gill nets

SECTION 1. Section 50-13-325 of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"Section 50-13-325. (A) The season for taking nongame fish other than American shad and herring in the freshwaters of this State with a gill net is from November first to March first inclusive. A gill net may be used or possessed in the freshwaters in which their use is authorized on Wednesdays, Thursdays, Fridays, and Saturdays only. A gill net used in the freshwaters must have a mesh size not less than four and one-half inches stretch mesh. A gill net measuring more than one hundred yards in length must not be used in the freshwaters and a gill net, cable, line or other device used for support of a gill net may not extend more than halfway across any stream or body of water. A gill net may be placed in the freshwaters on a first come first served basis but a gill net must not be placed within two hundred yards of another gill net. However, notwithstanding another provision of law, along the Little Pee Dee River upstream of Punch Bowl Landing, no net may be set within seventy-five feet of a gill net previously set, drifted within seventy-five feet of another drifting net, or placed or set within seventy-five feet of the confluence of a tributary. Use or possession of a gill net at any place or time other than those prescribed in this subsection is unlawful.

(B) Nongame fish taken in shad nets lawfully fished during the open season for taking shad may be kept. A sturgeon caught must be returned immediately to the waters from where it was taken."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 18

(R26, H3620)

AN ACT TO AMEND SECTION 38-90-160, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXEMPTION OF CAPTIVE INSURANCE COMPANIES FROM CERTAIN PROVISIONS OF TITLE 38, SO AS TO PROVIDE AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY IS SUBJECT TO CERTAIN REQUIREMENTS CONCERNING REPORTS FOR RISK-BASED CAPITAL, ACQUISITIONS DISCLOSURE, AND ASSET DISPOSITION, AND CEDED REINSURANCE AGREEMENTS, AND TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY ELECT NOT TO TAKE REGULATORY ACTION CONCERNING RISK-BASED CAPITAL IN SPECIFIC CIRCUMSTANCES.

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

Captive insurance company reporting requirements, regulations on risk-based capital limited

SECTION 1. Section 38-90-160 of the 1976 Code, as last amended by Act 217 of 2010, is further amended to read:

"Section 38-90-160. (A) No provisions of this title, other than those contained in this chapter or contained in specific references contained in this chapter and regulations applicable to them, apply to captive insurance companies.

(B) The director may exempt, by rule, regulation, or order, special purpose captive insurance companies, on a case by case basis, from provisions of this chapter that he determines to be inappropriate given the nature of the risks to be insured.

(C) The provisions of Sections 38-5-120(A)(3), 38-5-120(C), 38-5-120(D), 38-9-225, 38-9-230, 38-21-10, 38-21-30, 38-21-60, 38-21-70, 38-21-90, 38-21-95, 38-21-120, 38-21-130, 38-21-140, 38-21-150, 38-21-160, 38-21-170, 38-21-250, 38-21-270, 38-21-280, 38-21-310, 38-21-320, 38-21-330, 38-21-360, 38-55-75 and Chapters 44 and 46, Title 38 apply in full to a risk retention group licensed as an industrial insured captive insurance company and, if a conflict occurs between those code sections and chapters referenced in this subsection

and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.

(D) Except as provided elsewhere in this chapter, the provisions of Chapter 87, Title 38 apply to a risk retention group licensed as an industrial insured captive insurance company.

(E)(1) Except for Section 38-9-330(F) and Section 38-9-440, the provisions of Article 3 and Article 5, Chapter 9, Title 38 apply in full to a risk retention group licensed as an industrial insured captive insurance company, and if a conflict occurs between those provisions and this chapter, the provisions of this subsection control.

(2) The director may elect not to take regulatory action as otherwise required by Sections 38-9-330, 38-9-340, 38-9-350, and 38-9-360 if any of the following conditions exist:

(a) the director establishes that the risk retention group's members, sponsoring organizations, or both, are well-capitalized entities whose financial condition and support for the risk retention group is adequately documented. In making this determination, the director shall, at a minimum, require the filing of at least three years of historical, audited financial statements of the members, sponsor, or both, to assess the financial ability of the members', sponsor's, or both, support of the risk retention group. In addition, one year of projected financial information must be reviewed if available. The members, sponsor, or both, shall have:

(i) an investment grade rating from a nationally recognized statistical rating organization or A.M. Best rating of A- or better; or

(ii) equity equal to or greater than one hundred million dollars or equity equal to or greater than ten times the risk retention group's largest net retained per occurrence limit;

(b) each policyholder qualifies as an industrial insured in their state or this State, depending on which has the greater requirements, provided that if the policyholder's home state does not have an industrial insured exemption or equivalent, the policyholder must qualify under the industrial insured requirement of this State; or

(c) the risk retention group's certificate of authority date of issue was before January 1, 2011, and, based on a minimum five-year history of successful operations, is specifically exempted, in writing, from the requirements for mandatory risk-based capital action by the director."

Severability

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 3. This act takes effect upon approval by the Governor, except the provisions of SECTION 1 are effective on January 1, 2014.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 19

(R27, H3621)

AN ACT TO AMEND SECTION 38-5-120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REVOCATION OR SUSPENSION OF A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE BY AN INSURER, SO AS TO REVISE PROVISIONS CONCERNING HAZARDOUS INSURERS.

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

Revocation or suspension of certificate of authority, requirements revised

SECTION 1. Section 38-5-120 of the 1976 Code, as last amended by Act 27 of 2009, is further amended to read:

"Section 38-5-120. (A) The director or his designee shall revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence that one or more of the following exist:

(1) The insurer is in an unsound condition.

(2) The insurer has not complied with the law or with the provisions of its charter.

(3) The officers or agents of an insurer refuse to submit to examination or to perform a legal obligation relative to an examination.

(4) The insurer has not complied with a lawful order of the director or his designee.

(5) The condition of the insurer renders the continuance of its business hazardous to the general public, its creditors, or its policyholders. The director or his designee may consider one or more of the following standards to determine whether the continued operation of an insurer transacting insurance business in this State is hazardous to the general public, its creditors, or its policyholders:

(a) adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries;

(b) the National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

(c) whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

(d) whether the ability of an assuming reinsurer to perform and the reinsurance program of the insurer provides sufficient protection for the remaining surplus of the insurer after taking into account the cash flow of the insurer, the classes of business written, and the financial condition of the assuming reinsurer;

(e) whether the operating loss of the insurer in the immediately preceding twelve month period or less is greater than fifty percent of the remaining surplus of the insurer regarding policyholders in excess of the minimum required, provided that for the purposes of this section, the operating loss of an insurer includes, but is not limited

to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders;

(f) whether the operating loss, excluding net capital gains, of the insurer in the immediately preceding twelve month period or less is greater than twenty percent of the remaining surplus of the insurer regarding policyholders in excess of the minimum required;

(g) whether a reinsurer, obligor, or any entity within the insurance holding company system of the insurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which in the opinion of the director or his designee may affect the solvency of the insurer;

(h) contingent liabilities, pledges, or guaranties which individually or collectively involve a total amount which in the opinion of the director or his designee may affect the solvency of the insurer;

(i) whether a controlling person of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;

(j) the age and collectability of receivables;

(k) whether the management of an insurer, including officers, directors, or other people who directly or indirectly control the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in that position;

(l) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(m) whether management of an insurer has filed a false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, made a false or misleading entry, or omitted an entry of a material amount in the books of the insurer;

(n) whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the director or his designee;

(o) whether the insurer has grown so rapidly and to an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(p) whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(q) whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice;

(r) whether management persistently engages in material under reserving that results in adverse development;

(s) whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the ability of the insurer to meet its outstanding obligations as they mature; and

(t) any other finding determined by the director or his designee to be hazardous to the insurer's policyholders, creditors, or general public.

(B) For the purposes of making a determination of the financial condition of an insurer under this section, the director or his designee may:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and state regulations;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) increase the liability of the insurer in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve month period.

(C) The department must publish notice of revocation and suspension in a newspaper of general circulation in this State. The insurer and its agents may not conduct any new business in this State while the default or disability continues and until the director or his designee restore the authority of the insurer to transact business in this State.

(D)(1) The insurer may request a hearing on an order or a decision made by the director or his designee pursuant to the provisions of this title. The insurer or other parties must be served with notice of the hearing stating the time and place of the hearing and the grounds upon which the director based the order; the hearing must occur not less than ten days nor more than thirty days following the notice and must be conducted at the offices of the South Carolina Department of Insurance unless otherwise designated by the director. The director or his designee shall hold all hearings in private unless the insurer requests a

public hearing. After a hearing by the director or his designee, an order or a decision made, issued, or executed by the director or his designee is subject to review in accordance with Section 38-3-210 under the appellate procedures of the South Carolina Administrative Law Court, as provided by law.

(2) Notwithstanding the provisions of subsection (A), if the director or his designee determines that an insurer is in an unsound condition or in a hazardous condition as provided in subsection (A)(1) or (A)(5), he may issue an order requiring the insurer to:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce, suspend, or limit the volume of business being accepted or renewed;

(c) reduce general insurance and commission expenses by specified methods;

(d) increase the insurer's capital and surplus;

(e) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

(f) file reports in a form acceptable to the director or his designee concerning the market value of an insurer's assets;

(g) limit or withdraw from certain investments or discontinue certain investment practices to the extent the director or his designee considers necessary;

(h) document the adequacy of premium rates in relation to the risks insured;

(i) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in a format approved by the director or his designee;

(j) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the director or his designee;

(k) provide a business plan to the director or his designee in order to continue to transact business in the State; or

(l) adjust rates for any nonlife insurance product written by the insurer that the director or his designee considers necessary to improve the financial condition of the insurer, notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments.

(3) The order of the director or his designee may be limited to the extent provided by law if the insurer is a foreign insurer."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 18th day of April, 2013.

Approved the 23rd day of April, 2013.

No. 20

(R30, S295)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-11-2028 SO AS TO ALLOW THE GOVERNING BODY OF A SPECIAL PURPOSE DISTRICT CREATED BY ACT OF THE GENERAL ASSEMBLY, WHICH PROVIDES RECREATIONAL SERVICES AND HAS AS ITS BOUNDARY THE SAME AS THE COUNTY IN WHICH IT IS LOCATED, TO VOLUNTARILY DISSOLVE ITSELF AND TRANSFER ITS ASSETS AND LIABILITIES TO A COUNTY IF ACCEPTED BY RESOLUTION OF ITS GOVERNING BODY; TO REQUIRE A PUBLIC HEARING TO BE CONDUCTED BEFORE TAKING A SUPERMAJORITY VOTE OF ITS GOVERNING BODY AND THE GOVERNING BODY OF THE COUNTY; TO REQUIRE THE GOVERNING BODY OF THE COUNTY TO COMPLY WITH THE PROVISIONS OF SECTION 6-11-2140; TO PROVIDE FOR CALCULATING THE MILLAGE LIMITATION FOR A COUNTY WHEN A SPECIAL PURPOSE DISTRICT TRANSFERS ITS ASSETS AND LIABILITIES TO A COUNTY; AND TO PROVIDE THAT THIS SECTION DOES NOT APPLY TO A SPECIAL PURPOSE DISTRICT THAT PROVIDES BOTH RECREATIONAL AND AGING SERVICES OR THAT HAS A BOARD APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE COUNTY LEGISLATIVE DELEGATION.

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

Transfer of assets and liabilities of special purpose district to county

SECTION 1. Article 15, Chapter 11, Title 6 of the 1976 Code is amended by adding:

"Section 6-11-2028. (A) Notwithstanding the provisions of this article, the assets and liabilities of a special purpose district that:

(1) is created by act of the General Assembly that does not require a referendum;

(2) provides only recreational services; and

(3) has as its boundary the same as the county in which it is located, may be transferred to the governing body of the county in which the special purpose district is located if the governing body of the special purpose district and the governing body of the county each pass by a supermajority of two-thirds vote of members present and voting resolutions that transfer the special purpose district's assets and liabilities to the governing body of the county in which the special purpose district is located. The governing body of the special purpose district must hold a public hearing prior to the passage by a supermajority of two-thirds vote of the resolutions by the governing body of the special purpose district and the governing body of the county. The provisions of this section are applicable only if the governing body of the county also adopts a resolution agreeing to follow the provisions of Section 6-11-2140.

(B) For purposes of calculating the millage limitation imposed pursuant to Section 6-1-320 for a county, any millage for operating purposes imposed by the dissolved special purpose district is considered to be imposed by the county.

(C) The provisions of this section do not apply to a special purpose district that: (1) provides both recreational and aging services; or (2) has a board appointed by the Governor upon the recommendation of the county legislative delegation.

(D) The provisions of this section expire two years from the effective date of this act."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.

No. 21

(R31, H3011)

AN ACT TO AMEND SECTION 53-3-120, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PURPLE HEART DAY IN SOUTH CAROLINA, SO AS TO MOVE THE DAY FROM THE THIRD SATURDAY IN FEBRUARY TO THE SEVENTH DAY OF AUGUST IN ORDER TO COINCIDE WITH THE DATE GENERAL GEORGE WASHINGTON ORIGINALLY AUTHORIZED THE AWARD.

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

Purple Heart Day date

SECTION 1. Section 53-3-120 of the 1976 Code, as added by Act 342 of 2000, is amended to read:

"Section 53-3-120. The seventh day of August of each year is designated as Purple Heart Day in South Carolina to honor the decoration itself and those men and women who have received it."

Time Effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.

No. 22

(R33, H3560)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 31, TITLE 23 SO AS TO REQUIRE THE JUDICIAL DEPARTMENT AND THE STATE LAW ENFORCEMENT DIVISION TO DEVELOP PROCEDURES FOR THE COLLECTION OF INFORMATION ON INDIVIDUALS WHO HAVE BEEN ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION AND FOR THE SUBMISSION OF THIS INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS); TO PROVIDE THAT A PERSON PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR RECEIVING A FIREARM OR AMMUNITION PURSUANT TO FEDERAL OR STATE LAW MAY PETITION THE COURT ISSUING THE ORIGINAL ORDER TO REMOVE THE FIREARM AND AMMUNITION PROHIBITION, TO PROVIDE PROCEDURES TO SEEK THIS REMOVAL AND TO APPEAL THE DENIAL OF SUCH RELIEF; TO PROVIDE THAT IF THIS PROHIBITION IS REMOVED, NICS PROMPTLY MUST BE INFORMED OF THE COURT ACTION REMOVING THE PROHIBITION; TO PROVIDE THAT IT IS A FELONY FOR A PERSON WHO HAS BEEN ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION TO SHIP, TRANSPORT, POSSESS, OR RECEIVE A FIREARM OR AMMUNITION, TO PROVIDE CRIMINAL PENALTIES, AND TO REQUIRE CONFISCATION OF SUCH FIREARMS AND AMMUNITION, AND TO ESTABLISH PROCEDURES FOR THE RETURN OF FIREARMS AND AMMUNITION TO AN INNOCENT OWNER; TO AMEND SECTION 44-22-100, RELATING TO THE CONFIDENTIALITY AND RELEASE OF MENTAL HEALTH COMMITMENT AND TREATMENT RECORDS AND EXCEPTIONS, SO AS TO AUTHORIZE REPORTING INFORMATION IN THESE RECORDS TO NICS; AND TO ESTABLISH PROSPECTIVE AND RETROACTIVE REQUIREMENTS FOR COURTS TO SUBMIT MENTAL HEALTH ADJUDICATION AND COMMITMENT INFORMATION.

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

Mental health adjudications and commitments to be reported to the National Instant Criminal Background Check System, appeals to remove prohibition of possessing firearms and ammunition, felony for a person adjudicated as a mental defective or committed to a mental institution to possess firearms or ammunition, confiscation of such firearms or ammunition

SECTION 1. Chapter 31, Title 23 of the 1976 Code is amended by adding:

"Article 10

NICS: Mental Health Adjudication and Commitment Reporting

Section 23-31-1010. As used in this article:

(1) 'Adjudicated as a mental defective' means a determination by a court of competent jurisdiction that a person, as a result of marked subnormal intelligence, mental illness, mental incompetency, mental condition, or mental disease:

(a) is a danger to himself or to others; or

(b) lacks the mental capacity to contract or manage the person's own affairs.

The term includes:

(a) a finding of insanity by a court in a criminal case; and

(b) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. Sections 850(a) and 876(b).

(2) 'Committed to a mental institution' means a formal commitment of a person to a mental institution by a court of competent jurisdiction. The term includes a commitment to a mental institution involuntarily, and a commitment to a mental institution for mental defectiveness, mental illness, and other reasons, such as drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

(3) 'Mental institution' includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Section 23-31-1020. (A) The Judicial Department and the Chief of SLED, or the chief's designee, shall work in conjunction with a court of competent jurisdiction in developing procedures for the collection and submission of information of persons who have been adjudicated as a mental defective or who have been committed to a mental institution.

(B) When a court submits this information to SLED by court order, SLED shall transmit the information to the National Instant Criminal Background Check System (NICS) established pursuant to the Brady Handgun Violence Protection Act of 1993, Pub. L. (pg. 79) 103-159.

(C) The court shall submit the information to SLED by court order within five days from the filing of each order related to adjudications and commitments. Under no circumstances may the court or SLED submit information pursuant to this section relating to a person's diagnosis or treatment.

(D) SLED shall keep information submitted by the court confidential, and that information only may be disclosed to NICS pursuant to this section, for purposes directly related to the Brady Act, or as provided in subsection (E).

(E) If the court, by court order, has submitted a person's name and other identifying information to SLED to be transmitted to NICS, SLED shall review the state concealed weapons permit holders list, and if the review reveals that the person possesses a current concealed weapons permit, the permit must be revoked and surrendered to a sheriff, police department, SLED agent, or by certified mail to the Chief of SLED. If the permit holder fails to return the permit within ten days of being notified of the permit's revocation, SLED shall retrieve the permit from the permit holder.

(F) Information submitted by the court pursuant to this section, which is also contained in court orders or in other state or local agency records, is not affected by this section, and such court orders or other state or local agency records may be disclosed in accordance with existing laws and procedures.

Section 23-31-1030. (A) If a person is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040 as a result of adjudication as a mental defective or commitment to a mental institution, the person may petition the court that issued the original order to remove the prohibitions. The person may file the petition upon the expiration of any current commitment order; however, the

court only may consider petitions for relief due to adjudications and commitments that occurred in this State.

(B) The petition must be accompanied by an authorization and release signed by the petitioner authorizing disclosure of the petitioner's current and past medical records, including mental health records.

(C) If the petition is filed pro se, the court shall provide notice to all parties of record. If the petitioner is represented by counsel, counsel shall provide notice to all parties of record.

(D) Notwithstanding the exclusive jurisdiction of the court to preside over hearings initiated pursuant to this section, the case may be removed to the circuit court upon motion of the petitioner or on motion of the court, made not later than ten days following the date the petition is filed. Upon such motion, the case must be removed to the circuit court where the court shall proceed with the case de novo.

(E)(1) Within ninety days of receiving the petition, unless the court grants an extension upon request of the petitioner, the court shall conduct a hearing which must be presided over by a person other than the person who gathered evidence for use by the court in the hearing.

(2) At the hearing on the petition, the petitioner shall have the opportunity to submit evidence, and a record of the hearing must be made and maintained for review. The court shall consider information and records, which otherwise are confidential or privileged, relevant to the criteria for removing firearm and ammunition prohibitions and shall receive and consider evidence concerning the following:

(a) the circumstances regarding the firearm and ammunitions prohibitions imposed by 18 U.S.C. Section 922(g)(4) and Section 23-31-1040;

(b) the petitioner's record, which must include, at a minimum, the petitioner's mental health and criminal history records;

(c) evidence of the petitioner's reputation developed through character witness statements, testimony, or other character evidence; and

(d) a current evaluation presented by the petitioner conducted by the Department of Mental Health or a physician licensed in this State specializing in mental health specifically addressing whether due to mental defectiveness or mental illness the petitioner poses a threat to the safety of the public or himself or herself.

(F) The hearing must be closed to the public, and the petitioner's mental health records must be restricted from public disclosure. However, upon motion by the petitioner, the hearing may be open to the public, and the court may allow for the in camera inspection of the

petitioner's mental health records and for the use of these records, but these records must be restricted from public disclosure.

(G)(1) The court shall make findings of fact regarding the following and shall remove the firearm and ammunition prohibitions if the petitioner proves by a preponderance of the evidence that:

(a) the petitioner is no longer required to participate in court-ordered psychiatric treatment;

(b) the petitioner is determined by the Department of Mental Health or by a physician licensed in this State specializing in mental health to be not likely to act in a manner dangerous to public safety; and

(c) granting the petitioner relief will not be contrary to the public interest.

(2) Notwithstanding item (1), the court must not remove the firearm and ammunition prohibitions if, by a preponderance of the evidence, it is proven that the petitioner has engaged in acts of violence subsequent to the petitioner's last adjudication as a mental defective or last commitment to a mental institution, unless the petitioner, by clear and convincing evidence, proves that he is not likely to act in a manner dangerous to public safety.

(H) If the petitioner is denied relief and the firearm and ammunition prohibitions are not removed, the petitioner may appeal to the circuit court for de novo review. In conducting its review, the circuit court:

(1) shall review the record;

(2) may give deference to the decision of the court denying the petitioner relief; and

(3) may receive additional evidence as necessary to conduct an adequate review.

(I) Medical records, psychological reports, and other treatment records which have been submitted to the court or admitted into evidence under this section must be part of the record, but must be sealed and opened only on order of the court.

(J) If a court issues an order pursuant to this section that removes the firearm and ammunition prohibitions that prohibited the petitioner from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. Section 922(g)(4) or Section 23-31-1040, arising from adjudication as a mental defective or commitment to a mental institution, the court shall provide SLED with a certified copy of the order that may be transmitted through electronic means. SLED promptly shall inform the NICS of the court action removing these firearm and ammunition prohibitions.

Section 23-31-1040. (A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a felony, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED's forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section. A law enforcement agency that receives a firearm or ammunition pursuant to this subsection may administratively release the firearm or ammunition to an innocent owner. If possession of the firearm or ammunition is necessary for legal proceedings, the firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally concluded. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this subsection which resulted in the firearm's or ammunition's confiscation. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this subsection.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person's representative, as appropriate, a written form that conspicuously informs the person or the person's representative, as appropriate, of the provisions of this section.

Section 23-31-1050. As used in Section 23-31-1030 and Section 23-31-1040:

(1) 'Ammunition' means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in a firearm other than an antique firearm. The term does not include:

(a) a shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing; or

(b) an unloaded, nonmetallic shotgun hull or casing not having a primer.

(2) 'Antique firearm' means:

(a) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; and

(b) a replica of a firearm described in subitem (a) if such replica:

(i) is not designed or redesigned for using rimfire or conventional centerfire-fixed ammunition; or

(ii) uses rimfire or conventional centerfire-fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) 'Firearm' means a weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such weapon; a firearm muffler or firearm silencer; or a destructive device; but the term does not include an antique firearm. In the case of a licensed collector, the term means only curios and relics.

(4) 'Firearm frame or receiver' means that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

(5) 'Firearm muffler or firearm silencer' means a device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Section 23-31-1060. Nothing in this article affects a court's duty to conduct a hearing on the issue of a person's fitness to stand trial pursuant to Section 44-23-430. A solicitor shall not dismiss charges against a person prior to such hearing based solely on the person's fitness to stand trial."

Confidentiality of mental health records and exceptions

SECTION 2. Section 44-22-100 of the 1976 Code is amended to read:

"Section 44-22-100. (A) Certificates, applications, records, and reports made for the purpose of this chapter or Chapter 9, Chapter 11, Chapter 13, Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed unless:

(1) the individual identified or the individual's guardian consents;

(2) a court directs that disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest;

(3) disclosure is required for research conducted or authorized by the department or the Department of Alcohol and Other Drug Abuse Services and with the patient's consent;

(4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state or federal agencies, or when furthering the welfare of the patient or the patient's family;

(5) disclosure to a court of competent jurisdiction is necessary for the limited purpose of providing a court order to SLED in order to submit information to the federal National Instant Criminal Background Check System (NICS), established pursuant to the Brady Handgun Violence Prevention Act of 1993, Pub.L. 103-159, and in accordance with Article 10, Chapter 31, Title 23; or

(6) disclosure is necessary to carry out the provisions of this chapter or Chapter 9, Chapter 11, Chapter 13, Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52.

(B) Nothing in this section:

(1) precludes disclosure, upon proper inquiry, of information as to a patient's current medical condition to members of the patient's family, or the Governor's Office of Ombudsman; or

(2) requires the release of records of which disclosure is prohibited or regulated by federal law.

(C) A person who violates this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both."

Prospective and retroactive requirements for courts to submit mental health adjudication and commitment information

SECTION 3. A court required to submit information to SLED pursuant to this act concerning individuals who have been adjudicated as a mental defective or who have been committed to a mental institution shall, from the effective date of this act forward, submit information by court order within five days from the filing of each order and in accordance with procedures developed as required by this act and have one year from this act's effective date to submit retroactive information by court order on such individuals going back a minimum of ten years or, if records are not available as far back as ten years, as far back as records exist.

Severability

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 5. This act takes effect ninety days after approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.

No. 23

(R34, H3568)

AN ACT TO AMEND SECTION 16-13-385, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ALTERING, TAMPERING WITH, OR BYPASSING ELECTRIC, GAS, OR WATER METERS, SECTION 58-7-60, RELATING TO THE UNLAWFUL APPROPRIATION OF GAS, AND SECTION 58-7-70, RELATING TO THE WRONGFUL USE OF GAS AND INTERFERENCE WITH GAS METERS, ALL SO AS TO RESTRUCTURE THE PENALTIES AND PROVIDE GRADUATED PENALTIES FOR VIOLATIONS OF THE STATUTES.

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

Altering or tampering with electric, gas, or water meters, penalties restructured, graduated penalties created

SECTION 1. Section 16-13-385 of the 1976 Code is amended to read:

"Section 16-13-385. (A) It is unlawful for an unauthorized person to alter, tamper with, or bypass a meter which has been installed for the purpose of measuring the use of electricity, gas, or water.

A meter found in a condition which would cause electricity, gas, or water to be diverted from the recording apparatus of the meter or to cause the meter to inaccurately measure the use of electricity, gas, or water or the attachment to a meter or distribution wire of any device, mechanism, or wire which would permit the use of unmetered electricity, gas, or water or would cause a meter to inaccurately measure the use is prima facie evidence that the person in whose name the meter was installed or the person for whose benefit electricity, gas, or water was diverted caused the electricity, gas, or water to be diverted from going through the meter or the meter to inaccurately measure the use of the electricity, gas, or water.

(B) A person who violates the provisions of this section for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;

(2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than five years, or both.

(C) A person who violates the provisions of this section for profit or income on behalf of a person in whose name the meter was installed or a person for whose benefit electricity, gas, or water was diverted for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) second offense, is guilty of misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(D) A person who violates the provisions of this section and the violation results in property damage in excess of five thousand dollars or results in the risk of great bodily injury or death from fire, explosion, or electrocution for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) second offense, is guilty of misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(E) A person who violates the provisions of this section and the violation results in:

(1) great bodily injury to another person is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than fifteen years, or both. For purposes of this item, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent

disfigurement, or protracted loss or impairment of the function of any bodily member or organ; and

(2) the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(F) This section does not apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards.

(G) A person who violates the provisions of this section for the purpose of growing or manufacturing controlled substances listed, or to be listed, in the schedules in Sections 44-53-190, 44-53-210, 44-53-230, 44-53-250, and 44-53-270 is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned for not more than ten years, or both."

Unlawful appropriation of gas, penalties restructured, graduated penalties created

SECTION 2. Section 58-7-60 of the 1976 Code is amended to read:

"Section 58-7-60. (A) It is unlawful for a person who has no contract, agreement, license or permission with or from a person or corporation authorized to manufacture, sell or use gas for the purpose of light, heat, or power or with or from an authorized agent of a person or corporation for the use of gas belonging to, or produced or furnished by, a person or corporation who shall wilfully withdraw or cause to be withdrawn in any manner and appropriate gas from the pipes or conduits of a person or corporation for his own use or for the use of another person or corporation.

(B) A person who violates the provisions of this section for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;

(2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than five years, or both.

(C) A person who violates the provisions of this section and the violation results in property damage in excess of five thousand dollars or results in the risk of great bodily injury or death from fire, explosion, or electrocution for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(D) A person who violates the provisions of this section and the violation results in:

(1) great bodily injury to another person is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than fifteen years, or both. For purposes of this item, 'great bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ; and

(2) the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(E) Notwithstanding the provisions of this section, a person who aids, abets, or assists another person in withdrawing and appropriating gas from pipes or conduits to or for the use of another person or to or for the use of another person or corporation for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(F) This section does not apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards."

Wrongful use of gas and interference with gas meters, penalties restructured, graduated penalties created

SECTION 3. Section 58-7-70 of the 1976 Code is amended to read:

"Section 58-7-70. (A) It is unlawful for a person who has a contract, agreement, license or permission, oral or written, with or from a person or corporation authorized to manufacture, sell or use gas for the purpose of light, heat, or power or with or from an authorized agent of a person or corporation for the use of the gas belonging to, or produced or furnished by, a person or corporation for certain specified purposes who shall wilfully and intentionally withdraw, or cause to be withdrawn, gas in any manner and appropriate it to his own use or to the use of another person or corporation for purposes other than those specified.

(B) It is unlawful for a person to whom gas is furnished from or by means of a meter who shall wilfully and with intention to cheat and defraud a person or corporation alter or interfere with a meter or by any contrivance whatsoever withdraw or take off gas in any manner except through a meter shall be punished as provided in Section 58-7-60(B).

(C) A person who violates the provisions of this section for profit or income on behalf of a person in whose name the meter was installed or a person for whose benefit electricity, gas, or water was diverted for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(D) A person who violates the provisions of this section and the violation results in property damage in excess of five thousand dollars or results in the risk of great bodily injury or death from fire, explosion, or electrocution for a:

(1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

(3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(E) A person who violates the provisions of this section and the violation results in:

(1) great bodily injury to another person is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than fifteen years, or both. For purposes of this item, 'great bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ; and

(2) the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(F) This section does not apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards."

Savings clause

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.

No. 24

(R35, H3624)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 9-4-15 SO AS TO PROVIDE THAT THE STATE SHALL DEFEND MEMBERS OF THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY (PEBA) AGAINST CLAIMS AND SUITS ARISING OUT OF THE PERFORMANCE OF THEIR OFFICIAL DUTIES, AND REQUIRE THAT THE STATE INDEMNIFY THESE DIRECTORS FOR ANY LOSS OR JUDGMENT INCURRED BY THEM WITH RESPECT TO SUCH A CLAIM OR SUIT, TO PROVIDE THAT THE STATE SHALL DEFEND PEBA OFFICERS AND MANAGEMENT EMPLOYEES AGAINST CLAIMS AND SUITS ARISING OUT OF THE PERFORMANCE OF THEIR OFFICIAL DUTIES UNLESS THE OFFICER OR MANAGEMENT EMPLOYEE WAS ACTING IN BAD FAITH, AND REQUIRE THAT THE STATE INDEMNIFY PEBA OFFICERS AND MANAGEMENT EMPLOYEES FOR ANY LOSS OR JUDGMENT INCURRED BY THEM WITH RESPECT TO SUCH A CLAIM OR SUIT, AND TO EXTEND THE REQUIREMENT TO DEFEND AND INDEMNIFY MEMBERS OF THE BOARD OF DIRECTORS, OFFICERS, AND MANAGEMENT EMPLOYEES OF PEBA TO SUCH PERSONS AFTER LEAVING OFFICE OR EMPLOYMENT WITH PEBA FOR OFFICIAL DUTIES UNDERTAKEN BY THEM WHILE SERVING AS A DIRECTOR, OFFICER, OR MANAGEMENT EMPLOYEE OF PEBA.

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

South Carolina Public Employee Benefit Authority, obligation to defend and indemnify

SECTION 1. Article 1, Chapter 4, Title 9 of the 1976 Code is amended by adding:

"Section 9-4-15. The State shall defend the members of the Board of Directors of the South Carolina Public Employee Benefit Authority (PEBA) established pursuant to this article against a claim or suit that

arises out of or by virtue of their performance of official duties on behalf of the authority and must indemnify these directors for a loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State shall defend officers and management employees of PEBA against a claim or suit that arises out of or by virtue of performance of official duties unless the officer or management employee was acting in bad faith and must indemnify these officers, and management employees for a loss or judgment incurred by them as a result of such claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to PEBA directors, officers, and management employees after they have left their office or employment with PEBA, as applicable, if the claim or suit arises out of or by virtue of their performance of official duties on behalf of PEBA."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies with respect to any official duties undertaken by directors, officers, and management employees of the South Carolina Public Employee Benefit Authority after June 30, 2012.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.

No. 25

(R36, H3973)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-115 SO AS TO PROVIDE THAT THE MONTH OF SEPTEMBER OF EVERY YEAR IS DESIGNATED AS "GOLDEN-SEPTEMBER CHILDHOOD CANCER AWARENESS MONTH" IN SOUTH CAROLINA.

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

Findings

SECTION 1. The General Assembly finds that:

(1) cancer is a disease that affects Americans of every sex, gender, race, and ethnicity;

(2) it is a particularly horrible disease when it strikes children; and

(3) to declare the month of September of each year as 'Childhood Cancer Awareness Month' in South Carolina and to designate it as 'Golden-September' would honor and give courage to all those children in our State who are fighting this terrible disease.

Month designated

SECTION 2. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-115. The month of September of every year is declared 'Golden-September Childhood Cancer Awareness Month' in South Carolina to honor and give courage to all those children in our State who are fighting this terrible disease."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 3rd day of May, 2013.

No. 26

(R29, S163)

AN ACT TO AMEND SECTION 12-62-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REBATE TO A MOTION PICTURE PRODUCTION COMPANY OF CERTAIN SOUTH CAROLINA PAYROLL, SO AS TO PROVIDE THAT THE REBATE FOR A QUALIFYING MOTION PICTURE COMPANY MAY NOT EXCEED TWENTY

PERCENT OF THE TOTAL AGGREGATE PAYROLL FOR PERSONS SUBJECT TO SOUTH CAROLINA INCOME TAX WITHHOLDINGS AND MAY NOT EXCEED TWENTY-FIVE PERCENT FOR RESIDENTS OF SOUTH CAROLINA; TO AMEND SECTION 12-62-60, AS AMENDED, RELATING TO THE REBATE OF CERTAIN EXPENDITURES OF A MOTION PICTURE PRODUCTION COMPANY, SO AS TO PROVIDE THAT THE DEPARTMENT OF PARKS, RECREATION AND TOURISM MAY REBATE UP TO THIRTY PERCENT OF THE EXPENDITURES IN SOUTH CAROLINA IF THERE IS A MINIMUM IN-STATE EXPENDITURE OF ONE MILLION DOLLARS; AND BY ADDING SECTION 12-62-95 SO AS TO PROVIDE THAT THE PROVISIONS OF THE SOUTH CAROLINA MOTION PICTURE INCENTIVE ACT DO NOT APPLY IF THE MOTION PICTURE OR TELEVISION PRODUCTION THAT IS MADE, IN WHOLE OR IN PART, IN SOUTH CAROLINA IS FOUND TO CONTAIN SCENES THE AVERAGE PERSON, APPLYING CONTEMPORARY STATE COMMUNITY STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE, APPEALS TO THE PRURIENT INTEREST, WHETHER THE WORK DEPICTS OR DESCRIBES, IN A PATENTLY OFFENSIVE WAY, SEXUAL CONDUCT, AND WHETHER THE WORK, TAKEN AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE.

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

Revision of payroll tax rebate

SECTION 1. Section 12-62-50(A)(1) of the 1976 Code, as last amended by Act 56 of 2005, is further amended to read:

"(A)(1) The South Carolina Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate may not exceed twenty percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings, and may not exceed twenty-five percent for South Carolina residents, for persons employed in connection with the production when total production costs in South Carolina equal or

exceed one million dollars during the taxable year. The rebates in total may not annually exceed ten million dollars and shall come from the state's general fund. For purposes of this section, 'total aggregate payroll' does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture."

Revision of rebate based on expenditures

SECTION 2. Section 12-62-60(A)(1) of the 1976 Code, as last amended by Act 56 of 2005, is further amended to read:

"(A)(1) An amount equal to twenty-six percent of the general fund portion of admissions tax collected by the State of South Carolina for the previous fiscal year must be funded annually by September first to the department for the exclusive use of the South Carolina Film Commission. The department may rebate to a motion picture production company up to thirty percent of the expenditures made by the motion picture production company in the State if the motion picture production company has a minimum in-state expenditure of one million dollars. The distribution of rebates may not exceed the amount annually funded to the department for the South Carolina Film Commission from the admissions tax collected by the State."

Inapplicability of chapter for works appealing to the prurient interest

SECTION 3. Chapter 62, Title 12 of the 1976 Code is amended by adding:

"Section 12-62-95. The provisions of this chapter do not apply if the motion picture or television production that is made in whole or in part in South Carolina is found to contain scenes the average person, applying contemporary state community standards would find that the work, taken as a whole, appeals to the prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct, and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The department and the South Carolina Film Commission may not award any benefit offered by this chapter to a motion picture production company producing such motion picture."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of May, 2013.

Approved the 8th day of May, 2013.

No. 27

(R37, S237)

AN ACT TO AMEND SECTION 10-1-161, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FLYING OF FLAGS ATOP THE STATE CAPITOL BUILDING AT HALF-STAFF, SO AS TO PROVIDE THE LENGTH OF TIME THAT THESE FLAGS MAY BE FLOWN AT HALF-STAFF FOR MEMBERS OF THE UNITED STATES MILITARY SERVICES WHO WERE RESIDENTS OF SOUTH CAROLINA AND WHO LOST THEIR LIVES IN THE LINE OF DUTY WHILE IN COMBAT, TO PROVIDE THE PROCEDURE FOR HOISTING AND LOWERING THE FLAGS ATOP THE STATE CAPITOL BUILDING WHEN MORE THAN ONE INDIVIDUAL IS HONORED, AND TO PROVIDE THAT ON A DAY WHERE THE FLAGS ATOP THE STATE CAPITOL BUILDING ARE FLOWN AT HALF-STAFF, THE GOVERNOR SHALL IDENTIFY THE PERSON OR PERSONS WHO ARE HONORED ON THE GOVERNOR'S WEBSITE.

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

Flags flown at half-staff

SECTION 1. Section 10-1-161 of the 1976 Code is amended to read:

"Section 10-1-161. (A) On Memorial Day the flags, which are flown atop the State Capitol Building, must be displayed at half-staff until noon, then raised to the top of the staff.

(B) To honor and pay tribute to the following public officials and individuals, the flags which are flown atop the State Capitol Building

must be lowered to half-staff on the day on which funeral services are conducted for these public officials and individuals:

(1) current and past members of the United States Congress from the State of South Carolina;

(2) current constitutional officers of the State of South Carolina;

(3) former Governors and Lieutenant Governors of the State of South Carolina;

(4) current members of the South Carolina General Assembly;

(5) current members of the South Carolina Supreme Court;

(6) current and former Presidents of the United States; and

(7) members of the United States military services who were residents of South Carolina and who lost their lives in the line of duty while in combat.

(C) As contained in this section, 'half-staff' means the position of the flag when it is one-half the distance between the top and bottom of the staff.

(D) The flags atop the State Capitol Building must be flown at half-staff for a period of thirty days from the date of death of the President or a former President; for a period of ten days from the date of death of the Vice President, the Chief Justice, or a retired Chief Justice of the United States Supreme Court, or the Speaker of the United States House of Representatives; for a period of five days before the day of the funeral through the date of the funeral for members of the United States military services who were residents of South Carolina and who lost their lives in the line of duty while in combat, for which the Division of Veterans' Affairs must notify the Office of the Governor of the scheduled funeral date; and from the date of death through the date of interment of an associate justice of the United States Supreme Court, or a secretary of a federal executive or military department, or a former Vice President.

(E) Upon the occurrence of an extraordinary event resulting in death or upon the death of a person of extraordinary stature, the Governor may order that the flags atop the State Capitol Building be lowered to half-staff at a designated time or for a designated period of time.

(F) The Governor may order the flags atop the State Capitol Building to be lowered to half-staff for the same designated time when an act of the United States Congress or a presidential order is issued to lower flags to half-staff over federal buildings.

(G) The flags atop the State Capitol Building, when flown at half-staff must first be hoisted to the peak for an instant and then

lowered to the half-staff position. The flags must be again raised to the peak before they are lowered for the day.

(H)(1) On any day where flags atop the State Capitol Building are flown at half-staff to honor and pay tribute to more than one individual listed in subsections (B) or (D), the flags must be hoisted and lowered pursuant to subsection (G) as many times as there are individuals to honor and pay tribute to that day.

(2) On any day where flags atop the State Capitol Building are flown at half-staff, the Governor shall, on a conspicuous place on the website maintained by the Governor, identify the person or persons to which such honor and tribute is being paid until the day of the funeral."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 17th day of May, 2013.

No. 28

(R38, S448)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-47-938 SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A PHYSICIAN MAY ENTER A SUPERVISORY RELATIONSHIP WITH A PHYSICIAN ASSISTANT; TO AMEND SECTION 40-47-910, RELATING TO DEFINITIONS IN THE PHYSICIAN ASSISTANTS PRACTICE ACT, SO AS TO ADD AND REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 40-47-940, RELATING TO APPLICATION FOR LICENSURE, SO AS TO PROVIDE AN APPLICATION MUST BE COMPLETE BEFORE A LICENSE MAY BE GRANTED; TO AMEND SECTION 40-47-945, RELATING TO CONDITIONS FOR GRANTING PERMANENT LICENSURE, SO AS TO DELETE REQUIREMENTS THAT A SUPERVISING PHYSICIAN MUST ACCOMPANY AN APPLICANT APPEARING BEFORE THE BOARD WITH HIS SCOPE OF PRACTICE GUIDELINES, AND

TO DELETE THE PROHIBITION AGAINST APPROVAL BY A SUPERVISING PHYSICIAN OF ON-THE-JOB TRAINING OR TASKS NOT LISTED ON THE APPLICATION FOR LIMITED LICENSURE AS A PHYSICIAN ASSISTANT; TO AMEND SECTION 40-47-950, RELATING TO REQUIREMENTS FOR LIMITED LICENSURE AS A PHYSICIAN ASSISTANT, SO AS TO DELETE REFERENCES TO SUPERVISING PHYSICIANS; TO AMEND SECTION 40-47-955, RELATING TO PHYSICAL PRESENCE REQUIREMENTS OF THE SUPERVISING PHYSICIAN OF A PHYSICIAN ASSISTANT, SO AS TO DELETE EXISTING REQUIREMENTS CONCERNING ON-SITE SETTINGS AND TO PROVIDE WHERE AND HOW A PHYSICIAN ASSISTANT MAY PRACTICE, TO REVISE PROVISIONS CONCERNING OFF-SITE SETTINGS, AND TO REVISE CERTAIN REQUIREMENTS OF A SUPERVISING PHYSICIAN; TO AMEND SECTION 40-47-960, RELATING TO SCOPE OF PRACTICE GUIDELINES FOR PHYSICIAN ASSISTANTS, SO AS TO INCLUDE AUTHORIZATION TO PRESCRIBE SCHEDULE II CONTROLLED SUBSTANCES AMONG SITUATIONS REQUIRING DIRECT EVALUATION OR IMMEDIATE REFERRAL BY THE SUPERVISING PHYSICIAN; TO AMEND SECTION 40-47-965, RELATING TO SCHEDULE II CONTROLLED SUBSTANCES AND SCOPE OF PRACTICE GUIDELINES OF A PHYSICIAN ASSISTANT, SO AS TO PROVIDE A PHYSICIAN ASSISTANT MAY RECEIVE AND DISTRIBUTE PROFESSIONAL SAMPLES OF THESE SUBSTANCES AND MAY PRESCRIBE THESE SUBSTANCES IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 40-47-970, RELATING TO THE PRESCRIBING OF DRUGS BY A PHYSICIAN ASSISTANT, SO AS TO AS TO DELETE A PROHIBITION AGAINST PRESCRIBING SCHEDULE II CONTROLLED SUBSTANCES; TO AMEND SECTION 40-47-995, RELATING TO THE TERMINATION OF A SUPERVISORY RELATIONSHIP BETWEEN A PHYSICIAN AND PHYSICIAN ASSISTANT, SO AS TO PROVIDE THAT UPON THIS TERMINATION THE PRACTICE OF THE PHYSICIAN ASSISTANT MUST CEASE UNTIL NEW SCOPE OF PRACTICE GUIDELINES, RATHER THAN A NEW APPLICATION, ARE SUBMITTED BY A NEW SUPERVISING PHYSICIAN TO THE BOARD; AND TO REPEAL SECTION 40-47-975 RELATING TO ON-THE-JOB TRAINING AND SECTION 40-47-980 RELATING TO THE TREATMENT OF

PATIENTS IN CHRONIC CARE AND LONG-TERM CARE FACILITIES.

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

Supervisory relationships

SECTION 1. Article 7, Chapter 47, Title 40 of the 1976 Code is amended by adding:

"Section 40-47-938. (A) A physician currently possessing an active, unrestricted permanent license to practice medicine under the provisions of this chapter, who accepts the responsibility to supervise a physician assistant's activities, must enter into a supervisory relationship with a physician assistant licensed pursuant to this article, subject to approval of scope of practice guidelines by the board. The physician must notify the board, in writing, of the proposed supervisory relationship and include the proposed scope of practice guidelines for the relationship. Upon receipt of board approval, the physician assistant may begin clinical practice with the named supervising physician and alternate physicians.

(B) A supervising physician may determine that there are additional medical acts, tasks, or functions for which a physician assistant under the physician's supervision needs additional training or education to meet the needs of the physician's practice and that the physician would like to incorporate into the physician assistant's scope of practice guidelines. The physician must determine, in consultation with the physician assistant, the means of educating the physician assistant, which may include training under the direct supervision of the physician, education, or certification of proposed practices or other appropriate educational methods. The physician must notify the board in writing of the requested changes to the physician assistant's scope of practice guidelines and must provide documentation to the board of the competence of the physician assistant to perform the additional medical acts, tasks, or functions. Upon receipt of board approval of the requested changes, the physician assistant may incorporate these additional medical acts, tasks, or functions into practice.

(C) The board shall review and determine whether to approve these proposed scope of practice guidelines or requested changes to the scope of practice guidelines within ten business days after receipt of notice from the supervising physician as required by subsections (A) and (B). If the board needs additional information or clarification, a physician

member of the board must contact the supervisory physician within ten business days of receipt of the physician's notice. If the board requests additional information or clarification to consider approval of scope of practice guidelines or changes to these guidelines, the supervising physician shall provide it in a timely manner; and upon receipt, a determination regarding approval must be made within ten business days."

Definitions

SECTION 2. Section 40-47-910 of the 1976 Code is amended to read:

"Section 40-47-910. As used in this article:

(1) 'Alternate physician supervisor' or 'alternate supervising physician' means a South Carolina licensed physician currently possessing an active, unrestricted permanent license to practice medicine in South Carolina who accepts the responsibility to supervise a physician assistant's activities in the absence of the supervising physician and this physician is approved by the physician supervisor in writing in the scope of practice guidelines.

(2) 'Board' means the Board of Medical Examiners of South Carolina.

(3) 'Committee' means the Physician Assistant Committee as established by this article as an advisory committee responsible to the board.

(4) 'Immediate consultation' means a supervising physician must be available for direct communication by telephone or other means of telecommunication.

(5) 'NCCPA' means the National Commission on Certification of Physician Assistants, Inc., the agency recognized to examine and evaluate the education of physician assistants, or its successor organization as recognized by the board.

(6) 'Physician assistant' means a health care professional licensed to assist in the practice of medicine with a physician supervisor.

(7) 'Physician supervisor' or 'supervising physician' means a South Carolina licensed physician currently possessing an active, unrestricted permanent license to practice medicine in South Carolina who is approved to serve as a supervising physician for no more than three full-time equivalent physician assistants. The physician supervisor is the individual who is responsible for supervising a physician assistant's activities.

(8) 'Supervising' means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant as part of a physician-led team in a manner approved by the board."

Applications for licensure

SECTION 3. Section 40-47-940(A) of the 1976 Code is amended to read:

"(A) An application must be submitted to the board on forms supplied by the board. The application must be complete in every detail before licensure may be granted and must be accompanied by a nonrefundable fee. As part of the application process, the supervising physician and physician assistant must specify clearly in detail those medical acts, tasks, or functions for which approval is being sought. The specific medical acts, tasks, or functions must be included in the scope of practice guidelines, and the scope of practice guidelines must accompany the application."

Grants of permanent licensure

SECTION 4. Section 40-47-945 of the 1976 Code is amended to read:

"Section 40-47-945. (A) Except as otherwise provided in this article, an individual shall obtain a permanent license from the board before the individual may practice as a physician assistant. The board shall grant a permanent license as a physician assistant to an applicant who has:

(1) submitted a completed application on forms provided by the board;

(2) paid the nonrefundable application fees established in this article;

(3) successfully completed an educational program for physician assistants approved by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor organization;

(4) successfully completed the NCCPA certifying examination and provide documentation that the applicant possesses a current, active, NCCPA certificate;

(5) certified that the applicant is mentally and physically able to engage safely in practice as a physician assistant;

(6) no licensure, certificate, or registration as a physician assistant under current discipline, revocation, suspension, probation, or investigation for cause resulting from the applicant's practice as a physician assistant;

(7) good moral character;

(8) submitted to the board other information the board considers necessary to evaluate the applicant's qualifications;

(9) appeared before a board member or board designee with all original diplomas and certificates and demonstrated knowledge of the contents of this article. A temporary authorization to practice may be issued as provided in Section 40-47-940 pending completion of this requirement and subject to satisfactory interview as provided below; and

(10) successfully completed an examination administered by the committee on the statutes and regulations regarding physician assistant practice and supervision.

(B) Not later than ninety days from the date a temporary authorization is issued, each applicant shall appear before a board member or board designee and demonstrate knowledge of the contents of this article. Failure to appear within the prescribed time automatically results in the immediate invalidation of the authorization to practice pending compliance and further order of the board. If approved, a permanent license may be issued immediately. If not approved, the application must be reviewed by the committee and may be recommended to the board for approval as presented to or modified by the committee.

(C) The supervising physician of a limited licensee physically must be present on the premises at all times when the limited licensee is performing a task."

Appearance before board for temporary licensure

SECTION 5. Section 40-47-950(A)(9) of the 1976 Code is amended to read:

"(9) appeared before a board member or board designee with all original diplomas and certificates and demonstrated knowledge of the contents of this article; and"

On-the-job training for temporary licensure

SECTION 6. Section 40-47-950(C) of the 1976 Code is amended to read:

"(C) The supervising physician of a limited licensee physically must be present on the premises at all times when the limited licensee is performing a task."

Physical presence requirements of supervising physicians

SECTION 7. Section 40-47-955 of the 1976 Code is amended to read:

"Section 40-47-955. (A) The supervising physician is responsible for all aspects of the physician assistant's practice. Supervision must be continuous but must not be construed as necessarily requiring the physical presence of the supervising physician at the time and place where the services are rendered, except as otherwise required for limited licensees. The supervising physician shall identify the physician assistant's scope of practice and determine the delegation of medical acts, tasks, or functions. Medical acts, tasks, or functions must be defined in written scope of practice guidelines which must be appropriate to the physician assistant's ability and knowledge.

(B) Pursuant to scope of practice guidelines, a physician assistant may practice in a public place, a private place, or a facility where the supervising physician regularly sees patients, may make house calls, perform hospital duties, and perform any functions performed by the supervising physician if the physician assistant is also qualified to perform those functions.

(C) A physician assistant must have six months of clinical experience with the current supervising physician before being permitted to practice at a location off site from the supervising physician, except that a physician assistant who has at least two years continuous practice in the same specialty may practice at a location off site from the supervising physician after three months clinical experience with the supervising physician and upon request of the supervising physician. This three-month requirement may be waived for experienced physician assistants and supervisors upon recommendation of the committee and approval by the board. The off-site location may not be more than sixty miles of travel from the supervising physician or alternate supervising physician without written approval of the board. Notice of off-site practice must be filed

with the administrative staff of the board before off-site practice may be authorized. The supervising physician or alternate must review, initial, and date the off-site physician assistant's charts periodically as provided in the written scope of practice guidelines, provided the supervising physician must review and verify the adequacy of clinical practice of ten percent of these charts monthly.

(D) A supervising physician may simultaneously supervise no more than three physician assistants providing clinical service at one time.

(E) Upon written request, and recommendation of the committee, the board may authorize exceptions to the requirements of this section."

Scope of practice, Schedule II drugs

SECTION 8. Section 40-47-960 of the 1976 Code is amended to read:

"Section 40-47-960. A physician assistant practicing at all sites shall practice pursuant to written scope of practice guidelines signed by all supervisory physicians and the physician assistant. Copies of the guidelines must be on file at all practice sites. The guidelines shall include at a minimum the:

(1) name, license number, and practice addresses of all supervising physicians;

(2) name and practice address of the physician assistant;

(3) date the guidelines were developed and dates they were reviewed and amended;

(4) medical conditions for which therapies may be initiated, continued, or modified;

(5) treatments that may be initiated, continued, or modified;

(6) drug therapy, if any, that may be prescribed with drug-specific classifications; and

(7) situations that require direct evaluation by or immediate referral to the physician, including Schedule II controlled substance prescription authorization as provided for in Section 40-47-965."

Permissible medical samples, Schedule II drugs

SECTION 9. Section 40-47-965 of the 1976 Code is amended to read:

"Section 40-47-965. (A) If the written scope of practice guidelines authorizes the physician's assistant to prescribe drug therapy:

(1) prescriptions for authorized drugs and devices shall comply with all applicable state and federal laws;

(2) prescriptions must be limited to drugs and devices authorized by the supervising physician and set forth in the written scope of practice guidelines;

(3) prescriptions must be signed by the physician assistant and must bear the physician assistant's identification number as assigned by the board and all prescribing numbers required by law. The preprinted prescription form shall include both the physician assistant's and physician's name, address, and phone number and shall comply with the provisions of Section 39-24-40;

(4) drugs or devices prescribed must be specifically documented in the patient record;

(5) the physician assistant may request, receive, and sign for professional samples of drugs authorized in the written scope of practice guidelines and may distribute professional samples to patients in compliance with appropriate federal and state regulations and the written scope of practice guidelines;

(6) the physician assistant may authorize prescriptions for an orally administered Schedule II controlled substance, as defined in the federal Controlled Substances Act, pursuant to the following requirements:

(a) the authorization to prescribe is expressly approved by the supervising physician as set forth in the physician assistant's written scope of practice guidelines;

(b) the physician assistant has directly evaluated the patient;

(c) the authority to prescribe is limited to an initial prescription and must not exceed a seventy-two hour supply;

(d) any subsequent prescription authorization must be in consultation with and upon patient examination and evaluation by the supervising physician, and must be documented in the patient's chart; and

(e) any prescription for continuing drug therapy must include consultation with the supervising physician and must be documented in the patient's chart;

(7) the physician assistant may authorize a medical order for parenteral administration of a Schedule II controlled substance, as defined in the federal Controlled Substances Act, pursuant to the following requirements:

(a) the authorization to write a medical order is expressly approved by the supervising physician as set forth in the physician assistant's written scope of practice guidelines;

(b) the physician assistant is providing patient care in a hospital setting, including emergency and outpatient departments affiliated with the hospital;

(c) an initial patient examination and evaluation has been performed by the supervising physician, or his delegate physician, and has been documented in the patient's chart; however, in a hospital emergency department, a physician assistant may authorize such a medical order if the supervising or delegate physician is unavailable due to clinical demands, but remains on the premises and is immediately available, and the supervising or delegate physician conducts the patient evaluation as soon as practicable and is documented in the patient's chart;

(d) the physician assistant has directly evaluated the patient; and

(e) the written medical order may not exceed a one-time administration within a twenty-four hour period.

(B) When applying for controlled substance prescriptive authority, the applicant shall comply with the following requirements:

(1) the physician assistant shall provide evidence of completion of sixty contact hours of education in pharmacotherapeutics acceptable to the board before application;

(2) the physician assistant shall provide at least fifteen contact hours of education in controlled substances acceptable to the board;

(3) every two years, the physician assistant shall provide documentation of four continuing education contact hours in prescribing controlled substances acceptable to the board;

(4) the physician assistant must have a valid Drug Enforcement Administration (DEA) registration and prescribe in accordance with DEA rules; and

(5) the physician assistant and supervising physician must read and sign a document approved by the board describing the management of expanded controlled substances prescriptive authority for physician assistants in South Carolina which must be kept on file for review. Within the two-year period, the physician assistant and the supervising physician periodically shall review this document and the physician assistant's prescribing practices to ensure proper prescribing procedures are followed. This review must be documented in writing with a copy kept at each practice site.

(C) A physician assistant's prescriptive authorization may be terminated by the board if the physician assistant:

(1) practices outside the written scope of practice guidelines;

(2) violates any state or federal law or regulation applicable to prescriptions; or

(3) violates a state or federal law applicable to physician assistants."

Prohibited medical acts, Schedule II drugs

SECTION 10. Section 40-47-970 of the 1976 Code is amended to read:

"Section 40-47-970. A physician assistant may not:

(1) perform a medical act, task, or function which has not been listed and approved on the scope of practice guidelines;

(2) prescribe drugs, medications, or devices not specifically authorized by the supervising physician and documented in the written scope of practice guidelines;

(3) prescribe, under any circumstances, controlled substances in Schedule II except as authorized in Section 40-47-965;

(4) perform a medical act, task, or function that is outside the usual practice of the supervising physician."

Scope of practice, termination

SECTION 11. Section 40-47-995 of the 1976 Code is amended to read:

"Section 40-47-995. If the supervisory relationship between a physician assistant and the supervising physician is terminated for any reason, the physician assistant and the supervising physician shall inform the board immediately in writing of the termination, including the reasons for the termination. The approval of the practice setting terminates coterminous with the termination of the relationship, and practice shall cease until new scope of practice guidelines are submitted by a supervising physician and are approved by the board."

Repeal

SECTION 12. Sections 40-47-975 and 40-47-980 of the 1976 Code are repealed.

Time effective

SECTION 13. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 29

(R40, H3087)

AN ACT TO AMEND SECTION 59-40-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VARIOUS REQUIREMENTS, POWERS, AND DUTIES OF CHARTER SCHOOLS, SO AS TO PROVIDE A PUBLIC CHARTER SCHOOL SHALL ALLOW ENROLLMENT PREFERENCE TO RETURNING STUDENTS AND THAT THESE RETURNING STUDENTS MAY NOT ENTER A LOTTERY FOR CHARTER SCHOOL ENROLLMENT, AND TO PROVIDE THAT A CHARTER SCHOOL LOCATED ON A FEDERAL MILITARY INSTALLATION OR BASE WHERE THE APPROPRIATE AUTHORITIES HAVE MADE BUILDINGS, FACILITIES, AND GROUNDS ON THE INSTALLATION OR BASE AVAILABLE FOR USE BY THE CHARTER SCHOOL AS ITS PRINCIPAL LOCATION ALSO MAY GIVE ENROLLMENT PRIORITY TO OTHERWISE ELIGIBLE STUDENTS WHO ARE DEPENDENTS OF MILITARY PERSONNEL LIVING IN MILITARY HOUSING ON THE BASE OR INSTALLATION OR WHO ARE CURRENTLY STATIONED AT THE BASE OR INSTALLATION NOT TO EXCEED FIFTY PERCENT OF THE TOTAL ENROLLMENT OF THE CHARTER SCHOOL.

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

Charter school powers and duties

SECTION 1. Section 59-40-50(B)(8) of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

"(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals, except in the case of an application to create a single gender charter school, in which case gender may be the only reason to show preference or deny admission to the school; a charter school may give enrollment priority to a sibling of a pupil currently enrolled and attending, or who, within the last six years, attended the school for at least one complete academic year. A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year. An enrollment preference for returning students excludes those students from entering into a lottery. A charter school also may give priority to children of a charter school employee and children of the charter committee, if priority enrollment for children of employees and of the charter committee does not constitute more than twenty percent of the enrollment of the charter school. In addition, a charter school located on a federal military installation or base where the appropriate authorities have made buildings, facilities, and grounds on the installation or base available for use by the charter school as its principal location also may give enrollment priority to otherwise eligible students who are dependents of military personnel living in military housing on the base or installation or who are currently stationed at the base or installation not to exceed fifty percent of the total enrollment of the charter school. This priority is in addition to the other priorities provided by this item, but no child may be counted more than once for purposes of determining the percentage makeup of each priority;"

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 30

(R41, H3097)

AN ACT TO AMEND ARTICLE 4, CHAPTER 56, TITLE 44, CODE OF LAWS, 1976, RELATING TO THE DRYCLEANING FACILITY RESTORATION TRUST FUND, SO AS TO SPECIFY THE USE AND PURPOSE OF THE FUND, AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO EXPEND MONIES FROM THE FUND FOR ASSESSMENT OF POTENTIAL SITES PRIOR TO OBTAINING EVIDENCE OF CONTAMINATION AT THE SITE, AND CLARIFY WHAT FACILITIES ARE EXCLUDED FROM PARTICIPATING IN THE FUND AND THE EFFECT OF PARTICIPATING IN THE FUND IF A FACILITY IS SEEKING EXEMPTION FROM THE FUND; AND TO DELETE OBSOLETE PROVISIONS, REORGANIZE PROVISIONS, AND MAKE TECHNICAL CORRECTIONS.

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

Drycleaning restoration trust fund revised

SECTION 1. Article 4, Chapter 56, Title 44 of the 1976 Code is amended to read:

"Article 4

Drycleaning Facility Restoration Trust Fund

Section 44-56-405. The purpose of the South Carolina Drycleaning Facility Restoration Trust Fund is to collect and manage funds for the investigation and remediation of environmental contamination arising from the operation of eligible drycleaning facilities and eligible wholesale supply facilities. The Department of Revenue shall collect, and enforce the payment of surcharges and fees, which constitute the fund, as required by this article. The Department of Health and Environmental Control shall administer the fund to ensure that the sites that pose the greatest threat to human health and the environment are remediated first and that the remediation is accomplished in compliance with this article.

Section 44-56-410. As used in this article:

(1) 'Contaminated site' means any drycleaning facility or wholesale supply facility and surrounding area where drycleaning solvent has been deposited, stored, disposed of, released, placed, or otherwise come to be located; but does not include any consumer product in consumer use or any container. In order for a site to be a contaminated site it must have documented evidence of contamination from drycleaning solvent.

(2) 'Department' means the Department of Health and Environmental Control.

(3) 'Drycleaning facility' means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process that involves the use of drycleaning solvent. In the case of a retail establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop-off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop-off facilities. 'Drycleaning facility' includes laundry facilities that are using or have used drycleaning solvent as part of their cleaning process but does not include textile mills, uniform rental and linen supply facilities, or drycleaning facilities owned or operated by a local, state, or federal government.

(4) 'Drycleaning solvent' means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated drycleaning fluids, and their breakdown products. 'Drycleaning solvent' includes solvent that has been recycled for use at a drycleaning facility and applies only to those solvents used at a drycleaning facility or handled by a wholesale supply facility.

(5) 'Dry drop-off facility' means a commercial retail business (including routes) that receives clothing and other fabrics, from customers, for drycleaning or laundering at an off-site drycleaning facility.

(6) 'Employee' means a natural person employed and paid by the owner of a drycleaning facility for thirty-five or more hours a week for forty-five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Department of Employment and Workforce or Department of Revenue as required by

law. Excluded from the meaning of the term 'employee' are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and not compensated pursuant to the definition of the term 'employee' contained in this item. Part-time employees who are employed and paid for fewer than thirty-five hours a week for fewer than forty-five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part-time employee or employees, total thirty-five or more hours a week for forty-five or more weeks a year.

(7) 'Existing drycleaning facility' means a drycleaning facility that started operation before November 24, 2004.

(8) 'Former drycleaning facility' means a drycleaning facility that ceased to be operated as a drycleaning facility before July 1, 1995.

(9) 'Fund' means Drycleaning Facility Restoration Trust Fund.

(10) 'Halogenated drycleaning fluid' means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume of any of the halogenated compounds including, but not limited to, chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include, but are not limited to, the known solvents perchloroethylene (also known as tetrachloroethylene or perc), n-propyl bromide, and any breakdown components of them.

(11) 'New drycleaning facility' means a drycleaning facility that started operation on or after November 24, 2004.

(12) 'Nonaqueous solvent' means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty-one percent of water by volume.

(13) 'Nonhalogenated drycleaning fluid' means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated drycleaning fluid. Nonhalogenated drycleaning fluid includes petroleum based drycleaning solvents and any breakdown components of them.

(14) 'Person' means an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

(15) 'Property owner' means a person who is vested with ownership, dominion, or legal or rightful title to the real property or who has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

(16) 'Release' means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or disposing into the environment of drycleaning solvent.

(17) 'Route' means a commercial business that receives by mobile means clothing and other fabrics, from customers, for drycleaning or laundering at an off-site drycleaning facility.

(18) 'Wholesale supply facility' means a commercial establishment that supplies drycleaning solvent to drycleaning facilities.

Section 44-56-420. (A) There is created in the state treasury a separate and distinct account called the 'Drycleaning Facility Restoration Trust Fund', revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the department and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, surcharges and fees imposed and collected pursuant to this article except for administrative costs retained by the Department of Revenue, and other fees and charges related to the implementation of this article must be credited to the fund. Payments made out of the fund must be made in accordance with the provisions of this article. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this article. The State may recover to the fund any disbursements from the fund which were not utilized in accordance with this article.

(B) The board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the release of drycleaning solvent to soil or waters of the State. This moratorium applies only to those sites deemed eligible as defined in Section 44-56-470. The board may review and determine the appropriateness of the moratorium as needed. The review by the board must include, but is not limited to, consideration of these factors:

(1) the solvency of the fund as described in this article;

(2) prioritization of the sites;

(3) public health concerns related to the sites;

(4) eligibility of the sites; and

(5) corrective action plans submitted to the department. After review, the board may suspend all or a portion of the moratorium if necessary.

(C) If incidents of contamination by drycleaning solvent related to the operation of an eligible contaminated site pose a threat to the environment or the public health, safety, or welfare, the department may expend monies available in the fund to provide for:

(1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a property owner shall pay for the cost of the investigation and assessment up to the amount of the owner's, operator's, or property owner's deductible, and the department only shall provide monies that exceed the owner's, operator's, or property owner's deductible;

(2) the expeditious treatment, restoration, or replacement of potable water supplies;

(3) the remediation including the operation maintenance and monitoring of eligible contaminated sites, which consist of remediation of affected soil, groundwater, and surface waters, using the most cost-effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection;

(4) the expenses of administering the fund by the department including the employment of department staff to carry out the department's duties described in this article; however, the department may exclude five percent of the average annual collections of the fund or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater.

(D) The fund may not be used to:

(1) pay for activities in subsection (C) if the activities at a site are or were not related to the operation of a drycleaning facility or wholesale supply facility;

(2) pay for activities in subsection (C) if the activities are for a contaminated site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

(3) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a property owner under local, state, or federal law;

(4) pay for activities in subsection (C) if the costs were incurred before July 1, 1995;

(5) pay any costs to landscape or otherwise artificially improve a contaminated site;

(6) pay for activities in subsection (C) where the costs were incurred before the actual date of the first payment of registration fees for the site pursuant to Section 44-56-440(B);

(7) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;

(8) pay for activities in subsection (C) at sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;

(9) pay for activities in subsection (C) at sites that are no longer operated as drycleaning facilities or coin-operated drycleaning facilities unless they qualify pursuant to Section 44-56-470(C);

(10) pay any costs that may be associated with, but are not integral to, site assessment and/or remediation; and

(11) pay for activities in subsection (C) at a drycleaning facility that has been contaminated as a result of a release by a wholesale supplier during the delivery of drycleaning solvent until it has first been remediated by the full amount of the wholesale supplier's insurance.

Section 44-56-425. (A) Notwithstanding another provision of this article, this article does not apply to a drycleaning facility that possesses a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. A drycleaning facility exemption certificate may be issued by the Department of Revenue only if the drycleaning facility meets all of the following requirements:

(1) the drycleaning facility was in existence on July 1, 1995;

(2)(a) the drycleaning facility has only drycleaned with nonhalogenated drycleaning fluids; or

(b) the drycleaning facility drycleaned with halogenated drycleaning fluids and nonhalogenated drycleaning fluids and elected to remove the site from the requirements of this article by notification made to the Department of Revenue before October 1, 1995;

(3)(a) the drycleaning facility never participated in the fund through payment of any surcharges or fees imposed pursuant to this article; or

(b) paid an initial registration fee in 1995 and operated as an exempt drycleaning facility the following year and subsequent years up until 2009. A drycleaning facility described pursuant to subsection (A)(3)(b) of this section shall have any payments made after July 1, 2009, refunded by the Department of Revenue;

(4) the drycleaning facility requested a drycleaning facility exemption certificate from the Department of Revenue by December 31, 2009; and

(5) the department has verified that the drycleaning facility has met the requirements contained in items (1) through (4) for the issuance of the drycleaning facility exemption certificate to the drycleaning facility.

(B) If the ownership or operation of a drycleaning facility that possesses a drycleaning facility exemption certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated drycleaning facility exemption certificate from the Department of Revenue; otherwise the certificate remains current.

(C) The drycleaning facility exemption certificate authorized pursuant to this section only applies to the physical location at which the drycleaning took place and is not transferable to any other physical location.

(D)(1) This article does not apply to dry drop-off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that meets all of the following conditions:

(a) the drycleaning facility is owned or operated by the same person that owns or operates the dry drop-off facility and the drycleaning facility has been issued a drycleaning facility exemption certificate pursuant to this section;

(b) the owner or operator of the drycleaning facility, or related entity, does not own or operate a drycleaning facility that is required to participate in the fund through payment of surcharges or fees imposed pursuant to this article; and

(c) the owner or operator of the drycleaning facility, or related entity, does not own any property on which a drycleaning facility is protected by the moratorium pursuant to Section 44-56-420(B).

(2) This article does not apply to dry drop-off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that complies with subsection (D)(1), and the dry drop-off facility is not being operated at a property on which a drycleaning facility is protected by the moratorium pursuant to Section 44-56-420(B).

(3) If an owner or operator of a drycleaning facility, or related entity, who complies with subsection (D)(1), purchases the business of a drycleaning facility that participates in the fund, and the owner or operator uses that location only as a dry drop-off facility, this article will not apply to that dry drop-off facility if the drycleaning business was closed and not operating when it was purchased.

(E) A drycleaning facility that is in possession of a drycleaning facility exemption certificate is permanently barred from receiving monies from the fund, and the moratorium provided for in Section 44-56-420(B) does not apply.

(F) The department may direct the Department of Revenue in writing to allow a property owner to register if the property owner can demonstrate to the department that they have not been notified pursuant to Section 44-56-435(A) and did not have reason to know of this article for more than ninety days prior to requesting registration. The property owner registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering property owner is not liable for penalties.

Section 44-56-430. (A) The department is required to report each January fifteenth the current financial position of the fund to the General Assembly. In addition, the department shall include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five-year budget projection. This report also must review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities and wholesale supply facilities in this State.

(B) The department shall promulgate regulations to establish priorities for assessment and remediation at eligible contaminated sites. The department shall provide for the assessment and remediation of eligible contaminated sites consistent with these regulations and other provisions of this article.

(C) The department shall administer the assessment and remediation portions of the program through direct payments to contractors actually accomplishing the site assessment and remediation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or property owners. All services related to site assessment and remediation must be preapproved by the department before performance in order to receive payment for services rendered.

(D) The department may not expend more than five hundred fifty thousand dollars from the fund annually to pay for the costs at any one contaminated site for the activities described in Section 44-56-420(C).

(E) The department in its sole discretion may use other funds to pay the cost of a cleanup if the department declares a contaminated site is an emergency and if the committed money in the fund exceeds the current balance or the amount committed to a contaminated site has reached the maximum allowable expenditure as required in subsection (D). However, once the fund has an available uncommitted balance, the department's other sources of money that paid for the approved emergency cleanup may be reimbursed for the costs incurred through annual payments that may not exceed five percent of the total fund's average annual balance. The fund may not obligate itself for more than it is estimated to generate through surcharges and fees.

(F) Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

(G) Nothing in this article may restrict the department from temporarily postponing rehabilitation work on a site in order to make funds available to perform work on another contaminated site with a higher priority.

Section 44-56-435. (A) The Department of Revenue shall distribute registration forms to owners and operators of drycleaning and wholesale supply facilities and to property owners. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and property owners of drycleaning and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the department a copy of each applicant's registration materials within thirty working days of the receipt of the materials.

(B) The Department of Revenue shall administer, collect, and enforce the surcharges and fees in Sections 44-56-440, 44-56-450, and 44-56-460 in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36, Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharges and fees by the Department of Revenue.

(C) The Department of Revenue shall retain funds for the costs incurred to collect and enforce the fund that may include a part-time employee with the related expenses for audit purposes. The funds withheld must not exceed the actual costs to administer, collect, and

enforce the fund. The proceeds of the registration fee and surcharges, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing payment of the registration fee and the surcharges, must be remitted to the State Treasurer and credited to the fund. For the purposes of this article, the proceeds of the registration fee and the surcharges include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees and surcharges.

(D) The Department of Revenue may establish audit procedures and assess delinquent registration fees and surcharges.

(E) The Department of Revenue, in addition to all other penalties authorized by this article and in addition to the provisions of Section 12-54-90, may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator pursuant to this article or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of Section 44-56-440.

(F) The Department of Revenue shall create and update an annual report of all drycleaning facilities in the State. This report must identify those that have a drycleaning facility exemption certificate and must provide the status of the annual certificates of registration for those in the fund. The Department of Revenue shall publicize the report and distribute it as widely as practical on October thirtieth of each year to interested parties including, but not limited to, wholesale suppliers, dry cleaners, the department, and other interested parties.

Section 44-56-440. (A)(1) The owner or operator of a drycleaning facility shall register with and pay initial registration fees to the Department of Revenue for each drycleaning facility in operation, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility for the twelve-month period preceding payment of the fee.

(2)(a) The property owner of the drycleaning facility may register the site if the owner or operator of the drycleaning facility does not register a site under the provisions of this section. Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of Revenue of the registration, and the owner or operator of the drycleaning facility shall comply with all

applicable provisions of this article, including the payment of subsequent renewal fees imposed under subsection (B).

(b) The property owner shall obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the twelve-month period preceding payment of the fee and shall remit the fee imposed pursuant to subsection (B). If the property owner is unable to obtain information as to the number of employees at the site, the property owner shall remit the fee imposed pursuant to subsection (B)(3) in order to register the site.

(B) An initial and annual registration fee for each drycleaning facility with:

(1) up to four employees is seven hundred fifty dollars;

(2) five to ten employees is one thousand five hundred dollars;

(3) eleven or more employees is two thousand two hundred fifty dollars.

A drycleaning facility that possesses a drycleaning facility exemption certificate issued pursuant to Section 44-56-425 is exempt from the fee imposed pursuant to this section.

(C) Each drycleaning facility registered in accordance with this section must be issued an annual drycleaner's certificate of registration by the Department of Revenue. The certificate of registration authorized pursuant to this section is valid beginning the first day of October following the registration and ending on the last day of the following September. In the case of a new drycleaning facility registered in accordance with this section, the certificate of registration authorized pursuant to this section is valid beginning on the day it is issued and ending on the last day of the following September.

(D) In order to purchase or receive drycleaning solvent from a wholesale supply facility or another drycleaning facility, a drycleaning facility shall provide the supplier of drycleaning solvent a copy of its current certificate of registration or drycleaning facility exemption certificate issued pursuant to Section 44-56-425, whichever is applicable.

(E) Drycleaning solvent only must be purchased from a solvent supplier who is registered pursuant to Section 44-56-460(B).

(1) A wholesale supply facility is prohibited from selling or transferring drycleaning solvent to any drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44-56-425.

(2) A drycleaning facility is prohibited from selling or transferring drycleaning solvent to any other drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44-56-425. This prohibition applies even if the same person owns or operates both drycleaning facilities.

(3) A drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44-56-425, is prohibited from purchasing or receiving drycleaning solvent.

Section 44-56-450. (A)(1) An environmental surcharge equal to one percent of the gross proceeds of sales of laundering and drycleaning services is imposed upon every owner or operator of a retail drycleaning facility or a dry drop-off facility.

Exempt from the environmental surcharge imposed in this section are:

(a) drycleaning facilities that possess a drycleaning facility exemption certificate issued pursuant to Section 44-56-425;

(b) dry drop-off facilities exempt pursuant to Section 44-56-425(D); and

(c) wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop-off facility.

(2) At any time the uncommitted balance of the fund account exceeds five million dollars, the one percent of the gross proceeds of sales of drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The department is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is notified by the department. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is notified by the department.

(B) The surcharge imposed by this section is due and payable on the twentieth day of each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

Section 44-56-460. (A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A

surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated drycleaning fluid is levied on each gallon to be used for drycleaning purposes when imported into or produced in the State. Nonhalogenated drycleaning fluids purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. Exempt from the surcharge imposed pursuant to this section are sales or distributions to, or purchases or receipts by, drycleaning facilities that possess a drycleaning facility exemption certificate issued pursuant to Section 44-56-425.

(B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise shall register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person shall register as a producer or importer of drycleaning solvent. Persons operating as a producer or importer of drycleaning solvent at more than one location only are required to have a single registration. The fee for registration is thirty dollars.

(C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage site. The surcharge must be reported on forms and in the manner determined by the Department of Revenue. The surcharge report must include the name, address, and quantity of solvent sold to each drycleaning facility during the month. This information is not subject to the Freedom of Information Act and is not available for distribution to the Drycleaning Advisory Council.

(D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. An owner or operator of a drycleaning facility participating in the fund who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State shall document that the surcharge imposed by this section has been paid or shall pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to any owner or operator of a drycleaning facility who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State, except no surcharge may be imposed on drycleaning solvent supplied to a drycleaning facility that possesses a drycleaning facility exemption certificate issued pursuant to Section 44-56-425.

(E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms prescribed by the Department of Revenue.

(F) Drycleaning solvent exported out of State from the storage site at which the producer or importer holds it in this State is exempt from the surcharge authorized pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information it considers necessary in order to approve the refund or credit.

(G) The Department of Revenue may authorize:

(1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

(2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

(3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

Section 44-56-470. (A) In order for the department to expend fund money, a wholesale supply facility or drycleaning facility must be deemed eligible under this section and stay in compliance with this article and regulations promulgated pursuant to this section to remain eligible. In order for the department to determine eligibility, the owner, operator, or the property owner shall submit a timely application on forms developed by the department for this purpose.

(B) A wholesale supply facility, new drycleaning facility, or existing drycleaning facility is deemed eligible under this section only if:

(1) the owner, operator, or property owner of the drycleaning facility, has registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;

(2) the wholesale supply facility or drycleaning facility, is determined by the department to be in compliance with this article and department regulations governing drycleaning facilities or wholesale supply facilities;

(3) the drycleaning facility is covered by third-party liability insurance when and if the insurance becomes available at a reasonable

cost, as determined by the Department of Insurance, and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;

(4) the owner, operator, or property owner of the wholesale supply facility or drycleaning facility submitted an application for determination of eligibility;

(5) the wholesale supply facility or drycleaning facility has not been operated in a grossly negligent manner at any time after November 18, 1980; and

(6) the owner, operator, or property owner of the wholesale supply facility or drycleaning facility submits documented evidence of contamination to the department within six months of discovery if discovery was after November 24, 2004.

(C) A former drycleaning facility is deemed eligible under this section when:

(1) the owner or operator submitting an application for determination of eligibility has an operating drycleaning facility in the fund and every drycleaning facility under their control since July 1, 1995, meets the requirements of subsection (B); and

(2) the owner or operator submits documented evidence of contamination to the department within six months of discovery.

(D) Deductibles will be set as follows:

(1) When an owner, operator, or property owner of a wholesale supply facility, existing drycleaning facility, or former drycleaning facility submits an application for determination of eligibility:

(a) by November 24, 2005, the deductible is one thousand dollars;

(b) after November 24, 2005 and before December 31, 2014, the deductible is twenty-five thousand dollars; and

(c) on or after December 31, 2014, no applications will be accepted.

(2) When an owner, operator, or property owner of a new drycleaning facility submits an application for determination of eligibility, the deductible is twenty-five thousand dollars.

(E) The department shall review the application for determination of eligibility and request any additional information within ninety days of the date of receipt of the application. The department shall notify the applicant regarding the department's determination of eligibility status within one hundred eighty days of the date the department deems the application complete.

(F) Eligibility under this section applies to the site where the drycleaning facility or wholesale supply facility is located. Eligibility is

not affected by the subsequent conveyance of the ownership of the business or the property on which the business is located. The new owner or operator shall remain in compliance with this article and department regulations governing drycleaning facilities or wholesale supply facilities to maintain eligibility.

(G) A drycleaning facility or wholesale supply facility is permanently barred from receiving monies from the fund, and the moratorium described in Section 44-56-420(B) does not apply if:

(1) the owner, operator, or the property owner does not submit an application for determination of eligibility in accordance with subsection (B) or subsection (C);

(2) the owner, operator, or the property owner does not provide documented evidence of contamination to the department within six months of discovery if the discovery was after November 24, 2004;

(3) the owner, operator, or the property owner of a drycleaning facility or wholesale supply facility denies the department access to the property; or

(4) the owner, operator, or the property owner of a drycleaning facility misrepresents the number of employees upon which the registration fee described in Section 44-56-440 is based.

(H) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or department regulations governing drycleaning facilities may not be used directly as evidence of liability for the release in a civil or criminal trial arising out of the release.

Section 44-56-480. (A) Owners or operators of existing drycleaning facilities shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvent is used and around an area in which solvents or waste containing solvents are stored. Owners or operators of new drycleaning facilities shall install containment structures before the commencement of operations and before delivery of any drycleaning solvent to the drycleaning facility. Owners or operators of operating drycleaning facilities shall maintain all containment structures while the drycleaning facility remains in operation and shall certify every five years, that the conditions at their drycleaning facility meet the requirements of subsection (A) by completing a certification form as required by the department. The containment must meet the following criteria:

(1) dikes or containment structures around machines:

(a) for existing drycleaning facilities the dikes or containment structures must be capable of containing one-third of the total tank

capacity of each machine that does not have a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one-third of the total tank capacity of each machine, whichever is greater;

(b) for new drycleaning facilities, the owners or operators shall install beneath each machine or item of equipment in which drycleaning solvent is used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one-third of the total tank capacity of each machine, whichever is greater;

(2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

(3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvent in use at the drycleaning facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

(4) to the extent practicable, an owner or operator of a drycleaning facility or property owner shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvent may leak, spill, or otherwise be released;

(5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

(6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvent in use at the drycleaning facility for not less than seventy-two hours.

(B) The property owner or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

(C) Effective January 1, 2010, all halogenated solvents must be delivered by a closed-loop delivery system.

(D) Failure to comply with the requirements of this section constitutes gross negligence that may permanently bar the drycleaning facility from receiving monies from the fund, and the moratorium

provided for in Section 44-56-420(B) does not apply to this drycleaning facility.

Section 44-56-485. The department may promulgate regulations to carry out the provisions of this article.

Section 44-56-490. (A) If the department finds that a person is in violation of a provision of this article or a regulation promulgated pursuant to this article, the department may issue an order requiring the person to comply with this article or regulation promulgated pursuant to this article or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction.

(B) A person who violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to this article or regulation promulgated pursuant to this article is subject to a civil penalty not to exceed ten thousand dollars for each day of violation.

(C) A person who wilfully violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to this article is guilty of a misdemeanor and, upon conviction, may be fined not more than twenty-five thousand dollars for each day of violation or imprisoned for not more than one year, or both.

(D) A wholesale supply facility selling or providing drycleaning solvent in violation of the provisions of Section 44-56-440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(E) A drycleaning facility selling or providing solvent to another drycleaning facility in violation of the provisions of Section 44-56-440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(F) A drycleaning facility purchasing or receiving drycleaning solvent in violation of the provisions of Section 44-56-440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each purchase or receipt constitutes a separate violation.

(G) Failure to register as a producer or importer of drycleaning solvent pursuant to Section 44-56-460(B) before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person may be fined up to twenty-five thousand dollars or imprisoned up to thirty days.

Section 44-56-495. (A) There is created the Drycleaning Advisory Council to advise the department on matters relating to regulations and standards that affect drycleaning and related industries.

(B) The council is composed of the following members:

(1) eight owners or operators of drycleaning facilities who are participating in this article;

(2) one representative of a wholesale supply facility;

(3) one representative of the drycleaners who have a Drycleaning Exemption Certificate issued by the Department of Revenue; and

(4) one representative from the department, who is an administrator.

(C) Members enumerated in subsections (B)(1) through (B)(3) are appointed by the board of the Department of Health and Environmental Control and shall serve terms of two years and until their successors are appointed. The chairman of the council is elected by the members of the council at the first meeting of each new term.

(D) An employee of the Department of Revenue shall attend meetings of the council to provide the council informal assistance as to matters involving the surcharges and fees that are imposed pursuant to this article and which are administered and collected by the Department of Revenue.

(E) The Department of Revenue may disclose to the department information on a return filed with the Department of Revenue pursuant to the provisions of Section 44-56-450.

The Department of Revenue and the department may not disclose to the members enumerated in subsections (B)(1) through (B)(3) or to the public specific information on a return filed with the Department of Revenue pursuant to the provisions of Section 44-56-450; however, the Department of Revenue and the department may provide these members available statistical information concerning the surcharge imposed pursuant to Section 44-56-450."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 31

(R42, H3223)

AN ACT TO AMEND SECTIONS 1-11-55, AS AMENDED, 1-11-425, 1-23-120, AS AMENDED, 2-1-230, 2-3-75, 2-13-60, 2-13-180, 2-13-190, AS AMENDED, 2-13-200, 2-13-210, 11-35-310, 11-53-20, AND 29-6-250, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING, IN WHOLE OR IN PART, TO THE OFFICE OF LEGISLATIVE PRINTING, INFORMATION AND TECHNOLOGY SYSTEMS (LPITS), SO AS TO CHANGE THE NAME OF THIS OFFICE TO THE LEGISLATIVE SERVICES AGENCY (LSA).

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

Name changed

SECTION 1. Section 1-11-55(1) of the 1976 Code is amended to read:

"(1) 'Governmental body' means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branches of this State. Governmental body excludes the General Assembly, Legislative Council, the Legislative Services Agency, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts."

Name changed

SECTION 2. Section 1-11-425 of the 1976 Code is amended to read:

"Section 1-11-425. All agencies using appropriated funds shall print on the last page of all bound publications the following information:

(1) total printing cost;
(2) total number of documents printed; and
(3) cost per unit.

The President Pro Tempore of the Senate, the Speaker of the House, the Legislative Services Agency, the presidents of each institution of higher education, and the State Board for Technical and

Comprehensive Education may exempt from this requirement documents published by their respective agencies. Agency publications which are produced for resale are also exempt from this requirement.

Publications of public relations nature produced by Parks, Recreation and Tourism and the Division of State Development are exempt from this requirement."

Name changed

SECTION 3. Section 1-23-120(C) of the 1976 Code is amended to read:

"(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting."

Name changed

SECTION 4. Section 2-1-230 of the 1976 Code, as added by Act 119 of 2005, is amended to read:

"Section 2-1-230. (A) With the exception of the Governor's Executive Budget and related documents and telephone directories, an agency, a department, or an entity of state government required by law to report to the General Assembly shall prepare its report and transmit its report electronically to the Legislative Services Agency (LSA) and to the State Library as provided in Section 60-2-30. LSA shall notify the members of the General Assembly that the report is available. An

agency, a department, or an entity of state government may not provide the General Assembly with hard copies of a publication whether or not the publication, report, or other document is required by law to be furnished to the General Assembly, and a publication only may be provided to a member of the General Assembly if the member requests the publication.

(B) The agency, department, or entity of state government shall transmit these publications to the Legislative Services Agency (LSA) by electronic medium in a format and form pursuant to technical standards as may be established by LSA. LSA shall make information transmitted available through its network.

(C) A report governed by the requirements of this section may be published in hard copy form for distribution to the General Assembly if authorized by the Speaker of the House and the President Pro Tempore of the Senate."

Name changed, references conformed

SECTION 5. Section 2-3-75 of the 1976 Code is amended to read:

"Section 2-3-75. (A) The name of the Office of Legislative Printing, Information and Technology Systems (LPITS) on the effective date of this subsection is hereby changed to the Legislative Services Agency (LSA). All references to the former Office of Legislative Printing, Information and Technology Systems (LPITS) in the 1976 Code, or other provisions of law are considered to be and must be construed to mean the Legislative Services Agency (LSA).

(B) The Legislative Services Agency (LSA) is established under the joint direction and management of the Clerk of the Senate and the Clerk of the House. The clerks shall employ a director to carry out the business of the office, who shall have authority to hire and discharge staff with the approval of the clerks, with funds as may be authorized by the General Assembly. The Legislative Services Agency has the following authority and duties:

(1) The Legislative Services Agency shall provide printing and technical services to the House of Representatives, the Senate, the Legislative Council, and the Code Commissioner. The Director of LSA, with the approval of the clerks shall contract for all legislative printing requirements not otherwise provided for by law. LSA also shall contract for the printing requirements of the Code Commissioner as contained in Section 2-13-60(4).

(2) Any materials which have been printed or paid for under the LSA printing contract may be sold to other state agencies and private persons. All funds received for this service must be deposited in the state treasury to the credit of the general fund of the State. Before any funds are paid into the state treasury, all necessary expenses incurred by LSA in the production and distribution of materials in accordance with this section may be first deducted and retained by LSA. Payment for these expenses may be made on order of the Director of the Legislative Services Agency and approval of the Clerks of the House and Senate.

(3) Legislative Services Agency may sell by means of electronic transmission or by other means as it considers appropriate any legislative document or report which may be obtained under the provisions of Chapter 4, Title 30. This sale is with the approval of the Clerks of the House and Senate upon their prior consultation with the Speaker of the House and the President Pro Tempore of the Senate."

Name changed

SECTION 6. Section 2-13-60(5) of the 1976 Code is amended to read:

"(5) annually prepare for publication, to be printed by the Legislative Services Agency, the statutes and joint resolutions passed at the preceding session;"

Name changed

SECTION 7. Section 2-13-180 of the 1976 Code is amended to read:

"Section 2-13-180. The Code Commissioner, from time to time during any session of the General Assembly, shall furnish the Legislative Services Agency (LSA) with all acts and joint resolutions of a general and permanent nature which have become law. The Legislative Services Agency (LSA) as soon as practicable after delivery of these acts and joint resolutions, shall furnish the Code Commissioner with page proofs of all acts and joint resolutions."

Name changed

SECTION 8. Section 2-13-190 of the 1976 Code, as last amended by Act 10 of 2009, is further amended to read:

"Section 2-13-190. After receiving the page proofs corrected from the Code Commissioner, the Legislative Services Agency shall print the same and shall deliver not more than twenty-five copies to the Code Commissioner as the commissioner orders. LSA shall publish the advance sheets online as directed by the Code Commissioner and in accordance with applicable law. Dissemination of advance sheets to previous recipients will be accomplished by making them available online only and will not be provided in printed form."

Name changed

SECTION 9. Section 2-13-200 of the 1976 Code is amended to read:

"Section 2-13-200. The Code Commissioner and the Legislative Council may sell the service mentioned in Section 2-13-190 on terms agreeable to the council and the Code Commissioner. All funds received for this service must be deposited in the state treasury, to the credit of the General Fund of the State, but before any funds are paid into the state treasury, the expenses of the Code Commissioner and the Legislative Services Agency (LSA) for additional supplies, postage, and clerical help may be first deducted. Payment of these additional expenses may be made on order of the Chairman of the Legislative Council and the Clerks of the House and Senate."

Name changed

SECTION 10. Section 2-13-210 of the 1976 Code is amended to read:

"Section 2-13-210. Within twenty-five days after the adjournment of any session of the General Assembly, the Code Commissioner shall furnish the Director of the Legislative Services Agency all acts and joint resolutions passed, and which have been approved by the Governor. The Code Commissioner shall deliver to the Director of the Legislative Services Agency, within fifteen days after the receipt of the final page proof, a complete index of all the acts and joint resolutions furnished the director and such other copy as may be necessary for the published acts. The style and makeup of the acts and joint resolutions must be in such form as the Code Commissioner and Clerks of the Senate and the House may agree upon."

Name changed

SECTION 11. Section 11-35-310(18) of the 1976 Code is amended to read:

"(18) 'Governmental Body' means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds."

Name changed

SECTION 12. Section 11-53-20 of the 1976 Code is amended to read:

"Section 11-53-20. It is mandated by the General Assembly that the SCEIS shall be implemented for all agencies, with the exception of lump-sum agencies, the General Assembly or its respective branches or its committees, Legislative Council, and the Legislative Services Agency. The South Carolina Enterprise Information System Oversight Committee, as appointed by the Comptroller General, shall provide oversight for the implementation and continued operations of the system. The Budget and Control Board is authorized to use any available existing technology resources to assist with funding of the initial implementation of the system. It is further the intent of the General Assembly to fund the central government costs related to the implementation of the system. Agencies are required to implement SCEIS at a cost and in accordance with a schedule developed and approved by the SCEIS Oversight Committee. Full implementation must be completed within five years. An agency's implementation cost shall be borne by that agency through existing appropriations, grants, and/or the State Treasurer's Master Lease Program and shall be for the implementation of the 'back office' administrative functions that are common to all agencies in the areas of purchasing, finance, human

resources, payroll, and budgeting. Any issues arising with regard to project scope, implementation schedule, and associated costs shall be directed to the SCEIS Oversight Committee for resolution. In cooperation with the Comptroller General and the Budget and Control Board's Division of State Information Technology, the South Carolina Enterprise Information System Oversight Committee is required to report by January thirty-first of the fiscal year to the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee the status of the system's implementation and on-going operations."

Name changed

SECTION 13. Section 29-6-250(4) of the 1976 Code is amended to read:

"(4) For purposes of this section, 'governmental body' means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch, and all local political subdivisions. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is procured exclusively by private funds."

Time effective

SECTION 14. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 32

(R43, H3829)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 18 TO CHAPTER 53, TITLE 59 SO AS TO BE CAPTIONED THE "GREENVILLE TECHNICAL COLLEGE AREA COMMISSION"; TO DESIGNATE SECTIONS 1A, 4, AND 5 OF ACT 743 OF 1962 AS SECTIONS 59-53-1500, 59-53-1510, AND 59-53-1520, RESPECTIVELY, OF ARTICLE 18, CHAPTER 53, TITLE 59; AND TO AMEND ARTICLE 18, CHAPTER 53, TITLE 59, RELATING TO THE MEMBERSHIP, POWERS, AND DUTIES OF THE GREENVILLE TECHNICAL COLLEGE AREA COMMISSION, SO AS TO RECONSTITUTE THE MEMBERSHIP OF THE COMMISSION AND THE TERMS AND APPOINTING PROCEDURES FOR MEMBERS.

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

Article caption added

SECTION 1. Chapter 53, Title 59 of the 1976 Code is amended by adding:

"Article 18

Greenville Technical College Area Commission"

Designation of code sections

SECTION 2. (A) Section 1A of Act 743 of 1962, as last amended by Act 310 of 2010, is designated as Section 59-53-1500, Article 18, Chapter 53, Title 59.

(B) Section 4 of Act 743 of 1962 is hereby designated as Section 59-53-1510, Article 18, Chapter 53, Title 59.

(C) Section 5 of Act 743 of 1962, is hereby designated as Section 59-53-1520, Article 18, Chapter 53, Title 59.

Commission membership revised

SECTION 3. Article 18, Chapter 53, Title 59 of the 1976 Code is amended to read:

"Article 18

Greenville Technical College Area Commission

Section 59-53-1500. (A) There is created the Greenville Technical College Area Commission which is a body politic and corporate and the governing body of Greenville Technical College. The commission consists of twelve voting members or area commissioners appointed by the Greenville County Legislative Delegation in the manner provided in this section.

(B) All members must be qualified electors of Greenville County. Each member filling a house district residency seat, as provided for in this section, at the time of their appointment and throughout their term of office, shall reside in a house district corresponding to their membership seat. A change of residency outside of Greenville County, or outside of a corresponding district for members filling house district residency seats, automatically terminates that member's appointment, although, subject to the provisions of subsection (E), the member may serve until a successor is appointed and qualifies to fill the remainder of the unexpired term.

(C) The commission shall have six members designated as occupying house district residency seats, nominated by the Greenville County Council and selected by the Greenville County Legislative Delegation as follows:

(1) Residency Seat No. 1: one member selected from either House District 19, or House District 10;

(2) Residency Seat No. 2: one member selected from either House District 21 or House District 24;

(3) Residency Seat No. 3: one member selected from either House District 20 or House District 22;

(4) Residency Seat No. 4: one member selected from either House District 23 or House District 25;

(5) Residency Seat No. 5: one member selected from either House District 17, House District 18, or House District 36; and

(6) Residency Seat No. 6: one member selected from either House District 16, House District 27, or House District 28.

Current members of the commission residing in these specified house districts are deemed to be the house district residency seat members from those districts.

(D) The commission shall have six at-large members selected by the Greenville County Legislative Delegation as follows:

(1) four at-large members nominated by the Greenville County Council. Each of these four at-large seats must be numbered as Seats 1-4, respectively;

(2) one at-large member nominated by the Greenville County Council from among the Greenville County School District Board of Trustees, including the Superintendent; and

(3) one at-large member nominated by the Greenville County Council from the Greenville County Workforce Investment Board, including the President.

Any public officials selected for the school board and Workforce Investment Board seats shall serve ex officio.

Members are responsible to all areas served by the Greenville Technical College regardless of residency and shall make decisions in the best interests of the Greenville Technical College and all those it serves as a whole. The commission shall elect from among its members a chairman, vice chairman, secretary, and treasurer. Members shall serve without compensation.

(E) Commission members shall serve terms of four years, which expire May thirty-first of the appropriate year, and until their successors are appointed and qualify. A member shall serve until his successor is appointed and qualifies for a period not to exceed one year after expiration of his term. If the Greenville County Legislative Delegation has not filled a seat within one year of the expiration of the term, the member serving in that seat shall cease serving and the seat is vacant until filled. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

(F) A commissioner having served as a member of the commission for a total of twelve years, after the effective date of this subsection, and whether or not consecutive or in different seats, is not eligible for appointment to any additional terms until after he has been off the commission for six consecutive years, at which time, a new twelve-year limitation period commences.

(G) For the purpose of facilitating the transition to this modified commission structure, upon the effective date of this subsection:

(a) the house district residency seats are considered filled as set forth in subsection (C);

(b) the current commissioners filling the school board and Workforce Investment Board-related seats shall fill their respective newly reconstituted subject matter seats; and

(c) the four current remaining commissioners shall become the four at-large members in Seats 1-4 as follows:

(1) current Commissioner Johnson is deemed to fill at-large Seat No. 1;

(2) current Commissioner Ehrmann is deemed to fill at-large Seat No. 2;

(3) current Commissioner Stafford is deemed to fill at-large Seat No. 3; and

(4) current Commissioner Shouse is deemed to fill at-large Seat No. 4.

Thereafter, all commission members must be selected as otherwise set forth in subsections (A) - (F) and (H) - (J) and their terms of office must be staggered and modified as follows:

(1) Block 1: The terms of office for commissioner seats falling within Block 1 initially expire on May 31, 2014, and then expire every four years thereafter. Block 1 shall include:

(a) the at-large member nominated from the Greenville County School District Board of Trustees;

(b) the at-large member nominated from the Workforce Investment Board; and

(c) Residency Seat No. 1.

(2) Block 2: The terms of office for commissioner seats falling within Block 2 initially expire on May 31, 2015, and then expire every four years thereafter. Block 2 shall include:

(a) the at-large member from at-large Seat No. 1;

(b) Residency Seat No. 2; and

(c) Residency Seat No. 3.

(3) Block 3: The terms of office for commissioner seats falling within Block 3 initially expire on May 31, 2016, and then expire every four years thereafter. Block 3 shall include:

(a) the two at-large members from at-large Seats No. 2 and No. 3; and

(b) Residency Seat No. 4.

(4) Block 4: The terms of office for commissioner seats falling within Block 4 initially expire on May 31, 2017, and then expire every four years thereafter. Block 4 shall include:

(a) the at-large member from at-large Seat No. 4;

(b) Residency Seat No. 5; and

(c) Residency Seat No. 6.

(H) The absence of a member at three consecutive regularly scheduled commission meetings shall cause that member's seat to become immediately vacant. Any regularly scheduled meeting which is canceled pursuant to the bylaws or does not begin for lack of a quorum must be disregarded for all purposes under this subsection. Vacancies occurring under this subsection must be filled in the manner of the original appointment for the unexpired portion of the term. If otherwise eligible, the member causing the vacancy may be reappointed to the seat.

(I) The nominating procedures for appointment of area commissioners are as follows:

(1) The commission shall publicize vacancies, and recommendations may be made to the commission from any individual, organization, or group. Notwithstanding this provision, the Greenville County Legislative Delegation may reappoint a member who completes an unexpired portion of a prior term of less than two years without soliciting or accepting any nominations.

(2) All recommendations, nominations, and appointments to the commission must be nondiscriminatory and shall take into account diversity and other pertinent qualifications as may be beneficial to constituting a commission which is mindful of the needs of all segments of the population of Greenville County and those served by Greenville Technical College.

(3) The Greenville County School District Board of Trustees and the Greenville County Workforce Investment Board shall submit at least two nominees to the Greenville County Council to fill vacancies in their respective proxy seats. The Greenville County Council shall submit at least two nominees to the Greenville County Legislative Delegation for all other seat vacancies for which it submits nominations.

(4) Members of the Greenville County Legislative Delegation may nominate additional candidates for any seat other than the seats filled from among the members of the Greenville County School District Board of Trustees and the Greenville County Workforce Investment Board. The Greenville County Legislative Delegation may request additional nominees for any vacant seat.

(J) Whenever the South Carolina House of Representatives election districts are redrawn and become effective, the boundaries of the house district residency seats are automatically redrawn to match the new house districts. Redistricting does not affect the term of any commissioner appointed before the effective date of redistricting. If

any new house districts are added to Greenville County or include portions of Greenville County, then one of the four at-large seats nominated by the Greenville County Council must be filled upon the expiration of the current member's term with a member residing in one of the new house districts until such time as the residency seats are amended to include the new house districts. If redistricting renames or renumbers a district, it continues to be included within the residency seat boundaries under its prior number. If disagreement arises as to whether a house district is new or renamed for the purpose of this subsection, it must be resolved by majority vote of the Greenville County Legislative Delegation.

(K) The commission shall:

(1) establish the basic qualifications for and appoint a president for the term and under the conditions as it may fix, the commission having full powers of appointment and dismissal to the fullest extent permitted by law and applicable regulations;

(2) provide for the employment of personnel pursuant to Section 59-53-20;

(3) purchase land required for college sites and rights of way which are necessary for the proper operation of the college;

(4) apply the standards and requirements for admission and graduation of students and other standards established by the State Board for Technical and Comprehensive Education;

(5) receive and accept private donations, gifts, bequests, and the like to apply them or invest any of them and apply the proceeds for the purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of law and the regulations of the State Board for Technical and Comprehensive Education;

(6) require the execution of studies and take steps as are necessary to ensure that the functions of the college are always those which are most helpful and feasible in light of the resources available to the school;

(7) designate members or other agents or representatives to represent the college before the Greenville County Council, the State Board for Technical and Comprehensive Education, and other agencies concerned with the serving of financial support for the needs of the college for operational expenses and capital outlay;

(8) adopt and recommend current expense and capital outlay budgets;

(9) perform acts and do other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of reasonable rules, regulations, and bylaws

for the government and operation of the college under law and for the discipline of students;

(10) perform functions required as necessary for the proper governance of the college with regard to policy, personnel, and fiduciary matters.

Section 59-53-1510. The commission at all times shall keep a full and accurate account of its acts and of its receipts and expenditures, and at least once within four months, following the close of its fiscal year, a complete audit of its affairs must be made by a qualified public accountant. Copies of the audit must be filed with the Clerk of Court for Greenville County and with the Secretary of the Greenville County Legislative Delegation.

Section 59-53-1520. Not less frequently than annually the commission shall make a written report of the activities of the commission and file a copy with the Secretary of the Greenville County Legislative Delegation."

Time effective

SECTION 4. This act takes effect on June 1, 2013.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 33

(R65, H3061)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-63-75 SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, IN CONSULTATION WITH THE DEPARTMENT OF EDUCATION, TO POST ON ITS WEBSITE NATIONALLY RECOGNIZED GUIDELINES AND PROCEDURES CONCERNING THE MANAGEMENT OF

CONCUSSIONS SUSTAINED BY STUDENT ATHLETES, TO REQUIRE EACH LOCAL SCHOOL DISTRICT TO DEVELOP ITS OWN GUIDELINES AND PROCEDURES BASED ON THE MODEL GUIDELINES AND PROCEDURES, TO REQUIRE AN INFORMATION SHEET ON CONCUSSIONS AND BRAIN INJURY BE PROVIDED TO CERTAIN PERSONS EACH YEAR WHO PARTICIPATE IN ATHLETICS, TO REQUIRE THE REMOVAL FROM PLAY AND EVALUATION OF A STUDENT ATHLETE BELIEVED TO HAVE SUSTAINED A CONCUSSION DURING PLAY, TO ALLOW FOR THE EVALUATION TO BE UNDERTAKEN BY CERTAIN TRAINED PERSONS, TO PROVIDE LIMITED LIABILITY FOR CERTAIN TRAINED PERSONS WHO EVALUATE STUDENT ATHLETES, TO PROVIDE A STUDENT ATHLETE REMOVED FROM PLAY AND EVALUATED MAY NOT RETURN TO PLAY UNTIL HE HAS RECEIVED WRITTEN MEDICAL CLEARANCE BY A PHYSICIAN, AND TO DEFINE NECESSARY TERMS.

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

Student athlete concussions, guidelines, management

SECTION 1. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

"Section 59-63-75. (A) The South Carolina Department of Health and Environmental Control, in consultation with the State Department of Education, shall post on its website nationally recognized guidelines and procedures regarding the identification and management of suspected concussions in student athletes. The Department of Health and Environmental Control also shall post on its website model policies that incorporate best practices guidelines for the identification, management, and return to play decisions for concussions reflective of current scientific and medical literature developed by resources from or members of sports medicine community organizations including, but not limited to, the Brain Injury Association of South Carolina, the South Carolina Medical Association, the South Carolina Athletic Trainer's Association, the National Federation of High Schools, the Centers for Disease Control and Prevention, and the American Academy of Pediatrics. Guidelines developed pursuant to this section apply to South Carolina High School League-sanctioned events.

(B) A local school district shall develop guidelines and procedures based on the model guidelines and procedures referenced in subsection (A).

(C) Each year prior to participation in athletics, each school district shall provide to all coaches, volunteers, student athletes, and their parents or legal guardian, an information sheet on concussions which informs of the nature and risk of concussion and brain injury, including the risks associated with continuing to play after a concussion or brain injury. The parent or legal guardian's receipt of the information sheet must be documented in writing or by electronic means before the student athlete is permitted to participate in an athletic competition or practice.

(D)(1) If a coach, athletic trainer, official, or physician suspects that a student athlete, under the control of the coach, athletic trainer, official, or physician, has sustained a concussion or brain injury in a practice or in an athletic competition, the student athlete shall be removed from practice or competition at that time.

(2) A student athlete who has been removed from play may return to play if, as a result of evaluating the student athlete on site, the athletic trainer, physician, physician assistant pursuant to scope of practice guidelines, or nurse practitioner pursuant to a written protocol determines in his best professional judgment that the student athlete does not have any signs or symptoms of a concussion or brain injury.

(3) A student athlete who has been removed from play and evaluated and who is suspected of having a concussion or brain injury may not return to play until the student athlete has received written medical clearance by a physician.

(4) In addition to posting information regarding the recognition and management of concussions in student athletes, the Department of Health and Environmental Control, in consultation with health care provider organizations, shall post on its website continuing education opportunities in concussion evaluation and management available to providers making such medical determinations. Such information must be posted by the department upon receipt from a participating health care organization.

(5) The athletic trainer, physician, physician assistant, or nurse practitioner who evaluates the student athlete during practice or an athletic competition and authorizes the student athlete to return to play is not liable for civil damages resulting from an act or omission in rendering this decision, other than acts or omissions constituting gross negligence or wilful, wanton misconduct. This immunity applies to an

athletic trainer, physician, physician assistant, or nurse practitioner serving as a volunteer.

(E) For purposes of this section:

(1) 'Physician' is defined in the same manner as provided in Section 40-47-20(35).

(2) 'Student athlete' includes cheerleaders."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 34

(R66, H3193)

AN ACT TO AMEND SECTION 24-13-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMPUTATION OF TIME SERVED BY A PRISONER, SO AS TO PROVIDE THAT ANY TIME SERVED UNDER HOUSE ARREST BY A PRISONER MAY BE USED IN COMPUTING TIME SERVED BY A PRISONER.

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

Computation of time served by a prisoner

SECTION 1. Section 24-13-40 of the 1976 Code, as last amended by Act 237 of 2010, is further amended to read:

"Section 24-13-40. The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the

time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 35

(R67, H3538)

AN ACT TO AMEND SECTION 16-17-500, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SALE OR PURCHASE OF TOBACCO PRODUCTS FOR MINORS, SO AS TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS IN THE PURVIEW OF THE STATUTE; TO AMEND SECTION 16-17-501, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF RELEVANT TOBACCO PRODUCT FOR MINORS OFFENSES, SO AS TO DEFINE THE TERMS "ALTERNATIVE NICOTINE PRODUCT" AND "ELECTRONIC CIGARETTE"; AND TO AMEND SECTIONS 16-17-502, 16-17-503, AND 16-17-504, RELATING TO DISTRIBUTION OF TOBACCO PRODUCT SAMPLES, ENFORCEMENT AND REPORTING, AND IMPLEMENTATION, RESPECTIVELY, ALL SO AS TO MAKE CONFORMING CHANGES TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS.

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

Sale or purchase of tobacco products for minors, alternative nicotine products added

SECTION 1. Section 16-17-500 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

"Section 16-17-500. (A) It is unlawful for an individual to sell, furnish, give, distribute, purchase for, or provide a tobacco product or an alternative nicotine product to a minor under the age of eighteen years.

(B) It is unlawful to sell a tobacco product or an alternative nicotine product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual's age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated pursuant to this subsection.

(C) A person engaged in the sale of alternative nicotine products made through the Internet or other remote sales methods shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older.

(D) It is unlawful to sell a tobacco product or an alternative nicotine product through a vending machine unless the vending machine is located in an establishment:

(1) which is open only to individuals who are eighteen years of age or older; or

(2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), or (D) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

(a) for a first offense, fined not less than one hundred dollars nor more than two hundred dollars;

(b) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars;

(c) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.

(2) In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.

(F)(1) A minor under the age of eighteen years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products.

(2) A minor who knowingly violates a provision of item (1) in person, by agent, or in any other way commits a noncriminal offense and is subject to a civil fine of twenty-five dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges.

(3) In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

(4) If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver's license or permit, the court may delay the issuance of the minor's driver's license or permit for a period of ninety days beginning from the date the minor applies for a driver's license or permit. Upon restricting or delaying the issuance of the minor's driver's license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver's license or permit to the court or the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate on the minor's driving record that the restriction or delayed issuance of the minor's driver's license or permit is not a traffic violation or a driver's license suspension. The Department of Motor Vehicles must notify the minor's parent, guardian, or custodian of the restriction or delayed

issuance of the minor's driver's license or permit. At the completion of the ninety-day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor's license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor's driver's license or permit after the ninety-day period. The restriction or delayed issuance of the minor's driver's license or permit must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty, including any penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(5) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

(6) A violation of this subsection is not grounds for denying, suspending, or revoking an individual's participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need-based grant.

(7) The uniform traffic ticket, established pursuant to Section 56-7-10, may be used by law enforcement officers for a violation of this subsection. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product or alternative nicotine product. The law enforcement officer also must notify a minor's parent, guardian, or custodian of the minor's offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

(G) This section does not apply to the possession of a tobacco product or an alternative nicotine product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

(H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing pursuant to subsection (F) must be placed on the court's appropriate docket for traffic violations, and not on the court's docket for civil matters.

(I) A retail establishment that distributes tobacco products or alternative nicotine products must train all retail sales employees regarding the unlawful distribution of tobacco products or alternative nicotine products to minors.

(J) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment's beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit."

Definitions

SECTION 2. Section 16-17-501 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

"Section 16-17-501. As used in this section and Sections 16-17-502, 16-17-503, and 16-17-504:

(1) 'Distribute' means to sell, furnish, give, or provide tobacco products and alternative nicotine products, including tobacco product samples and alternative nicotine product samples, cigarette paper, or a substitute for them, to the ultimate consumer.

(2) 'Proof of age' means a driver's license or identification card issued by this State or a United States Armed Services identification card.

(3) 'Sample' means a tobacco product or an alternative nicotine product distributed to members of the general public at no cost for the purpose of promoting the products.

(4) 'Sampling' means the distribution of samples to members of the general public in a public place.

(5) 'Tobacco product' means a product that contains tobacco and is intended for human consumption. 'Tobacco product' does not include an alternative nicotine product.

(6) 'Alternative nicotine product' means a product, including electronic cigarettes, that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means. 'Alternative nicotine product' does not include:

(a) a cigarette, as defined in Section 12-21-620, or other tobacco products, as defined in Section 12-21-800;

(b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

(c) a device pursuant to 21 U.S.C. 321(h); or

(d) a combination product described in 21 U.S.C. 353(g).

(7) 'Electronic cigarette' means an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe. 'Electronic cigarette' does not include:

(a) a cigarette, as defined in Section 12-21-620, or other tobacco products, as defined in Section 12-21-800;

(b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

(c) a device pursuant to 21 U.S.C. 321(h); or

(d) a combination product described in 21 U.S.C. 353(g)."

Conforming changes

SECTION 3. Section 16-17-502(A) of the 1976 Code is amended to read:

"(A) It is unlawful for a person to distribute a tobacco product or an alternative nicotine product sample to a person under the age of eighteen years."

Conforming changes

SECTION 4. Section 16-17-503(A) of the 1976 Code is amended to read:

"(A) Except as otherwise provided by law, the Director of the Department of Revenue shall provide for the enforcement of Sections 16-17-500 and 16-17-502 in a manner that reasonably may be expected to reduce the extent to which tobacco products or alternative nicotine products are sold or distributed to persons under the age of eighteen years and annually shall conduct random, unannounced inspections at locations where tobacco products or alternative nicotine products are sold or distributed to ensure compliance with the section. The department shall designate an enforcement officer to conduct the annual inspections. Penalties collected pursuant to Section 16-17-502 must be used to offset the costs of enforcement."

Conforming changes

SECTION 5. Section 16-17-504(A) of the 1976 Code is amended to read:

"(A) Sections 16-17-500, 16-17-502, and 16-17-503 must be implemented in an equitable and uniform manner throughout the State and enforced to ensure the eligibility for and receipt of federal funds or grants the State receives or may receive relating to the sections. Any laws, ordinances, or rules enacted pertaining to tobacco products or alternative nicotine products may not supersede state law or regulation. Nothing in this section affects the right of any person having ownership or otherwise controlling private property to allow or prohibit the use of tobacco products or alternative nicotine products on the property."

Savings clause

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 36

(R68, H3554)

AN ACT TO AMEND SECTION 61-4-1515, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SAMPLES AND

SALES OF BEER AT BREWERIES, SO AS TO SPECIFY THAT TWELVE PERCENT ALCOHOL BY WEIGHT IS THE MAXIMUM THAT MAY BE OFFERED FOR ON-PREMISES CONSUMPTION, TO ALLOW FOR THE SALE OF FORTY-EIGHT OUNCES OF BEER TO A CONSUMER EVERY TWENTY-FOUR HOURS, OF WHICH ONLY SIXTEEN OUNCES MAY BE MORE THAN EIGHT PERCENT ALCOHOL BY WEIGHT, TO REQUIRE THE BREWERY TO ESTABLISH A SYSTEM TO MONITOR SUCH SALES AND SAMPLES, TO PROVIDE THE BEER MUST BE SOLD AT THE APPROXIMATE RETAIL PRICE, TO PROVIDE THAT APPROPRIATE TAXES MUST BE REMITTED, TO REQUIRE THE BREWERY TO POST CERTAIN INFORMATION, TO REQUIRE THE BREWERY TO PROVIDE CERTAIN ALCOHOL ENFORCEMENT TRAINING, TO REQUIRE THE BREWERY TO MAINTAIN CERTAIN LIABILITY INSURANCE, TO CLARIFY THAT A CERTAIN PROVISION APPLIES TO OFF-PREMISES CONSUMPTION, TO INCREASE THE FINE AND PENALTIES FOR A BREWERY VIOLATING CERTAIN OFF-PREMISES CONSUMPTION PROVISIONS; TO AMEND SECTION 61-4-960, RELATING TO RETAILERS OF BEER FOR OFF-PREMISES CONSUMPTION AND BEER TASTINGS, SO AS TO ALLOW A BEER TASTING TO BE HELD IN CONJUNCTION WITH A WINE TASTING, AND TO REQUIRE THE DEPARTMENT OF REVENUE AND THE STATE LAW ENFORCEMENT DIVISION TO SUBMIT A REPORT DETAILING CERTAIN INFORMATION REGARDING THE EFFECT OF THE AMENDMENTS TO SECTION 61-4-1515.

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

Requirements for samples and sales of beer at breweries for on-premises consumption, increased penalties for a brewery's violation of off-premises consumption requirements

SECTION 1. Section 61-4-1515 of the 1976 Code, as added by Act 231 of 2010, is amended to read:

"Section 61-4-1515. (A) A brewery licensed in this State is authorized to offer samples of beer to consumers on its licensed premises, provided that the beer is brewed on the licensed premises

with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

(1) sales to or samplings by consumers must be held in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

(2) sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty-one;

(3)(a) no more than a total of forty-eight ounces of beer brewed at the licensed premises, including amounts of samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period; and

(b) of that forty-eight ounces of beer available to be sold to a consumer within a twenty-four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period;

(4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on-premises consumption;

(5) a brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located;

(6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

(7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

(a) driving under the influence;

(b) unlawful transport of an alcoholic container; and

(c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

(8) a brewery must provide DAODAS approved alcohol enforcement training for the employees who serve beer on the licensed premises to consumers for on-premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport or consumption of beer by persons who are under the age of twenty-one or who are intoxicated; and

(9) a brewery must maintain liability insurance in the amount of at least one million dollars for the biennial period for which it is licensed. Within ten days of receiving its biennial license, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of insurance information shall be retained with the department's alcohol beverage licensing section.

(B) A brewery located in this State is authorized to sell beer on its licensed premises for off-premises consumption provided that the sealed beer was brewed on the licensed premises with an alcohol content of fourteen percent by weight or less, subject to the following conditions:

(1) the maximum amount of beer that may be sold to an individual per day for off-premises consumption shall be equivalent to two hundred eighty-eight ounces in total;

(2) the beer only shall be sold in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

(3) the beer sold is for personal use only and cannot be resold;

(4) the beer cannot be sold to anyone holding a retail beer and wine license for the purpose of resale in their establishment;

(5) the brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located; and

(6) the brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12-21-1020 and Section 12-21-1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

(C) In addition to other applicable fines or penalties, a person licensed as a brewery in this State who violates the provisions of this section must be assessed a fine of five hundred dollars for a first violation. For a second violation that occurs within three years of the first violation, a person must be assessed an additional five hundred dollars. For subsequent violations within a three-year period, the department must suspend the brewery license for a period of not less than thirty days. The revenue from the fines established in this section must be directed to the State Law Enforcement Division for supplementing funds required for the regulation and enforcement of this section."

Beer tasting authorized in conjunction with wine tasting

SECTION 2. Section 61-4-960(A) of the 1976 Code, as added by Act 231 of 2010, is amended to read:

"Section 61-4-960. (A) Notwithstanding another provision of law or regulation, the holder of a retail permit authorizing the sale of beer for off-premises consumption whose primary product is beer or wine may conduct, in accordance with department rulings or regulations, not more than twenty-four beer tastings at any one retail location in a calendar quarter, provided that:

(1) at least ten days before the tasting, a notice detailing the specific date and hours of the tasting must be sent by first class mail or by electronic mail to the State Law Enforcement Division;

(2) the tastings must be conducted by the retailer or an agent or independent contractor of the retailer and may not be conducted by a wholesaler or manufacturer or an employee, agent, or independent contractor of a wholesaler or manufacturer. Nothing in this subsection prohibits a manufacturer or employee, agent, or independent contractor of a manufacturer from attending a tasting to provide information and offer educational material on the products to be sampled. For purposes of this subsection, a wholesaler is not considered an employee, agent, or independent contractor of a manufacturer;

(3) the products must be supplied by the retailer and may not be donated or otherwise supplied at no or reduced cost by the manufacturer or wholesaler;

(4) a sample may not be offered from more than eight products at any one tasting;

(5) no more than one container of each of the products to be sampled may be open at any time. Open containers must be visible at all times and must be removed at the conclusion of a tasting;

(6) the tasting must be held in a designated tasting area of the retail store;

(7) samples must be no more than two ounces for each product sampled as defined in Section 61-4-10(1);

(8) samples must be no more than one ounce for each product sampled as defined in Section 61-4-10(2), provided that no more than two of the total eight samples may contain more than ten percent of alcohol by weight;

(9) a person shall not be served more than one sample of each product;

(10) a sample shall not be offered to, or allowed to be consumed by, an intoxicated person or a person under the age of twenty-one years. A person tasting a sample may not be allowed to loiter on the store premises;

(11) a sampling may not be offered for more than four hours;

(12) a retailer, pursuant to this section, may not offer more than one sampling per day; and

(13) the tasting may not be held in conjunction with a tasting in a retail alcoholic liquor store, pursuant to Section 61-6-1035, that is adjacent to and licensed in the same name of the retail permit authorizing the sale of beer."

Department of Revenue and State Law Enforcement Division report

SECTION 3. (A) By no later than March 15, 2016, a report, compiled jointly by the Department of Revenue and the State Law Enforcement Division, shall be delivered to the chairs of the Senate Judiciary Committee, the Senate Finance Committee, the House Judiciary Committee, and the House Ways and Means Committee, and reported in the Senate and House Journals, which contains the following information:

(1) a list of civil and criminal violations and dispositions of those violations related to the provisions of Section 61-4-1515, including, but not limited to, sales or transfers of beer to minors or intoxicated persons, suspensions of brewery licenses, unlawful transportation of beer, and offenses of driving under the influence, if known, for the period of time from the enactment of these provisions to February 1, 2016;

(2) a total of excise and sales taxes paid by the breweries to the Department of Revenue for the period of time from the enactment of these provisions to February 1, 2016;

(3) a total of all fines and penalties paid by or assessed against persons for violations of Section 61-4-1515 for the period of time from the enactment of these provisions to February 1, 2016;

(4) a monthly total of the numbers of persons touring each of the breweries licensed in this State for the period of time from two months after the enactment of these provisions to February 1, 2016, and each brewery shall be responsible for providing the Department of Revenue with this information electronically on a monthly basis during the above-described time period; and

(5) the Department of Revenue shall furnish a list of all licensed breweries upon request by the State Law Enforcement Division or local law enforcement agencies.

(B) The purpose of this report is to enable the General Assembly to consider the information provided by the report to determine if state laws should be amended and additional revenue for regulation and enforcement of Section 61-4-1515 should be appropriated.

Time effective

SECTION 4. This act takes effect upon approval by the Governor, except that, for a brewery licensed in the State at the time this act becomes effective, the requirements for proof of liability insurance shall apply immediately, and a licensed brewery must provide the required documentation within sixty days of the effective date of this act.

Ratified the 4th day of June, 2013.

Approved the 6th day of June, 2013.

No. 37

(R69, H3725)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "SAFE ACCESS TO VITAL EPINEPHRINE (SAVE) ACT"; BY ADDING SECTION 59-63-95 SO AS TO ALLOW SCHOOL DISTRICT AND PRIVATE SCHOOL GOVERNING AUTHORITIES TO OBTAIN AND STORE SUPPLIES OF EPINEPHRINE AUTO-INJECTORS FOR SCHOOLS TO USE IN CERTAIN CIRCUMSTANCES; TO AUTHORIZE CERTAIN PEOPLE TO PRESCRIBE AND DISPENSE PRESCRIPTIONS FOR EPINEPHRINE AUTO-INJECTORS FOR ADMINISTRATION OR SELF-ADMINISTRATION BY STUDENTS AND OTHER PEOPLE; TO AUTHORIZE CERTAIN SCHOOL PERSONNEL TO PROVIDE EPINEPHRINE AUTO-INJECTORS TO STUDENTS FOR SELF-ADMINISTRATION OF THE INJECTOR; TO AUTHORIZE CERTAIN PERSONNEL TO

ADMINISTER EPINEPHRINE AUTO-INJECTORS TO STUDENTS AND OTHER PEOPLE; TO REQUIRE CERTAIN GOVERNING AUTHORITIES OF SCHOOL DISTRICTS AND PRIVATE SCHOOLS, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND THE STATE DEPARTMENT OF EDUCATION, TO DEVELOP AND IMPLEMENT A PLAN FOR MANAGEMENT OF STUDENTS WITH LIFE-THREATENING ALLERGIES, INCLUDING FOR ADMINISTRATION AND PROVISION OF EPINEPHRINE AUTO-INJECTORS TO STUDENTS AND OTHER PEOPLE; TO PROVIDE THAT SCHOOLS ARE NOT SUBJECT TO THE SOUTH CAROLINA PHARMACY ACT AND RELEVANT REGULATIONS GOVERNING THE PRACTICE OF PHARMACY FOR PURPOSES OF CERTAIN ACTIONS TAKEN PURSUANT TO THE SECTION; AND TO PROVIDE FOR IMMUNITY FROM LIABILITY WITH REGARD TO USE OF EPINEPHRINE AUTO-INJECTORS BY SCHOOLS.

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

Citation of the act

SECTION 1. This act may be cited as the "Safe Access to Vital Epinephrine Act".

Epinephrine auto-injectors, obtaining, storing, dispensing, administering, and self-administering, immunity from liability

SECTION 2. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

"Section 59-63-95. (A) As used in this section, and unless the specific context indicates otherwise:

(1) 'Administer' means the direct application of an epinephrine auto-injector into the body of a person.

(2) 'Advanced practice registered nurse' means a registered nurse prepared for an advanced practice registered nursing role by virtue of the additional knowledge gained through an advanced formal education program in a specialty area pursuant to Chapter 33, Title 40.

(3) 'Designated school personnel' means an employee, agent, or volunteer of a school designated by the governing authority of the

school district or the governing authority of the private school who has completed the training required in accordance with the guidelines of the governing authority to provide for or administer an epinephrine auto-injector to a student.

(4) 'Epinephrine auto-injector' means a device that automatically injects a premeasured dose of epinephrine into a person.

(5) 'Governing authority of a school' means the board of trustees of a school district or the board of trustees of a private school.

(6) 'Participating governing authorities' means governing authorities of school districts and governing authorities of private schools that authorize schools to maintain a supply of undesignated epinephrine auto-injectors and to provide and administer epinephrine auto-injectors to students and other people pursuant to subsections (B) and (C).

(7) 'Physician' means a doctor of medicine licensed by the South Carolina Board of Medical Examiners pursuant to Article 1, Chapter 47, Title 40.

(8) 'Physician assistant' means a health care professional licensed to assist with the practice of medicine with a physician supervisor pursuant to Article 7, Chapter 47, Title 40.

(9) 'Provide' means to supply one or more epinephrine auto-injectors to a student or other person.

(10) 'School' means a public or private school.

(11) 'Self-administration' means a student or other person's discretionary use of an epinephrine auto-injector, whether provided by the student or the other person or by a school nurse or other designated school personnel pursuant to this section.

(B) Notwithstanding another provision of law, a physician, an advanced practice registered nurse licensed to prescribe medication pursuant to Section 40-33-34, and a physician assistant licensed to prescribe medication pursuant to Sections 40-47-955 through 40-47-965 may prescribe epinephrine auto-injectors maintained in the name of a school for use in accordance with subsection (D). Notwithstanding another provision of law, licensed pharmacists and physicians may dispense epinephrine auto-injectors in accordance with a prescription issued pursuant to this subsection. Notwithstanding another provision of law, a school may maintain a stock supply of epinephrine auto-injectors in accordance with a prescription issued pursuant to this subsection. For the purposes of administering and storing epinephrine auto-injectors, schools are not subject to Chapter 43, Title 40 or Chapter 99 of the South Carolina Code of State Regulations.

(C) The governing authority of a school district or private school may authorize school nurses and other designated school personnel to:

(1) provide an epinephrine auto-injector to a student to self-administer the epinephrine auto-injector in accordance with a prescription specific to the student that is on file with the school;

(2) administer an epinephrine auto-injector to a student in accordance with a prescription specific to the student on file with the school;

(3) administer an epinephrine auto-injector to a student or other individual on school premises whom the school nurse or other designated school personnel believes in good faith is experiencing anaphylaxis, in accordance with a standing protocol of a physician, an advanced practice registered nurse licensed to prescribe medication pursuant to Section 40-33-34, or a physician assistant licensed to prescribe medication pursuant to Sections 40-47-955 through 40-47-965, regardless of whether the student or other individual has a prescription for an epinephrine auto-injector.

(D) The governing authority of a school district or the governing authority of a private school may enter into arrangements with manufacturers of epinephrine auto-injectors or third-party suppliers of epinephrine auto-injectors to obtain epinephrine auto-injectors at fair-market, free, or reduced prices.

(E) Participating governing authorities, in consultation with the State Department of Education and the Department of Health and Environmental Control, shall implement a plan for the management of students with life-threatening allergies enrolled in the schools under their jurisdiction. The plan must include, but need not be limited to:

(1) education and training for school personnel on the management of students with life-threatening allergies, including training related to the administration of an epinephrine auto-injector, techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis, and the standards and procedures for the storage and administration of an epinephrine auto-injector;

(2) procedures for responding to life-threatening allergic reactions, including emergency follow-up procedures; and

(3) a process for the development of individualized health care and allergy action plans for every student with a known life-threatening allergy.

(F) Participating governing authorities shall make the plan developed pursuant to subsection (E) available on the websites of the school district and private school governing authorities and on the websites of schools; however, if a school does not have a website,

make the plan publicly available through other practicable means as determined by participating governing authorities.

(G) This section applies only to participating governing authorities.

(H)(1) A school, school district, school district governing authority, private school governing authority, the Department of Health and Environmental Control, the State Department of Education, and employees, volunteers, and other agents of all of those entities including, but not limited to, a physician, advanced practice registered nurse, physician assistant, pharmacist, school nurse, and other designated school personnel, who undertake an act identified in item (2), are not liable for damages caused by injuries to a student or another person resulting from the administration or self-administration of an epinephrine auto-injector, regardless of whether:

(a) the student's parent or guardian, or a physician, advanced practice registered nurse, or physician assistant, authorized the administration or self-administration; or

(b) the other person to whom a school nurse or other designated school personnel provides or administers an epinephrine auto-injector gave authorization for the administration.

(2) The immunity granted pursuant to item (1) applies to individuals and entities who:

(a) develop or implement, or participate in the development or implementation of, a plan, pursuant to subsection (E), including, but not limited to, providing training to school nurses and other designated school personnel;

(b) make publicly available a plan, pursuant to subsection (F);

(c) prescribe epinephrine auto-injectors, pursuant to subsection (B);

(d) dispense epinephrine auto-injectors, pursuant to subsection (B);

(e) provide epinephrine auto-injectors to students or other people for self-administration, pursuant to subsection (C); or

(f) administer epinephrine auto-injectors to students or other people, pursuant to subsection (C).

(3) The immunity granted pursuant to this subsection:

(a) does not apply to acts or omissions constituting gross negligence or wilful, wanton, or reckless conduct; and

(b) is in addition to, and not in lieu of, immunity provided pursuant to Sections 15-1-310, 15-78-10, and any other provisions of law.

(4) The administration of an epinephrine auto-injector pursuant to this section is not the practice of medicine or nursing."

Time effective

SECTION 3. This act takes effect upon approval of the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 38

(R44, S96)

AN ACT TO AMEND SECTION 54-15-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MEMBERSHIP OF THE SOUTH CAROLINA COMMISSIONERS OF PILOTAGE FOR THE UPPER COASTAL AREA, SO AS TO INCREASE THE NUMBER OF MEMBERS ON THE COMMISSION FROM SIX TO EIGHT, AND TO REVISE APPOINTMENT AND RELATED PROVISIONS.

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

Membership increased, appointment procedures revised

SECTION 1. Section 54-15-20 of the 1976 Code, as last amended by Act 237 of 2006, is further amended to read:

"Section 54-15-20. (A) The South Carolina Commissioners of Pilotage for the Upper Coastal Area must be appointed by the Governor, upon the recommendation of a majority of the Legislative Delegation of Georgetown County and shall serve for three years and until their successors are appointed and qualify. Vacancies must be filled in the manner of the original appointment for the unexpired term.

(B) The South Carolina Commissioners of Pilotage for the Upper Coastal Area shall consist of eight persons appointed as provided by this chapter, one of whom is the Chairman of the South Carolina State Ports Authority or a board member designated by the chairman, ex officio, one of whom is the President of the International

Longshoremen's Association Local or his designee, ex officio, and one of whom is a pilot licensed for the Port of Georgetown under Section 54-15-90, appointed by the Governor upon the recommendation of the licensed pilots. The remaining five members are appointed by the Governor upon the recommendation of the Georgetown County Legislative Delegation. The terms of office of the commissioners are for three years and until their successors are appointed except for the members first appointed. The member representative of the pilots licensed under Section 54-15-90 shall serve a three-year term. In the event of a vacancy, however caused, a successor must be appointed in the manner of the original appointment to fill the unexpired term. The above appointments must be made as each term of the present commissioners expires."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 39

(R45, S117)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-66-75 SO AS TO REQUIRE A HEALTH CARE PROVIDER TO GIVE A PATIENT AN OPPORTUNITY TO ALLOW DISCLOSURE OF CERTAIN INFORMATION TO DESIGNATED FAMILY MEMBERS AND OTHER INDIVIDUALS AND TO AUTHORIZE THE INVOLVEMENT OF THESE FAMILY MEMBERS AND OTHER INDIVIDUALS IN THE TREATMENT OF THE PATIENT; TO SPECIFY THE CONTENTS OF THE AUTHORIZATION; TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR GOOD FAITH DISCLOSURE OF INFORMATION; AND TO AMEND SECTION 44-66-20, AS AMENDED, RELATING TO DEFINITIONS IN THE ADULT HEALTH CARE CONSENT

ACT, SO AS TO DEFINE "PATIENT" AND "TREATMENT" AND TO AMEND OTHER DEFINITIONS.

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

Patient authorization to have medical condition disclosed to designated individual

SECTION 1. Chapter 66, Title 44 of the 1976 Code is amended by adding:

"Section 44-66-75. (A) A health care provider or the provider's agent shall provide on the patient information form or by electronic health records, the opportunity for the patient to designate a family member or other individual they choose as a person with whom the provider may discuss the patient's medical condition and treatment plan.

(B) The authorization provided for in subsection (A):

(1) satisfies the requirements of Title 42 of the Code of Federal Regulations, relating to public health, and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(2) must present the question in bold print and capitalized, or by electronic means: 'DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION? IF YES, WHOM?'; and

(3) must specify that the patient may revoke or modify an authorization with regard to any family member or other individual designated by the patient in the authorization and that the revocation or modification must be in writing.

(C) A health care provider may disclose information pursuant to an authorization unless the provider has actual knowledge that the authorization has been revoked or modified.

(D) A health care provider who in good faith discloses information in accordance with an authorization signed by a patient pursuant to this section is not subject to civil liability, criminal liability, or disciplinary sanctions because of this disclosure.

(E) Nothing in this section may be construed to:

(1) require a health care provider to disclose information that he otherwise may withhold or limit;

(2) limit or prevent a provider from disclosing information without written authorization from the patient if this disclosure is otherwise lawful or permissible;

(3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members; and

(4) conflict with an individual's health care power of attorney as provided for in the South Carolina Probate Code.

(F) Notwithstanding any other provision of this chapter, this section does not apply to nursing homes, as defined in Section 44-7-130 or a dentist, dental hygienist, or dental technician licensed or registered in Chapter 15, Title 40."

Definitions

SECTION 2. Section 44-66-20 of the 1976 Code, as last amended by Act 351 of 2002, is further amended to read:

"Section 44-66-20. As used in this chapter:

(1) 'Health care' means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. Health care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

(2) 'Health care provider' or 'provider' means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(3) 'Health care professional' means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.

(4) 'Patient' means an individual sixteen years of age or older who presents or is presented to a health care provider for treatment.

(5) 'Person' includes, but is not limited to, an individual, a state agency, or a representative of a state agency.

(6) 'Physician' means an individual who is licensed to practice medicine or osteopathy pursuant to Chapter 47, Title 40.

(7) 'Treatment' means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin.

Treatment includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.

(8) 'Unable to consent' means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This term does not apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item."

Time effective

SECTION 3. This act takes effect January 1, 2014.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 40

(R47, S191)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 46-3-25 SO AS TO REQUIRE THE DEPARTMENT OF AGRICULTURE TO CREATE AND MAINTAIN A PROGRAM TO FOSTER RELATIONSHIPS BETWEEN SOUTH CAROLINA FARMS, SCHOOL DISTRICTS, AND OTHER INSTITUTIONS AND TO

PROVIDE THEM WITH FRESH AND MINIMALLY PROCESSED FOODS FOR CONSUMPTION BY STUDENTS.

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

Findings

SECTION 1. The General Assembly finds:

(A) A voluntary program to link local farms to school districts and other institutions to provide students and adults with fresh and minimally processed farm foods for use in their daily meals and snacks will:

(1) strengthen local economies by keeping money within the area;

(2) create jobs;

(3) open a substantial new market for farmers;

(4) provide beginning farmers with a consistent and secure customer base;

(5) help students develop lifelong healthy eating habits and reduce obesity-related diseases in South Carolina;

(6) provide students with hands-on learning opportunities, such as farm visits, cooking demonstrations, and the planting and cultivating of school gardens; and

(7) encourage the integration of nutritional and agricultural education into programs of study.

(B) A successful South Carolina Fresh on the Campus program requires the expertise and collaboration of numerous state agencies, including, but not limited to, the State Department of Education, the Department of Agriculture, the Department of Health and Environmental Control, and Clemson University.

Fresh and minimally processed foods program

SECTION 2. Chapter 3, Title 46 of the 1976 Code is amended by adding:

"Section 46-3-25. (A) There is created a program within the South Carolina Department of Agriculture to foster relationships between South Carolina farms, school districts, and other institutions and to provide them with fresh and minimally processed foods for consumption by students.

(B) The program must:

(1) identify and promote local farms to food service programs and offer them information concerning actions and strategies to implement the program;

(2) establish a partnership with public and nonprofit resources to implement a public engagement campaign and establish a structure to facilitate communication between school districts, institutions, farmers, and produce distributors;

(3) encourage food service personnel to develop and implement school nutrition plans which purchase and use locally grown farm fresh products;

(4) offer assistance and outreach to school districts that choose to participate in the voluntary program. Assistance and outreach may include, but is not limited to, conducting workshops and training sessions, providing technical assistance regarding the availability of South Carolina farm products, and promoting the benefits of purchasing and consuming fresh food products from this State. School districts that choose to participate in the voluntary program are not required to participate or otherwise accept assistance or outreach; and

(5) regularly consult with the staff of the Department of Health and Environmental Control, the State Department of Education, Clemson University, and other state agencies concerning implementation of the program.

(C) The Department of Agriculture may seek grants and private funding for the program. This subsection may not be interpreted to explicitly or implicitly require any other state agency or department to participate or join the department in any grant applications or private funding efforts.

(D) The Department of Agriculture must establish a website for the program."

Regulations

SECTION 3. Regulations may not be promulgated pursuant to this act.

Repeal

SECTION 4. The provisions contained in this act are repealed July 1, 2018, unless reauthorized by the General Assembly.

Time effective

SECTION 5. This act takes effect upon approval of the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 41

(R48, S214)

AN ACT TO AMEND SECTION 40-30-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING THE MASSAGE/BODYWORK PRACTICE ACT, SO AS TO ADD, REVISE, AND DELETE DEFINITIONS; TO AMEND SECTION 40-30-40, RELATING TO THE ADVISORY PANEL FOR MASSAGE/BODYWORK THERAPY UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, SO AS TO REDESIGNATE THE ADVISORY PANEL TO BE KNOWN AS THE "PANEL", TO REVISE QUALIFICATIONS AND MANNER OF APPOINTMENT OF PANEL MEMBERS, AND TO PROVIDE COMPENSATION FOR MEMBERS AND REIMBURSEMENT OF CERTAIN EXPENSES; TO AMEND SECTION 40-30-50, RELATING TO DUTIES OF THE PANEL, SO AS TO PROVIDE ADDITIONAL DUTIES AND POWERS; TO AMEND SECTION 40-30-60, RELATING TO USE OF EMPLOYEES OF THE DEPARTMENT AND PROMULGATION OF REGULATIONS BY THE BOARD, SO AS TO REMOVE OBSOLETE REFERENCES; TO AMEND SECTION 40-30-90, RELATING TO REPORTING REQUIREMENTS, SO AS TO REMOVE AN OBSOLETE REFERENCE; TO AMEND SECTION 40-30-110, RELATING TO QUALIFICATIONS FOR LICENSURE, SO AS TO REQUIRE CLASSROOM STUDY INSTEAD OF SUPERVISED STUDY, AND TO SPECIFY PROFESSIONAL EXAMINATIONS CONSIDERED ACCEPTABLE FOR LICENSURE; TO AMEND SECTION 40-30-200, RELATING TO COMPLAINTS CONCERNING THE FITNESS OF A LICENSEE TO PRACTICE, SO AS TO MAKE CONFORMING CHANGES;

TO AMEND SECTION 40-30-220, RELATING TO EQUITABLE REMEDIES AVAILABLE TO THE PANEL, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-230, RELATING TO GROUNDS OF MISCONDUCT, SO AS TO MAKE CONFORMING CHANGES AND REVISE THE GROUNDS RELATED TO CONVICTIONS FOR CERTAIN CRIMINAL CONDUCT; TO AMEND SECTION 40-30-240, RELATING TO INVESTIGATIONS OF MISCONDUCT RELATED TO SUBSTANCE ABUSE, SO AS TO MAKE CONFORMING CHANGES AND REVISE LANGUAGE CONCERNING RECORDS THE PANEL OBTAINS IN AN INVESTIGATION; TO AMEND SECTION 40-30-250, RELATING TO ACTIONS THE BOARD MAY TAKE IN RESPONSE TO A DISCIPLINARY VIOLATION, SO AS TO MAKE CONFORMING CHANGES AND ADD PROVISIONS CONCERNING A PRIVATE REPRIMAND; TO AMEND SECTION 40-30-260, RELATING TO VOLUNTARY SURRENDER OF A LICENSE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-270, RELATING TO APPEALS FROM DISCIPLINARY PANEL DECISIONS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-300, RELATING TO SERVICE OF PROCESS ON NONRESIDENTS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-310, RELATING TO CIVIL PENALTIES, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 40-30-65 RELATING TO THE CREATION AND STRUCTURE OF THE DISCIPLINARY PANEL, SECTION 40-30-70 RELATING TO DUTIES OF THE DISCIPLINARY PANEL, AND SECTION 40-30-210 RELATING TO PROCEDURES BEFORE THE DISCIPLINARY PANEL.

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

Definitions revised

SECTION 1. Section 40-30-30 of the 1976 Code is amended to read:

"Section 40-30-30. As used in this chapter:

(1) 'Approved massage/bodywork school' means a facility that meets minimum standards for training and curriculum as determined by regulation of the department.

(2) 'Department' means the Department of Labor, Licensing and Regulation.

(3) 'Director' means the Director of the Department of Labor, Licensing and Regulation.

(4) 'Hydrotherapy' means the use of water, vapor, or ice for treatment of superficial tissues.

(5) 'Licensure' means the procedure by which an individual applies to the department and is granted approval to practice massage/bodywork.

(6) 'Massage/bodywork therapy' means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

(7) 'Massage/bodywork therapist' means an individual licensed as required by this chapter, who administers massage/bodywork therapy for compensation.

(8) 'Massage device' means a mechanical device that mimics or enhances the actions possible by the hands by means of vibration.

(9) 'Panel' means the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.

(10) 'Thermal therapy' means the use of ice or a heat lamp or moist heat on superficial tissues."

Advisory panel redesignated as "panel", membership, compensation, duties, conforming changes

SECTION 2. Sections 40-30-40, 40-30-50 and 40-30-60 of the 1976 Code are amended to read:

"Section 40-30-40. (A) There is created the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The panel consists of seven members appointed by the Governor. Six members must be licensed massage/bodywork therapists in good standing and must have been engaged in the practice of massage/bodywork for not fewer than three consecutive years before appointment to the panel. One member must represent the public at large and must not have a financial interest, direct or indirect, in the profession or practice of massage/bodywork therapy. A panel member must be a high school graduate or shall have received a graduate equivalency diploma and must be a citizen of the United States and a resident of this State for not fewer than five years. Nominations for

appointment to the panel may be submitted to the Governor from any individual, group, or association.

(B) Members serve a term of four years and until their successors are appointed and qualify. A vacancy on the panel must be filled in the manner of the original appointment for the remainder of the unexpired term.

(C) Members of the panel must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with and as a result of their service on the panel. Compensation and reimbursements paid to panel members pursuant to this subsection must be paid as an expense of the panel in the administration of this chapter.

(D) The Governor may remove a member of the panel in accordance with Section 1-3-240.

Section 40-30-50. (A) The Panel for Massage/Bodywork shall:

(1) advise and recommend action to the department in the development of regulations, statutory revisions, and such other matters as the department may request in regard to the administration of this chapter;

(2) conduct hearings:

(a) on alleged violations of this chapter and regulations promulgated pursuant to this chapter;

(b) on licensure determination if not appropriate to be determined at the staff level;

(3) mediate consumer complaints if appropriate;

(4) recommend discipline for individuals licensed pursuant to this chapter in any manner provided for in this chapter.

(B) The panel may administer oaths and upon its own motion, or upon request of a party, shall subpoena witnesses, compel their attendance, take evidence, and require the production of matter that is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of individuals having knowledge of relevant facts or other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the panel, the panel may apply pursuant to the Administrative Procedures Act to an administrative law judge for an order requiring

the individual to appear before the panel and to produce documentary evidence and give other evidence concerning the matter under inquiry.

Section 40-30-60. (A) The Director of the Department of Labor, Licensing and Regulation may employ and establish compensation for personnel the director considers necessary and appropriate for the administration of this chapter.

(B) The director shall prescribe duties, which may include, but are not limited to:

(1) maintaining and preserving records;

(2) receiving and accounting for all monies received by the panel;

(3) issuing necessary notices to licensees;

(4) determining the eligibility of applicants for examination and licensure;

(5) examining applicants for licensure including, but not limited to:

(a) prescribing the subjects, character, and manner of licensing examinations;

(b) preparing, administering, and grading the examination or contracting for the preparation, administration, or grading of the examination. Professional testing services may be utilized to formulate and administer any examinations required by the department;

(6) issuing and renewing licenses of qualified applicants;

(7) evaluating and approving continuing education course hours and programs;

(8) promulgating regulations to carry out this chapter including, but not limited to, establishing a code of ethics to govern the conduct and practices of individuals licensed pursuant to this chapter."

Annual report

SECTION 3. Section 40-30-90 of the 1976 Code is amended to read:

"Section 40-30-90. The department shall prepare and submit to the Governor an annual report on the administration of this chapter."

Qualifications for licensure

SECTION 4. Section 40-30-110 of the 1976 Code is amended to read:

"Section 40-30-110. To be licensed by the department as a massage/bodywork therapist an individual:

(1) must be at least eighteen years of age and have received a high school diploma or graduate equivalency diploma;

(2) shall have completed a five hundred hour course of classroom study at an approved massage/bodywork school having a curriculum that meets the standards set forth in regulation by the department; and

(3) shall have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), the Massage and Bodywork Licensing Examination (MBLEx), or any other examination provided for in regulation."

Complaints, conforming changes

SECTION 5. Section 40-30-200 of the 1976 Code is amended to read:

"Section 40-30-200. If the director has reason to believe that an individual licensed pursuant to this chapter has become unfit to practice massage/bodywork therapy or has violated a provision of this chapter or a regulation promulgated pursuant to this chapter or if a written complaint is filed with the director charging a licensee with the violation of a provision of this chapter or a regulation, the director shall initiate an investigation in accordance with procedures established by the department in regulation. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the panel for a hearing to determine whether disciplinary action must be taken against the licensee. Notice must be given and the hearing conducted in accordance with the Administrative Procedures Act."

Miscellaneous provisions, substantive and conforming changes

SECTION 6. Sections 40-30-220, 40-30-230, 40-30-240, 40-30-250, 40-30-260 and 40-30-270 of the 1976 Code are amended to read:

"Section 40-30-220. (A) If the panel or the department has reason to believe that an individual is violating or intends to violate a provision of this chapter or a regulation promulgated pursuant to this chapter, in addition to all other remedies, the panel may order an individual to immediately cease and desist from engaging in the conduct. If the individual is practicing massage/bodywork without

being licensed pursuant to this chapter the panel or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The administrative law judge may issue a temporary restraining order ex parte and the panel or the department is not required to:

(1) post a bond;

(2) establish the absence of an adequate remedy at law;

(3) establish that irreparable damage would result from the continued violation.

A panel member, the Director of the Department of Labor, Licensing or Regulation, or any other employee of the department may not be held liable for damages resulting from a wrongful temporary restraining order.

(B) In accordance with the South Carolina Rules of Civil Procedure, the panel or the department also may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this chapter or a regulation promulgated pursuant to this chapter.

Section 40-30-230. The following constitute misconduct and are grounds for the department denying initial licensure to or the panel taking disciplinary action against an individual who:

(1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for licensure pursuant to this chapter;

(2) has had his or her license to practice massage/bodywork from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;

(3) has violated a provision of this chapter, a regulation promulgated pursuant to this chapter, or an order of the department or the panel;

(4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated pursuant to this chapter;

(5) has intentionally used a fraudulent statement in a document connected to the practice of massage/bodywork or has made false, deceptive, or misleading statements in the practice of massage/bodywork or in advertising;

(6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;

(7) lacks the professional or ethical competence to practice massage/bodywork;

(8) has been convicted of or has pled guilty to or nolo contendere to a violent crime as defined in Section 16-1-60, during the previous five years has been convicted of or has pled guilty to or nolo contendere to a felony that directly relates to the practice or ability to practice massage/bodywork, or during the previous seven years has been convicted of or has pled guilty to or nolo contendere to a felony, an essential element of which is dishonesty, that reasonably relates to the ability to practice massage/bodywork;

(9) has practiced massage/bodywork while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him or her unfit to practice massage/bodywork;

(10) has sustained a physical or mental disability, as determined by a physician that renders further practice by the licensee dangerous to the public.

Section 40-30-240. If investigating grounds for taking disciplinary action based upon an alcohol or drug addiction, as provided for in Section 40-30-230(10), or a physical or mental disability, as provided for in Section 40-30-230(11), the panel upon reasonable grounds may:

(1) require an applicant or licensee to submit to a mental or physical examination including a drug test by physicians designated by the panel. The results of an examination are admissible in a hearing before the panel, notwithstanding a claim of privilege pursuant to a contrary rule of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application for a license to practice massage/bodywork in this State is deemed to have consented to submit to a mental or physical examination including a drug test and to have waived all objections to the admissibility of the results in a hearing before the panel upon the grounds that the results constitute a privileged communication. If an applicant or licensee fails to submit to an examination when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual's control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited from practicing pursuant to this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients;

(2) obtain records of an examination required by item (1) specifically relating to the mental or physical condition of an applicant or licensee who is the subject of an investigation and these records are

admissible in a hearing before the panel, notwithstanding any other provision of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application to practice massage/bodywork in this State is deemed to have consented to the panel obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the panel upon the grounds that the records constitute a privileged communication. If a licensee or applicant refuses to sign a written consent for the panel to obtain these records when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual's control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited pursuant to this section from practicing massage/bodywork must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients.

Section 40-30-250. (A) Upon a determination by the panel that one or more of the grounds for discipline exists, as provided for in Section 40-30-230, the panel may:

(1) issue a nondisciplinary letter of caution;

(2) issue a private reprimand;

(3) issue a public reprimand;

(4) impose a fine not to exceed five hundred dollars;

(5) place the licensee on probation, restrict the license, or suspend the license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension, respectively including, but not limited to, satisfactory completion of additional education of a supervisory period or of continuing education programs as may be specified;

(6) permanently revoke the license.

(B) A decision by the panel to discipline a licensee as authorized pursuant to this section must be made by a majority vote of the total membership of the panel serving at the time the vote is taken.

(C) Except for a private reprimand, a final order of the department refusing to issue a license to an applicant or a final order of the panel disciplining a licensee pursuant to this section is public information.

Section 40-30-260. A licensee who is under investigation for misconduct, as defined in Section 40-30-230, voluntarily may surrender his or her license to the department, invalidating the license

at the time it is surrendered. An individual who voluntarily surrenders his or her license may not practice as a massage/bodywork therapist until the panel reinstates the individual's license. An individual practicing as a massage/bodywork therapist during the period of voluntary license surrender is deemed an illegal practitioner and is subject to the penalties provided in this chapter. Surrendering a license must not be considered an admission of guilt in a proceeding held pursuant to this chapter. However, surrendering a license does not preclude the panel from imposing conditions on the acceptance of the proffered license or from taking disciplinary action against the licensee.

Section 40-30-270. An individual aggrieved by an action of the panel or the department may appeal the decision to an administrative law judge in accordance with the Administrative Procedures Act. Service of a notice of appeal does not stay the panel's or the department's decision pending completion of the appellate process."

Appeals and violations, conforming changes

SECTION 7. Sections 40-30-300 and 40-30-310 of the 1976 Code are amended to read:

"Section 40-30-300. (A) Every communication, whether oral or written, made by or on behalf of an individual, to the director or the panel, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the individual, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

(B) Nothing in this chapter may be construed to prohibit the respondent or his or her legal counsel from exercising the respondent's constitutional right of due process under the law, including, but not limited to, the respondent's right to have normal access to the charges and evidence filed against him or her.

Section 40-30-310. (A) It is unlawful for an individual to:

(1) hold himself or herself out as a massage/bodywork therapist unless licensed pursuant to this chapter;

(2) allow an employed individual to practice massage/bodywork unless licensed pursuant to this chapter;

(3) present as his or her own the license of another;

(4) allow the use of his or her license by an unlicensed individual;

(5) give false or forged evidence to the department in obtaining a license pursuant to this chapter;

(6) falsely impersonate another license holder;

(7) use or attempt to use a license that has been revoked;

(8) otherwise violate a provision of this chapter or a regulation promulgated pursuant to this chapter.

(B) The department may institute civil action in the circuit court, in the name of the State, for injunctive relief against an individual violating a provision of this chapter or a regulation promulgated pursuant to this chapter or an order of the department or the panel. For each violation, the court may impose a fine of no more than one thousand dollars."

Repeal

SECTION 8. Sections 40-30-65, 40-30-70, and 40-30-210 of the 1976 Code are repealed.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 42

(R49, S221)

AN ACT TO AMEND SECTION 36-4A-108, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNIFORM COMMERCIAL CODE-FUNDS TRANSFERS, SO AS TO MAKE THE CHAPTER APPLICABLE TO REMITTANCE TRANSFERS, UNLESS THE REMITTANCE TRANSFER IS AN ELECTRONIC FUND TRANSFER, AND TO PROVIDE THAT, IN THE EVENT THERE IS AN INCONSISTENCY BETWEEN THE APPLICABLE PROVISION OF THE CHAPTER AND THE APPLICABLE PROVISION OF THE ELECTRONIC FUND

TRANSFER ACT, THE PROVISION OF THE ELECTRONIC FUND TRANSFER ACT GOVERNS.

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

Remittance funds transfers, applicability of UCC funds transfers law

SECTION 1. Section 36-4A-108 of the 1976 Code is amended to read:

"Section 36-4A-108. (a) Except as provided in subsection (b), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Section 1693, et seq.) as amended from time to time.

(b) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Section 1693o-l) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Section 1693a) as amended from time to time.

(c) In a funds transfer to which this chapter applies, in the event of an inconsistency between an applicable provision of this chapter and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency."

OFFICIAL COMMENT

1. The Electronic Fund Transfer Act (EFTA), implemented by Regulation E, 12 C.F.R. Part 1005, is a federal statute that covers aspects of electronic fund transfers involving consumers. EFTA also governs remittance transfers, defined in 15 U.S.C. Section 1693o-1, which involve transfers of funds through electronic means by consumers to recipients in another country through persons or financial institutions that provide such transfers in the normal course of their business. Not all "remittance transfers" as defined in EFTA, however, qualify as "electronic fund transfers" as defined under the EFTA, 15 U.S.C. Section 1693a(7). While Section 36-4A-108(a) broadly states that Chapter 4A does not apply to any funds transfer that is governed in any part by EFTA, subsection (b) provides an exception. The purpose of Section 36-4A-108(b) is to allow this chapter to apply to a funds

transfer as defined in Section 36-4A-104(a) (see Section 36-4A-102) that also is a remittance transfer as defined in EFTA, so long as that remittance transfer is not an electronic fund transfer as defined in EFTA. If the resulting application of this chapter to an EFTA-defined "remittance transfer" that is not an EFTA-defined "electronic fund transfer" creates an inconsistency between an applicable provision of this chapter and an applicable provision of EFTA, as a matter of federal supremacy, the provision of EFTA governs to the extent of the inconsistency. Section 36-4A-108(c). Of course, applicable choice of law principles or enforceable choice of law provisions in an applicable agreement also will affect whether Chapter 4A will apply to all or part of any funds transfer, including a remittance transfer. See Section 36-4A-507. The following examples assume that choice of law principles or an enforceable choice of law provision will lead a court to examine the applicability of Chapter 4A to the funds transfer.

2. The following examples illustrate the relationship between EFTA and this chapter pursuant to Section 36-4A-108.

Example 1. A commercial customer of Bank A sends a payment order to Bank A, instructing Bank A to transfer funds from its account at Bank A to the account of a consumer at Bank B. The funds transfer is executed by a payment order from Bank A to an intermediary bank and is executed by the intermediary bank by means of a clearinghouse credit entry to the consumer's account at Bank B (the beneficiary's bank). The transfer into the consumer's account is an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7). Pursuant to Section 36-4A-108(a), Chapter 4A does not apply to any part of the funds transfer because EFTA governs part of the funds transfer. The funds transfer is not a remittance transfer as defined in 15 U.S.C. Section 1693o-1 because the originator is not a consumer customer. Thus Section 36-4A-108(b) does not apply.

A court might, however, apply appropriate principles from Chapter 4A by analogy in analyzing any part of the funds transfer that is not subject to the provisions of EFTA or other law, such as the obligation of the intermediary bank to execute the payment order of the originator's bank.

Example 2. A consumer originates a payment order that is a remittance transfer as defined in 15 U.S.C. Section 1693o-1 by providing the remittance transfer provider (Bank A) with cash in the amount of the transfer plus any relevant fees. The funds transfer is routed through an intermediary bank for final credit to the designated recipient's account at Bank B. Bank A's payment order identifies the designated recipient by both name and account number in Bank B, but

the name and number provided identify different persons. This remittance transfer is not an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) because it is not initiated by electronic means from a consumer's account, but does qualify as a funds transfer as defined in Section 36-4A-104. Both Chapter 4A and EFTA apply to the funds transfer. Sections 36-4A-102, 36-4A-108(a), and (b). Chapter 4A's provision on mistakes in identifying the designated beneficiary, Section 36-4A-207, would apply as long as not inconsistent with the governing EFTA provisions. Section 36-4A-108(c).

Example 3. A consumer originates a payment order from the consumer's account at Bank A to the designated recipient's account at Bank B located outside the United States. Bank A uses the CHIPS system to execute that payment order. The funds transfer is a remittance transfer as defined in 15 U.S.C. Section 1693o-1. This transfer is not an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) because of the exclusion for such types of transfers in 15 U.S.C. Section 1693a(7)(B), but qualifies as a funds transfer as defined in Section 36-4A-104. Under Sections 36-4A-102 and 36-4A-108(b), both Chapter 4A and EFTA apply to the funds transfer. The EFTA will prevail to the extent of any inconsistency between EFTA and Chapter 4A. Section 36-4A-108(c). For example, suppose the consumer subsequently exercised the right to cancel the remittance transfer under the right given under EFTA and obtain a refund. Bank A would be required to comply with the EFTA rule concerning cancellation even if Chapter 4A prevents Bank A from canceling or reversing its payment order it sent to its receiving bank. Section 36-4A-211.

Example 4. A person fraudulently originates an unauthorized payment order from a consumer's account through use of an online banking interface. This transaction is an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) and would be governed by EFTA and not Chapter 4A. Section 36-4A-108(a). Whether the funds transfer also qualifies as a remittance transfer under 15 U.S.C. Section 1693o-1 does not matter to the application of Chapter 4A.

Example 5. A person fraudulently originates an unauthorized payment order from a consumer's account at Bank A through forging written documents that are provided in person to an employee of Bank A. This funds transfer is not an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) because the fund transfer from the consumer's account is not initiated by electronic means, but the funds transfer qualifies as a funds transfer as defined in Section 36-4A-104. Chapter 4A will apply to this funds transfer regardless of whether the

funds transfer also qualifies as a remittance transfer under 15 U.S.C. Section 1693o-1. If the funds transfer is not a remittance transfer, the provisions of Section 36-4A-108 are not implicated because the funds transfer does not fall under EFTA, and the general scope provision of Chapter 4A governs. Section 36-4A-102. If the funds transfer is a remittance transfer, and thus governed by EFTA, Section 36-4A-108(b) provides that Chapter 4A also applies. The provisions of Chapter 4A will allocate the loss arising from the unauthorized payment order as long as those provisions are not inconsistent with the provisions of the EFTA applicable to remittance transfers. Section 36-4A-108(c).

3. Regulation J, 12 C.F.R. Part 210, of the Federal Reserve Board addresses the application of that regulation and EFTA to fund transfers made through Fedwire. Fedwire transfers are further described in Official Comments 1 and 2 to Section 36-4A-107. In addition, funds transfer system rules may be applicable pursuant to Section 36-4A-501.

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 43

(R50, S250)

AN ACT TO AMEND SECTION 33-56-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ORGANIZATIONS EXEMPT FROM FILING REGISTRATION STATEMENTS TO SOLICIT CHARITABLE CONTRIBUTIONS, SO AS TO ADD PUBLIC SCHOOL DISTRICTS AND PUBLIC SCHOOLS AS ORGANIZATIONS EXEMPT FROM THE FILING REQUIREMENT.

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

Organizations exempt from filing registration statements, public school districts and public schools

SECTION 1. Section 33-56-50 of the 1976 Code, as last amended by Act 69 of 2007, is further amended to read:

"Section 33-56-50. (A) The following are not required to file registration statements with the Secretary of State if their fundraising activities are not conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:

(1) an educational institution which solicits contributions from only its students and their families, alumni, faculty, friends, and other constituencies, trustees, corporations, foundations, and individuals who are interested in and supportive of the programs of the institution;

(2) a person requesting contributions for the relief of an individual specified by name at the time of the solicitation when all of the contributions collected, without deductions of any kind, are turned over to the named beneficiary for his use, as long as the person soliciting the contributions is not a named beneficiary;

(3) a charitable organization which (a) does not intend to solicit or receive contributions from the public in excess of twenty thousand dollars in a calendar year and (b) has received a letter of tax exemption from the Internal Revenue Service, if all functions, including fundraising activities, of the organization exempted pursuant to this item are conducted by persons who are compensated no more than five hundred dollars in a year for their services and no part of their assets or income inures to the benefit of or is paid to an officer or a member. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, within thirty days after the date the contributions exceed these amounts, the organization must register with and report to the Secretary of State as required by this chapter;

(4) an organization which solicits exclusively from its membership, including a utility cooperative;

(5) a veterans' organization which has a congressional charter; and

(6) the State, its political subdivisions, and an agency or a department of the State which are subject to the disclosure provisions of the Freedom of Information Act.

(B) The following are not required to file registration statements with the Secretary of State regardless of whether or not their

fundraising activities are conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:

(1) a public school district located in the State and any public school teaching pre-K through grade twelve located within the public school district. For purposes of this chapter, the term 'public school' includes any student organization within the school that does not maintain separate financial accounts or a separate federal Employer's Identification Number (EIN) from the school and whose fundraising revenues are deposited in the school's student activity fund; and

(2) a charitable organization that does not intend to solicit or receive contributions from the public in excess of seven thousand five hundred dollars during a calendar year. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, the organization shall register and report to the Secretary of State as required by this chapter within thirty days after the date the contributions exceed these amounts.

(C) A charitable organization claiming to be exempt from the registration provisions of this chapter and which solicits charitable contributions must submit annually to the Secretary of State, on forms prescribed by the Secretary of State, the name, address, and purpose of the organization and a statement setting forth the reason for the claim for exemption. If appropriate, the Secretary of State or his appropriate division shall issue a letter of exemption that may be exhibited to the public. A filing fee is not required of an exempt organization.

(D) A professional solicitor, professional fundraising counsel, or commercial coventurer conducting fundraising activities on behalf of an exempt organization must comply with the registration and filing requirements of this chapter."

Time effective

SECTION 2. This act takes effect upon approval of the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 44

(R52, S382)

AN ACT TO AMEND SECTION 56-15-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR REGULATING MANUFACTURERS, DISTRIBUTORS, AND DEALERS, SO AS TO DEFINE THE TERMS "DUE CAUSE" AND "MATERIAL BREACH"; TO AMEND SECTION 56-15-40, RELATING TO SPECIFIC ACTS DEEMED UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES, SO AS TO PROVIDE THAT A MANUFACTURER, DISTRIBUTOR, WHOLESALER, DISTRIBUTOR BRANCH OR DIVISION, FACTORY BRANCH OR DIVISION, WHOLESALE BRANCH OR DIVISION, OFFICER, AGENT, OR OTHER REPRESENTATIVE THEREOF, MAY NOT REQUIRE OR COERCE A MOTOR VEHICLE DEALER TO OFFER TO SELL OR SELL ANY EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN, FINANCIAL PRODUCT, OR INSURANCE PRODUCT OFFERED, SOLD, OR SPONSORED BY THE MANUFACTURER OR TO SELL, ASSIGN, OR TRANSFER ANY RETAIL INSTALLMENT SALES CONTRACT OR LEASE OBTAINED BY THE MOTOR VEHICLE DEALER IN CONNECTION WITH THE SALE OR LEASE OF A NEW MOTOR VEHICLE MANUFACTURED BY THE MANUFACTURER TO A SPECIFIED FINANCE COMPANY, CLASS OF FINANCE COMPANIES, LEASING COMPANY, CLASS OF LEASING COMPANIES, OR TO ANY OTHER SPECIFIED PERSON, TO DEFINE THE TERM "FINANCIAL SERVICES COMPANY", AND TO PROVIDE THAT A MANUFACTURER OR DISTRIBUTOR MAY NOT USE CERTAIN FINANCIAL SERVICES COMPANIES OR LEASING COMPANIES TO ACCOMPLISH ILLEGAL CONDUCT; BY ADDING SECTION 56-15-47 SO AS TO PROVIDE THAT A MANUFACTURER MAY NOT PREVENT A MOTOR VEHICLE DEALER FROM DESIGNATING A SUCCESSOR TO THE DEALERSHIP IN THE EVENT OF DEATH OR INCAPACITY OF THE MOTOR VEHICLE DEALER, AND TO PROVIDE THE CONDITIONS UPON WHICH A PERSON MAY SUCCEED TO A FRANCHISE; TO AMEND SECTION 56-15-60, RELATING TO MOTOR

VEHICLE DEALERS' CLAIMS FOR COMPENSATION, SO AS TO PROVIDE THAT ALL WARRANTY CLAIMS, SERVICE CLAIMS, OR INCENTIVE CLAIMS NOT SPECIFICALLY DISAPPROVED IN WRITING WITHIN THIRTY DAYS OF RECEIPT SHALL BE CONSTRUED AS APPROVED AND PAYMENT MUST FOLLOW WITHIN THIRTY DAYS, AND A MANUFACTURER SHALL NOT UNREASONABLY DISAPPROVE A CLAIM THAT RESULTS IN A CLERICAL OR ADMINISTRATIVE ERROR AND THAT CLAIM DISAPPROVAL MUST BE BASED ON A MATERIAL DEFECT; BY ADDING SECTION 56-15-95 SO AS TO PROVIDE THAT A MANUFACTURER MAY NOT TERMINATE OR CANCEL A FRANCHISE OR SELLING AGREEMENT OF A MOTOR VEHICLE DEALER WITHOUT DUE CAUSE, AND TO PROVIDE THE FACTORS THE COURT MUST USE WHEN IT DETERMINES WHETHER DUE CAUSE EXISTS; BY ADDING SECTION 56-15-96 SO AS TO PROVIDE THAT A PERFORMANCE STANDARD, SALES EFFECTIVENESS STANDARD, SALES OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE THAT MAY HAVE A MATERIAL EFFECT ON A MOTOR VEHICLE DEALER SHALL BE FAIR, REASONABLE, EQUITABLE, BASED ON ACCURATE INFORMATION, AND UNIFORMLY APPLIED TO OTHER SIMILARLY SITUATED MOTOR VEHICLE DEALERS; AND BY ADDING SECTION 56-15-98 SO AS TO PROVIDE THAT A MANUFACTURER OR DISTRIBUTOR, OFFICER, AGENT, OR ANY REPRESENTATIVE OF A MANUFACTURER OR DISTRIBUTOR MAY NOT UNREASONABLY ALTER A NEW MOTOR VEHICLE DEALER'S AREA OF RESPONSIBILITY, AND TO PROVIDE A PROCEDURE TO ALTER A NEW MOTOR VEHICLE DEALER'S AREA OF RESPONSIBILITY.

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

Definitions

SECTION 1. Section 56-15-10 of the 1976 Code is amended by adding the following items at the end:

"(r) 'Due cause' means a material breach by a dealer of a lawful provision of a franchise or selling agreement that is not cured within a

reasonable period of time after being given prior written notice of the specific material breach.

(s) 'Material breach' means a contract violation that is substantial and significant."

Unfair or deceptive acts or practices

SECTION 2. A. Section 56-15-40(2) of the 1976 Code is amended to read:

"(2) It shall be deemed a violation of subsection (a) of Section 56-15-30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or an officer, agent or other representative, to require, coerce, or attempt to coerce, any motor vehicle dealer:

(a) to order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered;

(b) to order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof;

(c) to order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(d) to offer to sell or to sell any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer, distributor, or wholesaler. Nothing in this item shall prohibit a manufacturer or distributor or financial arm from providing functionally available incentive programs to a motor vehicle dealer who voluntarily offers to sell or sells any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or distributor or financial arm;

(e) to sell, assign, or transfer any retail installment sales contract or lease obtained by the motor vehicle dealer in connection with the sale or lease of a new motor vehicle manufactured by the manufacturer to a specified finance company, class of finance companies, leasing company, class of leasing companies, or to any other specified person."

B. Section 56-15-40 of the 1976 Code is amended by adding an appropriately numbered item to read:

"( )(a) For purposes of this subsection, a 'financial services company' means any finance source that provides automotive-related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated, or controlled, in whole or in part, by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division.

(b) A manufacturer or distributor may not use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to subitems (2)(d) or (e)."

Successor to a dealership

SECTION 3. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-47. A manufacturer may not prevent a motor vehicle dealer from designating a successor to the dealership in the event of death or incapacity of the motor vehicle dealer. The designation may be made by the motor vehicle dealer by will or other written instrument or, in the event of his death or incapacity, by the qualified executor or personal representative of the motor vehicle dealer by will or other written instrument. No individual may succeed to a franchise until the franchisor has been given written notice as to the identity, financial ability, and qualifications of the successor in question. The manufacturer or distributor is not required to accept a succession which does not meet the manufacturer's or distributor's written, reasonable, and uniformly applied minimal standard qualifications. The burden of proof shall be on the manufacturer or distributor to show that the succession does not meet the manufacturer's or distributor's written, reasonable, and uniformly applied minimal standard qualifications."

Fulfillment of warranty agreements

SECTION 4. Section 56-15-60 of the 1976 Code is amended to read:

"Section 56-15-60. (A)(1) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division must fulfill properly a warranty

agreement and compensate adequately and fairly each of its motor vehicle dealers for labor and parts. All warranty claims, service claims, or incentive claims made by motor vehicle dealers pursuant to this section and Section 56-15-50 for labor and parts must be paid within thirty days following their approval. All claims must be either approved or disapproved within thirty days after their receipt. Any claim not specifically disapproved in writing within thirty days of receipt shall be construed as approved and payment must follow within thirty days. The motor vehicle dealer who submits a disapproved claim must be notified in writing of its disapproval within that period, and the notice must state the specific grounds upon which the disapproval is based.

(2) A claim disapproval must be based on a material defect. A manufacturer shall not disapprove claims:

(a) for which the motor vehicle dealer has received preauthorization from the manufacturer or its representative; or

(b) based on the motor vehicle dealer's incidental failure to comply with a specific claim processing requirement that results in a clerical or administrative error.

(3) In the event of neglect, oversight, or mistake by the motor vehicle dealer, the dealer may submit an amended claim for labor and parts up to sixty days from the date on which the manufacturer provided written notice to the motor vehicle dealer of the material defect or deviation. The motor vehicle dealer must substantiate the claim in accordance with the manufacturer's reasonable written procedures.

(4) Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, but not uniformly required of all dealers of that make, may be enforced only after thirty days' notice in writing of good and sufficient reason."

Termination or cancellation of a franchise or selling agreement

SECTION 5. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-95. (A) A manufacturer may not terminate or cancel a franchise or selling agreement of a motor vehicle dealer without due cause.

(B) The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms of the franchise or selling agreement.

(C) In determining whether due cause exists, the court shall take into consideration:

(1) the motor vehicle dealer's sales in relation to the business available to the motor vehicle dealer;

(2) the motor vehicle dealer's investments and obligations;

(3) whether the motor vehicle dealer was provided adequate inventory;

(4) injury to the public welfare;

(5) the adequacy of the motor vehicle dealer's sales and service facilities, equipment, and parts;

(6) the qualifications of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motor vehicles;

(7) the motor vehicle dealer's failure to comply with the requirements of the franchise agreement;

(8) the opportunity to cure the alleged breach; and

(9) the harm caused to the manufacturer or distributor."

Performance, sales effective and sales objective standards

SECTION 6. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-96. (A) A performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance that may have a material effect on a motor vehicle dealer including, but not limited to, his right to payment under any incentive or reimbursement program, shall be fair, reasonable, equitable, based on accurate information, and uniformly applied to other similarly situated motor vehicle dealers.

(B) If a motor vehicle dealer protests a new performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance, the burden of proof shall be on the manufacturer to show the action is reasonable and justifiable in light of the market conditions."

Alteration of a new motor vehicle dealer's area of responsibility

SECTION 7. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-98. (A) A manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor may not unreasonably alter a new motor vehicle dealer's area of responsibility.

(B) To alter a new motor vehicle dealer's area of responsibility, a manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor must provide advance notice to the motor vehicle dealer including an explanation of the basis for the alteration at least sixty days before the effective date of the alteration.

(C)(1) At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration.

(2) The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions.

(3) If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court.

(D) If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities."

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 45

(R53, S417)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "MILITARY SERVICE OCCUPATION, EDUCATION, AND CREDENTIALING ACT"; BY ADDING SECTION 59-101-400 SO AS TO PROVIDE A PUBLIC, POST-SECONDARY INSTITUTION OF HIGHER EDUCATION IN THIS STATE MAY AWARD EDUCATIONAL CREDIT TO AN HONORABLY DISCHARGED MEMBER OF THE ARMED FORCES FOR A COURSE THAT IS PART OF HIS MILITARY TRAINING OR SERVICE, SUBJECT TO CERTAIN CONDITIONS, AND TO REQUIRE THE INSTITUTION TO IMPLEMENT RELATED POLICIES AND REGULATIONS WITHIN A SPECIFIED TIME FRAME; BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 40 SO AS TO PROVIDE MISCELLANEOUS LICENSURE PROVISIONS FOR MILITARY PERSONNEL, TO PROVIDE A PERSON LICENSED BY BOARD OR COMMISSION UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION IS EXEMPT FROM CONTINUING EDUCATION REQUIREMENTS AND FEE ASSESSMENTS DURING ACTIVE DUTY IN THE UNITED STATES ARMED FORCES, TO PROVIDE A BOARD OR COMMISSION MAY ISSUE A TEMPORARY PROFESSIONAL LICENSE TO THE SPOUSE OF AN ACTIVE DUTY MEMBER OF THE UNITED STATES ARMED FORCES IN CERTAIN CIRCUMSTANCES, AND TO PROVIDE A BOARD OR COMMISSION MAY ACCEPT CERTAIN COURSEWORK OR EXPERIENCE OBTAINED DURING THE COURSE OF MILITARY SERVICE TO SATISFY RELATED PROFESSIONAL OR OCCUPATIONAL EDUCATION OR TRAINING LICENSURE REQUIREMENTS; AND TO REPEAL SECTIONS 40-1-75 RELATING TO EXEMPTING ACTIVE DUTY MILITARY PERSONNEL FROM CONTINUING EDUCATION REQUIREMENTS, AND 40-1-77 RELATING TO TEMPORARY PROFESSIONAL OR OCCUPATIONAL LICENSES FOR MILITARY SPOUSES, THE SUBSTANCE OF WHICH IS INCORPORATED INTO THE NEW ARTICLE ADDED BY THIS ACT.

Whereas, the South Carolina General Assembly finds that military service members after separating from military service are frequently delayed in getting post-military employment even though the service member may have applicable military education, training, and experience which could qualify for an occupational license or certification, or which could provide academic credit toward college, university, or technical degree requirements; and

Whereas, the General Assembly finds it is advantageous to the State to create occupational and educational opportunities for post-military service members who are honorably discharged and spouses of active-duty service members who must leave work in another state to accompany their service member on transfer and assignment for military duty in this State; and

Whereas, the General Assembly finds that the spouse of an active-duty service member assigned for duty in this State who possesses a valid professional license or certification with current experience in another state should be allowed to apply for the same professional license or certification in this State and such application should be expedited for better employment opportunities and based upon the person having substantially equivalent education, training, and experience for licensure in this State. Now, therefore,

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

Citation

SECTION 1. This act is known and may be cited as the "Military Service Occupation, Education, and Credentialing Act".

Educational credit for certain courses that are part of the military training or service

SECTION 2. Article 1, Chapter 101, Title 59 of the 1976 Code is amended by adding:

"Section 59-101-400. (A) A state-supported post-secondary educational institution governed by this title, including a technical and comprehensive educational institution, may award educational credit to a student honorably discharged from the Armed Forces of the United

States for a course that is part of the military training or service of the student, provided:

(1) the award must be made within three years after the enrollment of the student at the institution;

(2) the course meets the standards of the American Council of Education or equivalent standards for awarding academic credit; and

(3) the award is based upon the admissions standards, role, scope, and mission of the institution.

(B) An institution authorized to award educational credit under subsection (A) shall:

(1) develop a policy concerning the provisions of subsection (A) before January 1, 2014; and

(2) adopt rules and procedures to implement the provisions of this section to become effective on the beginning of the 2013-2014 academic year of the institution."

Miscellaneous licensure provisions for military personnel

SECTION 3. Chapter 1, Title 40 of the 1976 Code is amended by adding:

"Article 3

Miscellaneous Licensure Provisions for Military Personnel

Section 40-1-610. A person whose profession or occupation is regulated by this title is exempt from completing continuing education requirements for his profession or occupation while serving on active military duty.

Section 40-1-620. A person whose profession or occupation is regulated by this title may not be assessed, and is exempt from being required to pay, a license fee for his profession or occupation for a calendar year in which he serves any period of active military duty.

Section 40-1-630. (A) A board or commission that regulates the licensure of a profession or occupation under Title 40 may issue a temporary professional license for a profession or occupation it regulates to the spouse of an active duty member of the United States Armed Forces if the member is assigned to a duty station in this State pursuant to the official active duty military orders of the member.

(B)(1) A person seeking a temporary professional license under subsection (A) shall submit an application to the board or commission from which it is seeking the temporary license on forms the board or commission shall create and provide. In addition to general personal information about the applicant, the application must include proof that the:

(a) applicant is married to a member of the United States Armed Forces who is on active duty;

(b) applicant holds a valid license issued by another state, the District of Columbia, a possession or territory of the United States, or a foreign jurisdiction for the profession for which temporary licensure is sought;

(c) applicant holds the license in subitem (b) in 'good standing' as evidenced by a certificate of good standing from the state, possession or territory of the United States, or foreign jurisdiction that issued the license;

(d)(i) applicant submitted at his expense to a fingerprint-based background check conducted by the State Law Enforcement Division to determine if the applicant has a criminal history in this State and a fingerprint-based background check conducted by the Federal Bureau of Investigation to determine if the person has other criminal history, and the official results of these checks must be provided to the board or commission to which application for temporary licensure is made; and

(ii) the provisions of this subitem only apply if a similar background check is required to obtain ordinary licensure in the profession or occupation for which temporary licensure is sought by the applicant; and

(e) spouse of the applicant is assigned to a duty station in this State pursuant to the official active duty military orders of the member.

(C) A temporary license issued under this section expires one year from the date of issue and may not be renewed.

Section 40-1-640. (A) A professional or occupational board or commission governed by this title may accept the education, training, and experience completed by an individual as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state and apply this education, training, and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification or approval for license examination in this State, subject to the receipt of evidence considered satisfactory by the board or commission.

(B) Nothing in this section may be construed to require the issuance of a license or certificate to an applicant who does not otherwise meet the stated eligibility standards, criteria, qualifications, or requirements for licensure, or certification, nor may the provisions be construed to automatically allow issuance of any license or certificate without testing or examination, without proper consideration by the licensing and examination board, or without proper verification that the applicant is not subject to pending criminal charges or disciplinary actions, has not been convicted of any offense prohibiting licensure or certification, and has no other impairment that would prohibit licensure or certification in this State."

Repeal

SECTION 4. Sections 40-1-75 and 40-1-77 of the 1976 Code are repealed.

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 46

(R54, S438)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8-15-70 SO AS TO PROVIDE FOR THE FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONTRACTS BY STIPULATING THAT STATE OR LOCAL ENTITIES, OFFICIALS, AND EMPLOYEES, IN REGARD TO A PUBLIC BUILDING, MAY NOT REQUIRE OR PROHIBIT A BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FROM ENTERING INTO OR ADHERING TO AN AGREEMENT WITH ONE OR MORE LABOR ORGANIZATIONS IN REGARD TO THE PROJECT AND MAY NOT OTHERWISE DISCRIMINATE

AGAINST A BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FOR BECOMING OR REFUSING TO BECOME A SIGNATORY TO AN AGREEMENT WITH ONE OR MORE LABOR ORGANIZATIONS IN REGARD TO THE PROJECT, TO PROVIDE THAT STATE AND LOCAL ENTITIES, OFFICIALS, AND EMPLOYEES SHALL NOT AWARD A GRANT, TAX ABATEMENT, OR TAX CREDIT CONDITIONED UPON THE INCLUSION OF SUCH AGREEMENTS IN THE AWARD, AND TO PROVIDE EXCEPTIONS TO AND EXEMPTIONS FROM THESE PROVISIONS.

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

Governmental contractual requirements, public grant or award requirements

SECTION 1. Chapter 15, Title 8 of the 1976 Code is amended by adding:

"Section 8-15-70. (A) It is the intent of the General Assembly that the provisions of this section provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related services by this State and political subdivisions of this State as market participants. The General Assembly finds that providing for fair and open competition best effectuates this intent.

(B) An agent or employee of this State, a board or governing body of this State, or of any institution of state government, or any agent, employee, or board or governing body of any political subdivision of this State awarding a contract for the construction, repair, remodeling, or demolition of a public building shall not in any bid specifications, project agreements, or other controlling documents:

(1) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to that project or a related construction project; and

(2) otherwise discriminate against a bidder, offeror, contractor, or subcontractor for becoming, remaining, refusing to become or remain a signatory to, or for adhering or refusing to adhere to an agreement with one or more labor organizations in regard to that project or a related construction project.

(C) An agent or employee of this State, a board or governing body of this State, or of any institution of state government, or an agent, employee, or board or governing body of any political subdivision of this State shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the person receiving the grant, tax abatement, or tax credit include a term described in subsection (B) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

(D) This section does not prohibit an agent or employee of this State, a board or governing body of this State, or of any institution of state government, or an agent, employee, or board or governing body of any political subdivision of this State from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the state agent, employee, or board or the political subdivision does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the person's status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(E) This section does not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with this State or a political subdivision of this State or funded in whole or in part from a grant, tax abatement, or tax credit from this State or political subdivision.

(F) This State or the governing body of a political subdivision may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of subsection (B) or (C) if the State or governing body of the political subdivision finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section must not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

(G) This section does not do either of the following:

(1) prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. Sections 151-169; or

(2) interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U.S.C. Sections 151-169."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 47

(R55, S464)

AN ACT TO AMEND SECTION 38-77-150, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MANDATORY MINIMUM UNINSURED MOTORIST INSURANCE COVERAGE, SO AS TO INCREASE THE MINIMUM COVERAGE TO TWENTY-FIVE THOUSAND DOLLARS; TO AMEND SECTION 56-9-20, RELATING TO DEFINITIONS IN THE MOTOR VEHICLE RESPONSIBILITY ACT, SO AS TO REVISE THE DEFINITION OF "PROOF OF FINANCIAL RESPONSIBILITY" TO CONFORM AND TO INCREASE THE AMOUNT OF COVERAGE REQUIRED FOR MULTIPLE BODILY INJURIES; AND TO AMEND SECTION 56-9-353, RELATING TO POLICIES AND BONDS, AND SECTION 56-9-480, RELATING TO SATISFACTION OF JUDGMENTS, SO AS TO MAKE CONFORMING CHANGES.

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

Mandatory uninsured motorist coverage, minimum increased

SECTION 1. Section 38-77-150(A) of the 1976 Code is amended to read:

"(A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140. The uninsured motorist provision also must provide for no less than twenty-five thousand dollars' coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used."

Motor Vehicle Responsibility Act definitions, conforming changes

SECTION 2. Section 56-9-20(11) of the 1976 Code is amended to read:

"(11) 'Proof of financial responsibility': Proof of ability to respond to damages for liability, as provided in Section 38-77-150, or, on account of accidents occurring after the effective date of this proof, arising out of the ownership, maintenance, or use of a motor vehicle in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to this limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident and in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;"

Policies and bonds, conforming changes

SECTION 3. Section 56-9-353 of the 1976 Code is amended to read:

"Section 56-9-353. No policy or bond shall be effective under Sections 56-9-351 and 56-9-352 unless issued by an insurance company or surety company licensed and authorized by the South

Carolina Department of Insurance to do business in this State, except that if the motor vehicle was not registered in this State or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond or the most recent renewal thereof, the policy or bond shall not be effective under Sections 56-9-351 and 56-9-352 unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department of Motor Vehicles to accept service on its behalf of notice of process in any action upon the policy or bond arising out of the accident. Every policy or bond must be subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and subject to this limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars because of injury to or destruction of property of others in any one accident."

Satisfaction of judgments, conforming changes

SECTION 4. Section 56-9-480 of the 1976 Code is amended to read:

"Section 56-9-480. Judgments referred to in this article must, for the purpose of this article only, be considered satisfied:

(1) when twenty-five thousand dollars has been credited upon any judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(2) when, subject to the limit of twenty-five thousand dollars because of bodily injury to or death of one person, the sum of fifty thousand dollars has been credited upon any judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) when twenty-five thousand dollars has been credited upon any judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident must be credited in reduction of the amounts provided for in this section."

New offer of uninsured motorist insurance not required

SECTION 5. An automobile liability insurer is not required to make a new offer of coverage or obtain a new prescribed form on any automobile insurance policy, within the contemplation of Section 38-77-350, to comply with statutory changes to the minimum required limits set forth in Section 38-77-140 and Section 38-77-150.

Time effective

SECTION 6. This act takes effect January 1, 2014, and applies to all policies of automobile insurance issued or renewed on or after the effective date of this act.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 48

(R56, S465)

AN ACT TO AMEND SECTION 38-71-1330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT, SO AS TO REVISE THE DEFINITION OF AN "ELIGIBLE EMPLOYEE".

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

"Eligible employee" redefined

SECTION 1. Section 38-71-1330(6) of the 1976 Code, as last amended by Act 180 of 2008, is further amended to read:

"(6) 'Eligible employee' means an employee:

(a) as defined in Section 38-71-710(1) or Section 38-71-840(7) who works on a full-time basis and has a normal workweek of thirty or more hours; or

(b) who is a licensed real estate person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis, who has signed a valid independent contractor agreement with the broker who works on a full-time basis and has a normal workweek of thirty or more hours."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 49

(R57, S530)

AN ACT TO AMEND SECTION 38-71-1730, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CLOSED PANEL HEALTH PLANS, SO AS TO REMOVE THE REQUIREMENT THAT CERTAIN EMPLOYERS WHO OFFER ONLY CLOSED PANEL HEALTH PLANS TO ITS EMPLOYEES ALSO OFFER A POINT-OF-SERVICE OPTION TO ITS EMPLOYEES, TO MAKE CONFORMING CHANGES, TO PROVIDE THAT A POINT-OF-SERVICE OPTION MAY NOT DISCRIMINATE AGAINST CERTAIN HEALTH CARE PROVIDERS BY EXCLUDING THEM FROM NETWORK PARTICIPATION ON THE BASIS OF THEIR PROFESSION, AND TO INCREASE THE ALLOWABLE DIFFERENCES BETWEEN COINSURANCE PERCENTAGES FOR IN-NETWORK AND OUT-OF-NETWORK COVERED SERVICES AND SUPPLIES UNDER A POINT-OF-SERVICE OPTION.

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

Employers only offering closed panel health plans, point-of-service options

SECTION 1. Section 38-71-1730(A) of the 1976 Code is amended to read:

"(A) For purposes of health plans offered pursuant to this section:

(1) An employer may require an employee who chooses a point-of-service option to be responsible for payment of premiums, deductibles, copayments, or other payments in excess of the benefits provided by the closed panel health plan.

(2) Differences between coinsurance percentages for in-network and out-of-network covered health care services or supplies in a point-of-service option may not exceed a maximum differential of thirty percent. The coinsurance percentage for in-network and out-of-network covered health care services or supplies provided by dentists may not exceed a maximum difference of five percent.

(3) An employee, a spouse, or a dependent receiving treatment for an illness covered under a closed panel health plan may continue to receive services from a provider who elects to discontinue participation as a closed panel plan provider, subject to the terms of the contract between the provider and the health plan. This right of continuation is limited to a period of ninety days or the anniversary date of the plan, whichever occurs first.

(4) A point-of-service option or closed panel health plan may not discriminate against a physician, a podiatrist, an optometrist, an oral surgeon, or a chiropractor by excluding the provider from participating in the plan on the basis of the profession. A health care plan may not exclude these providers from providing health care services which they are licensed to provide and which are covered by the plan and as determined by medical necessity under utilization review guidelines. Nothing in this section interferes in any way with the medical decision of the primary health care provider to use or not use any health care professional on a case-by-case basis.

(5) A pharmacist may provide professional services under the pharmacist's scope of practice so long as the services are provided pursuant to a prescription written by a medical doctor or dentist with whom the patient has an established physician-patient relationship. Nothing in this subsection requires a managed care plan to provide reimbursement to a pharmacist. An advanced practice nurse functioning as authorized by the State Board of Nursing Regulation 91-6 may provide professional services under the advanced practice

nurse's scope of practice so long as the services provided are pursuant to protocols by a medical doctor with whom the patient has an established physician-patient relationship. A point-of-service option offered pursuant to this section may not discriminate against an advanced practice nurse. Nothing in this subsection requires a managed care plan to provide reimbursement to an advanced practice nurse.

(6) Nothing contained in this article affects in any way a plan exempted by the federal Employee Retirement Income Security Act of 1974 or any South Carolina law in existence before January 1, 1999, and state employee health insurance programs or any political subdivision self-funded health insurance program; and this article does not affect the right of an employer to specify plan design or affect the right of a plan to credential or re-credential a provider. Nothing contained in this article affects accident-only, blanket accident and sickness, specified disease, credit, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability or other insurance coverage designed solely to provide payments on a per diem, fixed-indemnity, or nonexpense incurred basis, coverage for Medicare or Medicaid services pursuant to a contract with state or federal government, worker's compensation or similar insurance, or automobile medical payment insurance."

Time effective

SECTION 2. This act takes effect forty-five days after approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 50

(R58, S559)

AN ACT TO AMEND SECTION 50-5-1705, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FLOUNDER CATCH LIMITS, SO AS TO DECREASE THE MAXIMUM CATCH LIMITS FOR FLOUNDER AND TO

PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO TAKE OR POSSESS MORE THAN FIFTEEN FLOUNDER TAKEN BY MEANS OF GIG, SPEAR, HOOK AND LINE, OR SIMILAR DEVICE IN ANY ONE DAY, NOT TO EXCEED THIRTY FLOUNDER IN ANY ONE DAY ON ANY BOAT.

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

Flounder catch limits

SECTION 1. Section 50-5-1705(G) of the 1976 Code, as last amended by Act 7 of 2013, is further amended to read:

"(G) It is unlawful for a person to take or possess more than fifteen flounder (Paralichthys species) taken by means of gig, spear, hook and line, or similar device in any one day, not to exceed thirty flounder in any one day on any boat."

Time effective

SECTION 2. This act takes effect July 1, 2014.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 51

(R59, S620)

AN ACT TO AMEND SECTION 56-3-2335, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF RESEARCH AND DEVELOPMENT LICENSE PLATES, SO AS TO INCLUDE THE MANUFACTURE AND RESEARCH AND DEVELOPMENT OF TRANSMISSIONS IN THIS STATE AS A PART OF THE DEFINITION OF THE TERM "RESEARCH AND DEVELOPMENT BUSINESS", TO INCLUDE A PERSON OR COMPANY IN THE BUSINESS OF OPERATING A GROUP OF VEHICLES DRIVEN BY THEIR EMPLOYEES FOR THE

PURPOSE OF TESTING AND EVALUATING THE PERFORMANCE OF A RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS AS A PART OF THE DEFINITION OF THE TERM "CONTRACTED FLEET OWNER", TO DEFINE THE TERM "TRANSMISSIONS", TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE RESEARCH AND DEVELOPMENT LICENSE PLATES FOR THE PURPOSE OF TESTING AND EVALUATING THE PERFORMANCE OF A RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS ON A MOTOR VEHICLE, TO PROVIDE THAT THE DEPARTMENT MAY ENTER INTO RECIPROCAL AGREEMENTS WITH OTHER STATES CONCERNING THE REGISTRATION AND OPERATION OF VEHICLES OWNED BY A RESEARCH AND DEVELOPMENT BUSINESS FOR THE PURPOSE OF TESTING AND EVALUATING THE PERFORMANCE OF THE RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS, AND TO PROVIDE THAT IT IS THE SOLE RESPONSIBILITY OF THE RESEARCH AND DEVELOPMENT BUSINESS OR CONTRACTED FLEET OWNER TO TAKE ANY OTHER ACTIONS REQUIRED BY ANOTHER STATE THAT ARE NECESSARY FOR THE RESEARCH AND DEVELOPMENT BUSINESS OR CONTRACTED FLEET OWNER, TO LEGALLY TEST AND EVALUATE THE PERFORMANCE OF THE RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS IN THAT STATE.

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

Research and development license plates

SECTION 1. Section 56-3-2335 of the 1976 Code, as last amended by Act 15 of 2011, is further amended to read:

"Section 56-3-2335. (A) As used in this section:

(1) 'Research and development business' or 'business' means a person who manufacturers tires or transmissions in this State for use as original or replacement equipment on motor vehicles and who conducts research and development activities on tires or transmissions in conjunction with the person's manufacturing activities in South Carolina.

(2) 'Contracted fleet owner' or 'contractor' means a person or company in the business of operating a group of vehicles driven by their employees for the purpose of testing and evaluating the performance of a research and development business' tires or transmissions.

(3) 'Tires' includes tires and tire replacement parts.

(4) 'Transmissions' includes transmissions and transmission parts.

(B)(1) Upon application and payment of the required fee, the Department of Motor Vehicles may issue research and development license plates to a research and development business. The license plates must be used exclusively on motor vehicles, including motorcycles, provided by a motor vehicle manufacturer to the research and development business for the purpose of testing and evaluating the performance of the research and development business' tires or transmissions on the motor vehicle.

(2) Application for research and development license plates must be made by the research and development business on a form prescribed by the department and submitted with proof of the applicant's status as a bona fide research and development business. The cost of each research and development license plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the testing facility of the business is located. Each plate is valid for two years. A maximum of one hundred research and development license plates may be issued for the two-year period.

(C)(1) Upon application and payment of the required fee, the Department of Motor Vehicles may issue fleet research and development plates to a research and development business or to a contracted fleet owner. The license plates will be registered to a specific vehicle owned by the research and development business, or owned by a contracted fleet owner under contract with the research and development business.

(2) Application for fleet research and development license plates must be made by the contractor on a form prescribed by the department and submitted with certification from the research and development business establishing the applicant's status as a bona fide contracted fleet owner under contract with the research and development business. The cost of each fleet research and development license plate is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the vehicle is sited, as evidenced by the address on the registration card. Each plate is valid

for two years. A maximum of one hundred fleet research and development license plates may be issued to a contracted fleet owner for the two-year period.

(D) Vehicles with research and development plates or fleet research and development plates may be operated on the state's streets and highways or another state's streets and highways pursuant to a reciprocity agreement with that state. The vehicles may be operated pursuant to this section only for the purpose of testing and evaluating the performance of the research and development business' tires or transmissions on the motor vehicle.

(E) The Department of Motor Vehicles may enter into reciprocal agreements with other states concerning the registration and operation of vehicles owned by a research and development business, provided to the research and development business by a contractor under contract with the research and development business, or provided by a motor vehicle manufacturer to the research and development business for the purpose of testing and evaluating the performance of the research and development business' tires or transmissions.

(F) It is the sole responsibility of the research and development business, or contracted fleet owner, to take any other actions required by another state that are necessary for the research and development business, or contracted fleet owner, to legally test and evaluate the performance of the research and development business' tires or transmissions in that state. The research and development business must comply with any other requirements associated with the operation of the vehicle on the other state's roads and highways."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 52

(R61, S636)

AN ACT TO AMEND SECTION 7-7-430, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN OCONEE COUNTY, SO AS TO ADD THE "NEW HOPE" PRECINCT, TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, AND TO CORRECT ARCHAIC LANGUAGE.

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

Oconee County voting precincts revised

SECTION 1. Section 7-7-430 of the 1976 Code, as last amended by Act 157 of 2012, is further amended to read:

"Section 7-7-430. (A) In Oconee County there are the following voting precincts:
Bounty Land
Earles Grove
Fair Play
Friendship
Holly Springs
Keowee
Long Creek
Madison
Mountain Rest
New Hope
Newry-Corinth
Oakway
Ravenel
Return
Richland
Salem
Seneca No. 1
Seneca No. 2
Seneca No. 3

Seneca No. 4
Shiloh
South Union
Stamp Creek
Tamassee
Tokeena/Providence
Utica
Walhalla No. 1
Walhalla No. 2
Westminster No. 1
Westminster No. 2
West Union

(B) The precinct lines defining the above precincts in Oconee County are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-73-13 and as shown on certified copies of the official map provided to the Oconee Registration and Elections Commission.

(C) The polling places for the precincts provided in this section must be established by the Oconee Registration and Elections Commission."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 53

(R70, H3751)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO CONFORM WITH FEDERAL MANDATES ENACTED BY THE UNITED STATES CONGRESS IN THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011; BY ADDING SECTION 41-41-45 SO AS TO PROVIDE THE DEPARTMENT OF EMPLOYMENT

AND WORKFORCE SHALL IMPOSE A PENALTY ON FRAUDULENT OVERPAYMENTS OF UNEMPLOYMENT BENEFITS IN A CERTAIN MANNER; BY ADDING SECTION 41-35-135 SO AS TO PROVIDE CIRCUMSTANCES WHEN THE DEPARTMENT SHALL CHARGE THE ACCOUNT OF AN EMPLOYER FOR OVERPAYMENT OF BENEFITS; BY ADDING SECTION 41-33-910 SO AS TO CREATE THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE INTEGRITY FUND AND PROVIDE FOR ITS SOURCE AND USE, EFFECTIVE OCTOBER 1, 2013; TO AMEND SECTION 43-5-598, AS AMENDED, RELATING TO DEFINITIONS CONCERNING THE SOUTH CAROLINA EMPLOYABLES PROGRAM ACT, SO AS TO REVISE THE DEFINITION OF "NEW HIRE"; AND TO MANDATE IMPLEMENTATION OF AN ONLINE, PREFILING PROGRAM BY THE DEPARTMENT FOR USE OF EMPLOYERS TO ADDRESS POTENTIAL BENEFIT CLAIMS.

Whereas, the United States Congress enacted the Trade Adjustment Assistance Extension Act of 2011 on October 21, 2011, and this act, among other things, imposed three mandatory integrity requirements on the unemployment insurance program of each state; and

Whereas, this mandate requires states to impose a monetary penalty on claimants whose fraudulent acts resulted in overpayments; prohibit states from providing relief from charges to an employer's unemployment insurance account when the actions of an employer or an agent of an employer have led to an improper payment, and requires employers to report to a State Directory of New Hires information on employees the employer has rehired after at least a sixty-day separation; and

Whereas, the State of South Carolina seeks to comply with this mandate by enacting necessary and appropriate changes to our statutory law. Now, therefore,

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

Improper unemployment compensation payments

SECTION 1. Chapter 41, Title 41 of the 1976 Code is amended by adding:

"Section 41-41-45. (A) Notwithstanding any other provision of law, if the department determines that an improper payment from its unemployment compensation fund or from any federal unemployment compensation fund was made to any individual due to a false statement or failure to disclose a material fact pursuant to Sections 41-41-10 and 41-41-20, the department will assess a monetary penalty of twenty-five percent of the amount of the overpayment.

(B) The notice of the determination or decision informing the individual of the overpayment must include:

(1) the claimant's appeal rights;

(2) the penalty amount;

(3) an explanation of the reason for the overpayment; and

(4) the reason the penalty has been applied.

(C) The recovered amounts shall be applied with priority to:

(1) the principal amount of the overpayment to the unemployment compensation fund;

(2) sixty percent of the monetary penalty to the unemployment compensation fund;

(3) the remaining forty percent of the monetary penalty to promote unemployment compensation integrity; and

(4) any remaining amounts to interest.

(D) Offset of future unemployment insurance benefits shall not be applied to the monetary penalty or interest associated with an overpayment.

(E) The monetary penalty will be assessed on any fraudulent overpayment determined by the department after October 21, 2013."

Charge of overpaid benefits to employer's account

SECTION 2. Article 1, Chapter 35, Title 41 of the 1976 Code is amended by adding:

"Section 41-35-135. (A) Notwithstanding any other provision of law, the department shall not relieve the charge benefits to an employer's account when it determines that the overpayment has been made to a claimant and it determines that both of the following conditions apply:

(1) the overpayment occurred because the employer was at fault for failing to respond timely or adequately to a written request of the department for information relating to an unemployment compensation claim; and

(2) the employer exhibits a pattern of failure to timely or adequately respond to requests from the department for information relating to unemployment compensation claims on three or more occasions, or three percent of requests made, within a single calendar year, whichever is greater, provided:

(a) if an employer uses a third-party agent to respond on its behalf to the department's request for information relating to an unemployment compensation claim, the agent's actions on behalf of the employer will be considered when determining a pattern of behavior;

(b) a response is considered untimely if it fails to meet the time as prescribed in the statute or in the regulations;

(c) a response is considered inadequate if it fails to provide sufficient facts to enable the department to make an accurate determination of benefits that do not result in an overpayment. However, a response may not be considered inadequate if the department fails to request the necessary information.

(B) In all cases where the department contacts, or attempts to contact, an employer via telephone concerning a claim for benefits, it must document the contact, or attempt to contact, the employer and provide the documentation to the employer upon request. The documentation must contain the name of the department's staff contacting, or attempting to contact, the employer, the date, time, and whether the department's staff spoke with the employer, and the name of the person with whom the department's staff spoke, if anyone.

(C) A written request for information may be made by electronic mail provided, the employer has opted for notice by electronic mail pursuant to Section 41-35-615.

(D) The department shall charge an employer's account that meets the conditions of subsection (A) for each week of unemployment compensation that is an overpayment until the department makes a determination that the individual is no longer eligible for unemployment compensation and stops making such payments.

(E) If the claim is a combined wage claim, the determination of not charging for the combined wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state promptly must notify the transferring state of its determination and the employer must be appropriately charged.

(F)(1) The department must waive the charging of benefits to an employer's account when the department finds the employer failed to timely or adequately respond due to good cause.

(2) For the purposes of this section, 'good cause' may include, but is not limited to, an error made by the department that results in the employer's error, or a natural disaster, emergency, or similar event, or an illness on the part of the employer, the employer's agent of record, or the employer's staff charged with responding to inquiries. The burden is on the employer to establish good cause.

(G) Determinations of the department prohibiting the relief of charges pursuant to this section shall be subject to appeal pursuant to procedures contained in Chapter 35, Title 41.

(H) The department shall charge benefits to an employer's account pursuant to this section for any overpayment determined by the department after October 21, 2013."

South Carolina Employables Program Act, definitions

SECTION 3. Section 43-5-598(A)(6) of the 1976 Code is amended to read:

"(6) 'New hire' includes an individual newly employed or an individual who has been rehired who was separated for at least sixty consecutive days or has returned to work after being laid off, furloughed, separated, granted leave without pay, or terminated from employment for at least sixty consecutive days."

Department of Employment and Workforce integrity fund, time effective

SECTION 4. A. Article 5, Title 41, Chapter 33 of the 1976 Code is amended by adding:

"Section 41-33-910. (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."

B. The provisions of this SECTION take effect October 1, 2013.

Online employer prefiling program implementation mandated

SECTION 5. The Department of Employment and Workforce, as soon as practicable, fully must implement an online, employer prefiling program that allows employers to address potential claims for benefits by one of the employer's former employees. The department must report progress on implementation upon request by the Chairman of the Senate Labor, Commerce and Industry Committee or the Chairman of the House Labor, Commerce and Industry Committee.

Time effective

SECTION 6. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 54

(R71, H3762)

AN ACT TO AMEND SECTIONS 50-11-740, AS AMENDED, AND 50-11-745, RELATING TO THE CONFISCATION, FORFEITURE, SALE, AND RELEASE OF PROPERTY USED FOR THE UNLAWFUL HUNTING OF WILDLIFE, SO AS TO PROVIDE ADDITIONAL TYPES OF PROPERTY THAT ARE COVERED BY BOTH PROVISIONS, TO REVISE THE DEFINITION OF THE TERM "HUNTING" BY EXCLUDING REFERENCES TO THE CARCASS OF A COYOTE, ARMADILLO, OR FERAL HOG, TO MAKE A TECHNICAL CHANGE, TO DELETE THE PROVISION THAT RELATES TO THE HUNTING OF CERTAIN ANIMALS UNDER SECTION 50-11-710, TO DELETE THE PROVISION THAT REQUIRES THE DEPARTMENT OF NATURAL RESOURCES TO PAY THE NET PROCEEDS FROM THE SALE OF A CONFISCATED DEVICE TO THE STATE TREASURER FOR DEPOSIT INTO THE FISH AND WILDLIFE PROTECTION FUND, AND REQUIRE THAT THE NET PROCEEDS FROM A SALE MUST BE DEPOSITED IN A COUNTY'S GAME AND FISH FUND, AND TO REVISE THE PENALTIES THAT MAY BE IMPOSED FOR THE UNLAWFUL HUNTING OF WILDLIFE.

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

Confiscation, forfeiture, sale, and release of property used for unlawful hunting

SECTION 1. Section 50-11-740 of the 1976 Code, as last amended by Act 228 of 2012, is further amended to read:

"Section 50-11-740. (A) Every vehicle, boat, trailer, other means of conveyance, animal, firearm, or device used in the hunting of deer or bear at night is forfeited to the State and must be seized by any peace officer who shall forthwith deliver it to the department.

(B) 'Hunting' as used in this section in reference to a vehicle, boat, or other means of conveyance includes the transportation of a hunter to or from the place of hunting or the transportation of the carcass, or any

part of the carcass, of a deer or bear which has been unlawfully killed at night.

(C)(1) For purposes of this section, a conviction for unlawfully hunting deer or bear at night is conclusive as against any owner of the above mentioned property.

(2) In all other instances, forfeiture must be accomplished by the initiation by the State of an action in the circuit court in the county in which the property was seized giving notice to owners of record and lienholders of record or other persons having claimed an interest in the property subject to forfeiture and an opportunity to appear and show, if they can, why the property should not be forfeited and disposed of as provided for by this section. Failure of any person claiming an interest in the property to appear at the above proceeding after having been given notice of the proceeding constitutes a waiver of his claim and the property must be immediately forfeited to the State.

(3) Notice of the above proceedings must be accomplished by:

(a) personal service of the owner of record or lienholder of record by certified copy of the petition or notice of hearing; or

(b) in the case of property for which there is no owner or lienholder of record, publication of notice in a newspaper of local circulation in the county where the property was seized for at least two successive weeks before the hearing.

(D) The department shall sell any confiscated device at public auction for cash to the highest bidder in front of the county courthouse in the county where it is confiscated, after having given ten days' public notice of the sale by posting advertisement thereof on the door or bulletin board of the county courthouse or by publishing the advertisement at least once in a newspaper of general circulation in the county.

(E)(1) If an individual is apprehended for a first offense and the device is of greater value than two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the sum of two thousand five hundred dollars. When the device is of lesser value than two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the retail market value.

(2) If an individual is apprehended for a second offense and the device is of greater value than five thousand dollars, the owner may, at any time before sale, redeem it by paying to the department the sum of five thousand dollars. When the device is of lesser value than five thousand dollars, the owner may, at any time before sale, redeem it by paying to the department the retail market value.

(3) If an individual is apprehended for a third or subsequent offense, the device must be forfeited to the State.

(F) Upon sale or redemption of a confiscated device, the department shall pay over the net proceeds, after payment of any proper costs and expenses of the seizure, advertisement, and sale, including any proper expense incurred for the storage of the confiscated device, to the State Treasurer for deposit in the County Game and Fish Fund."

Confiscation, forfeiture, sale, and release of property used for unlawful hunting

SECTION 2. Section 50-11-745(A) of the 1976 Code is amended to read:

"(A) Notwithstanding another provision of law, the Department of Natural Resources may administratively release any vehicle, boat, trailer, other means of conveyance, animal, firearm, or device confiscated from a person charged with hunting of deer or bear at night to an innocent owner or lienholder of the property."

Savings clause

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 55

(R73, H4038)

AN ACT TO AMEND SECTION 40-22-280, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXEMPTIONS FROM THE APPLICATION OF THE CHAPTER CONCERNING ENGINEERS AND SURVEYORS, SO AS TO ADD AN EXEMPTION FOR THE WORK OR PRACTICE OF RENDERING CERTAIN ENGINEERING SERVICES TO A CORPORATION OPERATING UNDER A PRODUCTION CERTIFICATE ISSUED BY THE FEDERAL AVIATION AUTHORITY, AND TO DEFINE A RELATED TERM.

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

Regulation of engineers and surveyors, exemptions, definition

SECTION 1. Section 40-22-280(A) of the 1976 Code is amended by adding an appropriately numbered new item to read:

"( ) the work or practice of a person rendering engineering services to a corporation that operates in South Carolina under a production certificate issued by the Federal Aviation Authority, provided that the general business of the corporation does not consist, either wholly or in part, of the rendering of engineering services to the general public. For purposes of this section, 'engineering services' means design, construction, and maintenance of airplanes and airplane manufacturing equipment."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 56

(R90, H3033)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 132 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE SPECIAL LICENSE PLATES TO RECIPIENTS OF THE DISTINGUISHED FLYING CROSS; TO AMEND SECTIONS 56-3-1810, 56-3-1815, AND 56-3-1820, ALL RELATING TO SPECIAL LICENSE PLATES THAT MAY BE ISSUED TO MEMBERS OF THE NATIONAL GUARD, SO AS TO DEFINE THE TERMS "PRIVATE PASSENGER MOTOR VEHICLE" AND "MOTORCYCLES"; TO AMEND SECTION 56-3-10410, AS AMENDED, RELATING TO THE ISSUANCE OF "VETERAN" SPECIAL LICENSE PLATES, SO AS TO INCREASE THE NUMBER OF LICENSE PLATES THAT MAY BE ISSUED TO A VETERAN; BY ADDING ARTICLES 133, 134, AND 135 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE "MOTORCYCLE AWARENESS ALLIANCE", "S.C. RIVERKEEPERS", AND "SAVANNAH LEE MONROE AUTISM AWARENESS" SPECIAL LICENSE PLATES; BY ADDING SECTION 56-3-8110 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE MOTORCYCLE SPECIAL LICENSE PLATES FOR ANY MOTOR VEHICLE SPECIAL LICENSE PLATE ISSUED BY THE DEPARTMENT; TO AMEND SECTIONS 56-3-8000 AND 56-3-8100, BOTH AS AMENDED, RELATING TO DEPARTMENT OF MOTOR VEHICLE GUIDELINES FOR THE PRODUCTION AND DISTRIBUTION OF SPECIAL LICENSE PLATES, SO AS TO REVISE THESE GUIDELINES.

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

Distinguished Flying Cross special license plates

SECTION 1. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 132

Special License Plates for Recipients of the Distinguished Flying Cross

Section 56-3-13210. (A) The Department of Motor Vehicles may issue a special motor vehicle license plate to a recipient of the Distinguished Flying Cross. The biennial fee for the special license plate is the same as the fee provided for in Section 56-3-2020 plus the regular registration fee contained in Article 5, Chapter 3, and only one plate may be issued to a person. The application for a special plate must include proof that the applicant is a recipient of the Distinguished Flying Cross.

(B) The special license plates must be of the same size as regular motor vehicle license plates, upon which must be imprinted on the left side of the plates the distinctive Distinguished Flying Cross insignia with numbers and designs determined by the department. The license plate must be issued for a biennial period which shall expire twenty-four months from the month in which the special license plate is issued.

(C) A license plate issued pursuant to this article may be transferred to another vehicle of the same weight class owned by the same person upon application being made and approved by the department. It is unlawful for a person to whom the special plate has been issued to knowingly permit it to be displayed on any vehicle except the one authorized by the department.

(D) This special license plate is exempt from the provisions contained in Section 56-3-8100, except that the department may retain its cost for the license plate from the special license plate fee authorized in subsection (A). The department also may require, if necessary, that written authorization be provided to the department to use a logo, trademark, or design that is a copyrighted or registered emblem, seal, or other symbol to be used to appear on the license plate.

(E) The provisions of this article do not affect the registration and licensing of motor vehicles as required by other provisions of this chapter but are cumulative to them. A person who violates the provisions of this article or who:

(1) fraudulently gives false or fictitious information in an application for a special license plate authorized in this article;

(2) conceals a material fact; or

(3) otherwise commits a fraud in an application or in the use of a special license plate issued is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days."

Special license plates

SECTION 2. A. Section 56-3-1810 of the 1976 Code is amended to read:

"Section 56-3-1810. The number of plates that may be issued to members of the National Guard by the Department of Motor Vehicles shall equal the number of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in such person's name in this State; provided, however, that the total number of such plates issued to any one person shall not exceed three. The department shall issue such plates for a particular private passenger motor vehicle or motorcycle registered in that person's name and such plates only may be transferred to another vehicle upon compliance with the provisions of Section 56-3-1830."

B. Section 56-3-1815 of the 1976 Code is amended to read:

"Section 56-3-1815. The Department of Motor Vehicles may issue a special motor vehicle license plate to a retired member of the South Carolina National Guard and may issue a special motor vehicle license plate to a member of the South Carolina State Guard who is a resident of the State for a private passenger motor vehicle, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, owned or leased by a member or a retiree only after the current stock of South Carolina Guard, National Guard, and South Carolina National Guard Retired license plates is exhausted. An application for a special motor vehicle license plate must include a copy of the applicant's military identification card or other evidence that shows the applicant is either a retired or an active member of the South Carolina National Guard or the South Carolina State Guard."

C. Section 56-3-1820 of the 1976 Code is amended to read:

"Section 56-3-1820. The special license plates must be of the same size and general design of regular motor vehicle license plates upon which must be imprinted the figure of the Minute Man with numbers, or letters, or both, as determined by the Department of Motor Vehicles. The license plate must provide a space on the top of the plate to affix a decal indicating National Guard, Retired National Guard, Air National Guard, or State Guard. This license plate must be issued only after the current stock of South Carolina State Guard, National Guard, and South Carolina National Guard Retired license plates is exhausted. The biennial fee for the special license plate is the regular motor vehicle registration fee prescribed by Article 5 of this chapter. The plates must be issued for biennial periods."

Veteran special license plates

SECTION 3. Section 56-3-10410(A) of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"Section 56-3-10410. (A) The department may issue a 'Veteran' special motor vehicle license plate for use on a private passenger motor vehicle, as defined in Section 56-3-630, or motorcycle as defined in Section 56-3-20, registered in a person's name in this State who served in the United States Armed Forces, active or reserve components, and who was honorably discharged from service. An application for this special motor vehicle license plate must include official military documentation showing the applicant was honorably discharged from service. Only four plates may be issued to a person."

Motorcycle Awareness Alliance special license plates

SECTION 4. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 133

Motorcycle Awareness Alliance Special License Plates

Section 56-3-13310. (A) The Department of Motor Vehicles may issue 'Motorcycle Awareness Alliance' special motor vehicle license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names which may have imprinted on the plate the

Motorcycle Awareness Alliance emblem. The Motorcycle Awareness Alliance shall submit to the department for its approval the proposed design it desires to be used for this special license plate. The fee for this special license plate is the regular motor vehicle registration fee contained in Article 5, Chapter 3 of this title and a special motor vehicle license plate fee of thirty dollars. This special license plate must be of the same size and general design of regular motor vehicle license plates. The special license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued.

(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license plate fee must be distributed to the Motorcycle Awareness Alliance for the promotion of motorcycle safety, education and awareness programs and deposited into an appropriate nonprofit account designated by the Motorcycle Awareness Alliance.

(C) The guidelines for the production of a special license plate under this section must meet the requirements of Section 56-3-8100.

(D) If the department receives less than three hundred biennial applications and renewals for a particular special license plate authorized under this section, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted."

S.C. Riverkeepers special license plates

SECTION 5. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 134

S.C. Riverkeepers Special License Plates

Section 56-3-13410. (A) The Department of Motor Vehicles may issue S.C. Riverkeepers special license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names

which shall have a blue background and imprinted on them in white 'S.C. Riverkeepers', 'Keep Our Rivers Clean', a crescent moon, and a palmetto tree. The fee for this special license plate is thirty dollars every two years in addition to the regular motor vehicle registration fee set forth in Article 5, Chapter 3, Title 56. This special license plate must be of the same size and general design of regular motor vehicle license plates. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

(B) The additional fees collected pursuant to this section above the cost of production must be distributed equally to the Congaree Riverkeeper, Charleston Waterkeeper, Waccamaw Riverkeeper, Savannah Riverkeeper, Catawba Riverkeeper, and Santee Riverkeeper organizations.

(C) The guidelines for the production, collection, and distribution of fees for a special license plate under this section must meet the requirements of Section 56-3-8100."

Autism Awareness special license plates

SECTION 6. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 135

Autism Awareness Special License Plates

Section 56-3-13510. This article may be cited as the 'Savannah Lee Monroe Autism Awareness Special License Plates Act'.

Section 56-3-13520. (A) The Department of Motor Vehicles may issue 'Autism Awareness' special motor vehicle license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names. This special license plate must be of the same size and general design of regular motor vehicle license plates. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

(B) The requirements for production, collection, and distribution of fees for this license plate are those set forth in Section 56-3-8100. The fees collected pursuant to this section above the cost of producing the

license plates must be distributed to the South Carolina Autism Society."

Motorcycle special license plates

SECTION 7. Article 82, Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Section 56-3-8110. Motorcycle special license plates may be issued by the Department of Motor Vehicles for any special license plate under the same terms and conditions as prescribed by law for private passenger motor vehicles."

Guidelines for the issuance and distribution of special license plates

SECTION 8. A. Section 56-3-8000 of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"Section 56-3-8000. (A) An organization which has obtained certification pursuant to either Section 501(C)(3), 501(C)(6), 501(C)(7), or 501(C)(8) of the federal Internal Revenue Code and maintained this certification for a period of five years may apply to the Department of Motor Vehicles for a special license plate. The department may issue special motor vehicle license plates to owners of private passenger motor vehicles as defined in Section 56-3-630, and motorcycles, as defined in Section 56-3-20, registered in their names.

(B) The department must develop a basic license plate design that will be used for all special organizational license plates. The plate must be the same size and general design of regular motor vehicle license plates but may be imprinted on the plate in an area specified by the department with an emblem, seal, insignia, or other identifying symbol of the sponsoring organization that the department considers appropriate. No text or slogans may be added to the plate design unless they are part of the approved emblem, seal, insignia, or other identifying symbol. The name of the organization may be imprinted across the top of the license plate. The standard plate design must be issued for all organizational license plates newly requested after July 1, 2013. Organizational license plate designs in production as of that date must be changed when the license plate, or license plate class, is replaced.

(C) The license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

The biennial fee for this special license plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the license plate. The initial fee amount requested may be changed only every five years from the first year the license plate is issued. Of the additional fee collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate.

(D) If the organization seeking issuance of the plate does not request an additional fee above the regular registration fee, the department may collect an additional fee of ten dollars.

(E) Of the additional fee collected pursuant to subsections (A) and (D), the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates.

(F) Any of the remaining additional fee collected pursuant to subsection (D) not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate, or to the general fund, if no additional fee is requested by the organization.

(G) Before the department produces and distributes a plate pursuant to this section, it must receive:

(1) six thousand eight hundred dollars from the individual or organization seeking issuance of the license plate; and

(2) a plan to market the sale of the special license plate which must be approved by the department.

(H) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (G)(1) into a restricted account to be used by the department to defray the initial cost of producing the special license plate.

(I) If the department receives less than three hundred biennial applications and renewals for a particular plate authorized under this section, it shall not produce additional plates in that series. The department shall continue to issue license plates of that series until the existing inventory is exhausted.

(J) License plates issued pursuant to this section shall not contain a reference to a private or public college or university in this State or use

symbols, designs, or logos of these institutions without the institution's written authorization.

(K) Before a design is approved, the organization must submit to the department written authorization of legal authority for the use of any copyrighted or registered logo, trademark, or design, and the organization's acceptance of legal responsibility for the use.

(L) The department may alter, modify, or refuse to produce any special license plate that it deems offensive or fails to meet community standards. If the department alters, modifies, or refuses to produce a special license plate, the organization or individual applying for the license plate may appeal the department's decision to a special joint legislative committee. This committee shall be comprised of two members from the House Education and Public Works Committee and two members from the Senate Transportation Committee.

Appointments to the joint legislative committee shall be made by the Chairmen of the House Education and Public Works Committee and the Senate Transportation Committee. The department's decision may be reversed by a majority of the joint legislative committee. If the committee reverses the department's decision, the department must issue the license plate pursuant to the committee's decision. However, the provision contained in subsection (G) also must be met. The joint legislative committee may also review all license plates issued by the department and instruct the department to cease issuing or renewing a plate it deems offensive or fails to meet community standards.

(M) Each new classification of special vehicle license plates including, but not limited to, motorcycle license plates, created pursuant to this section must meet the requirements of Articles 81 and 82, Chapter 3, Title 56, as appropriate.

(N) The fee required in subsection (G)(1) must be reviewed by the General Assembly during the 2013 legislative session, and every two years thereafter. The department must provide a detailed, comprehensive justification to increase the fee. Any fee increase must be introduced in a separate bill separate and apart from any other matter."

B. Section 56-3-8100 of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"Section 56-3-8100. (A) Before the Department of Motor Vehicles produces and distributes a special license plate created by the General Assembly after January 1, 2006, it must receive:

(1) six thousand eight hundred dollars from the individual or organization seeking issuance of the license plate; and

(2) a plan to market the sale of the special license plate which must be approved by the department.

(B) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (A)(1) into a restricted account to be used by the department to defray the initial cost of producing the special license plate.

(C) The department must develop a basic plate design that will be used for all special license plates authorized by the General Assembly. The license plate must be the same size and general design of regular motor vehicle license plates but may be imprinted on the license plate in an area specified by the department with an emblem, seal, insignia, or other identifying symbol of the sponsoring organization that the department considers appropriate. No text or slogans may be added to the license plate design unless they are part of the approved emblem, seal, insignia, or other identifying symbol. The name of the organization may be imprinted across the top of the license plate. The standard license plate design must be issued for all organizational license plates newly requested after July 1, 2013. License plate designs in production as of that date must be changed when the license plate, or license plate class, is replaced.

(D) The fee for all special license plates created by the General Assembly after January 1, 2006, is the regular biennial registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the plate, as authorized by law. The initial fee amount requested can only be changed every five years from the first year the plate is issued. Each special license plate must be of the same size and general design of regular motor vehicle license plates. Each special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued.

(E) If the individual or organization seeking issuance of the plate does not request an additional fee above the regular registration fee, and no other additional fee is prescribed by law, the department may collect an additional fee of ten dollars.

(F) Of the additional fee collected pursuant to subsections (D) and (E), the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates.

(G) Any of the remaining additional fee collected pursuant to subsections (D) and (E) not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate, or to the general fund, if no additional fee is requested by the organization.

(H) If the department receives less than three hundred biennial applications and renewals for a particular special license plate, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(I) If the department receives less than three hundred biennial applications and renewals for plates created pursuant to Article 12, Chapter 3, Title 56; Article 14, Chapter 3, Title 56; Article 31, Chapter 3, Title 56; Article 39, Chapter 3, Title 56; Article 40, Chapter 3, Title 56; Article 43, Chapter 3, Title 56; Article 45, Chapter 3, Title 56; Article 49, Chapter 3, Title 56; Article 50, Chapter 3, Title 56; Article 60, Chapter 3, Title 56; Article 70, Chapter 3, Title 56; Article 72, Chapter 3, Title 56; and Article 76, Chapter 3, Title 56 it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(J) The provisions contained in subsection (A)(1) and (2) do not apply to the production and distribution of the Korean War Veterans Special License Plates contained in Article 68, Chapter 3, Title 56.

(K) For each new classification of special vehicle license plate, including, but not limited to, motorcycle license plates, created pursuant to this section, must meet the requirements of Articles 81 and 82, Chapter 3, Title 56, as appropriate.

(L) The fee required in subsection (A)(1) must be reviewed by the General Assembly during the 2013 legislative session, and every two years thereafter. The department must provide a detailed, comprehensive justification to increase the fee. Any fee increase must be introduced in a separate bill separate and apart from any other matter."

Time effective

SECTION 9. SECTION 1 takes effect three months after its approval by the Governor. SECTION 5 takes effect six months after its approval by the Governor. All other SECTIONS take effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 57

(R91, H3093)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 67 TO TITLE 12 SO AS TO ENACT THE "SOUTH CAROLINA ABANDONED BUILDINGS REVITALIZATION ACT" TO PROVIDE THAT A TAXPAYER MAKING INVESTMENTS OF A CERTAIN SIZE IN REHABILITATING AN ABANDONED BUILDING BASED ON THE POPULATION OF THE POLITICAL SUBDIVISION IN WHICH THE BUILDING IS LOCATED MAY AT THE TAXPAYER'S OPTION RECEIVE SPECIFIED INCOME TAX CREDITS OR CREDITS AGAINST THE PROPERTY TAX LIABILITY, TO PROVIDE THE PROCEDURES, CRITERIA, AND REQUIREMENTS NECESSARY TO OBTAIN THESE CREDITS, AND TO PROVIDE THAT THE PROVISIONS OF CHAPTER 67, TITLE 12 ARE REPEALED ON DECEMBER 31, 2019.

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

Abandoned Buildings Revitalization Act

SECTION 1. A. Title 12 of the 1976 Code is amended by adding:

"CHAPTER 67

South Carolina Abandoned Buildings
Revitalization Act

Section 12-67-100. This chapter may be cited as the 'South Carolina Abandoned Buildings Revitalization Act'.

Section 12-67-110. (A) The purpose of this chapter is to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned buildings located in South Carolina.

(B) The abandonment of buildings has resulted in the disruption of communities and increased the cost to local governments by requiring additional police and fire services due to excessive vacancies. Many abandoned buildings pose safety concerns. A public and corporate purpose is served by restoring these buildings to productive assets for the communities in which they are located and result in increased job opportunities.

(C) There exists in many communities of this State abandoned buildings. The stable economic and physical development of these communities is endangered by the presence of these abandoned buildings as manifested by their progressive and advanced deterioration. As a result of the existence of these abandoned buildings, there is an excessive and disproportionate expenditure of public funds, inadequate public and private investment, unmarketability of property, growth in delinquencies and crime in the areas, together with an abnormal exodus of families and businesses, so that the decline of these areas impairs the value of private investments, threatens the sound growth and the tax base of taxing districts in these areas, and threatens the health, safety, morals, and welfare of the public. To remove and alleviate these adverse conditions, it is necessary to encourage private investment and restore and enhance the tax base of the taxing districts in which such buildings are located by the redevelopment of abandoned buildings.

Section 12-67-120. For the purposes of this chapter, unless the context requires otherwise:

(1) 'Abandoned building' means a building or structure, which clearly may be delineated from other buildings or structures, at least sixty-six percent of the space in which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least five years immediately preceding the date on which the taxpayer files a 'Notice of Intent to Rehabilitate'. For purposes of this item, a building or structure that otherwise qualifies as an 'abandoned building' may be subdivided into separate units or parcels, which units or parcels may be owned by the same taxpayer or different taxpayers, and each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. For purposes of this item, an abandoned building is not a building or structure with an

immediate preceding use as a single-family residence. For purposes of this item, use of any portion of a building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is considered nonoperational for income producing purposes; provided, however, that the credit provided under Section 12-67-140(B) is further limited by disqualifying for credit purposes the portion of the building or structure that was operational and used as a storage or warehouse for income producing purposes. This limitation is calculated based on the actual percentage of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least five years immediately preceding the date on which the taxpayer files a 'Notice of Intent to Rehabilitate' divided by one hundred percent.

(2) 'Building site' means the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building's income producing use.

(3) 'Local taxing entities' means a county, municipality, school district, special purpose district, and other entity or district with the power to levy ad valorem property taxes against the building site.

(4) 'Local taxing entity ratio' means that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the building site.

(5) 'Placed in service' means the date upon which the building site is completed and ready for its intended use. If the building site is completed and ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use.

(6) 'Rehabilitation expenses' means the expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitations, the renovation or redevelopment of existing buildings, environmental remediation, site improvements, and the construction of new buildings and other improvements on the building site, but excluding the cost of acquiring the building site or the cost of personal property located at the building site. For expenses associated with a building site to qualify for the tax credit, the abandoned buildings on the building site must be either renovated or redeveloped. Rehabilitation expenses associated with a building site that increases the amount of square

footage on the building site in excess of two hundred percent of the amount of square footage of the buildings that existed on the building site as of the filing of the Notice of Intent to Rehabilitate shall not be considered a rehabilitation expense for purposes of calculating the amount of the credit. Notwithstanding any other provision of this section, demolition expenses shall not be considered a rehabilitation expense for purposes of calculating the amount of the credit if the building being demolished is on the National Register for Historic Places.

(7) 'Notice of Intent to Rehabilitate' means a letter submitted by the taxpayer to the department or the municipality or county as specified in this chapter, indicating the taxpayer's intent to rehabilitate the building site, the location of the building site, the amount of acreage involved in the building site, the amount of square footage of existing buildings involved in the building site, and the estimated expenses to be incurred in connection with rehabilitation of the building site. The notice also must set forth information as to which buildings the taxpayer intends to renovate and whether new construction is to be involved.

Section 12-67-130. (A) This chapter only applies to abandoned building sites or phases or portions thereof put into operation in which a taxpayer incurs the following rehabilitation expenses:

(1) more than two hundred fifty thousand dollars for buildings located in the unincorporated areas of a county or in a municipality in the county with a population based on the most recent official United States census of more than twenty-five thousand persons;

(2) more than one hundred fifty thousand dollars for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of at least one thousand persons, but not more than twenty-five thousand persons based on the most recent official United States census; and

(3) more than seventy-five thousand dollars for buildings located in a municipality with a population of less than one thousand persons based on the most recent official United States census.

(B) This chapter only applies to abandoned building sites or phases or portions thereof put into operation for income producing purposes and that meet the purpose of this chapter set forth in Section 12-67-110. The construction or operation of a charter school, private or parochial school, or other similar educational institution does meet the purpose of this chapter. The construction of a single-family

residence is not an income producing purpose and does not meet the purpose of this chapter.

Section 12-67-140. (A) Subject to the terms and conditions of this chapter, a taxpayer who rehabilitates an abandoned building is eligible for either:

(1) a credit against income taxes imposed pursuant to Chapter 6 and Chapter 11 of this title, corporate license fees pursuant to Chapter 20 of this title, or taxes on associations pursuant to Chapter 13 of this title, or a combination thereof; or

(2) a credit against real property taxes levied by local taxing entities.

(B) If the taxpayer elects to receive the credit pursuant to subsection (A)(1), the following provisions apply:

(1) The taxpayer shall file with the department a Notice of Intent to Rehabilitate before incurring its first rehabilitation expenses at the building site. Failure to provide the Notice of Intent to Rehabilitate results in qualification of only those rehabilitation expenses incurred after the notice is provided.

(2) The amount of the credit is equal to twenty-five percent of the actual rehabilitation expenses incurred at the building site if the actual rehabilitation expenses incurred in rehabilitating the building site are between eighty percent and one hundred twenty-five percent of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate. If the actual rehabilitation expenses exceed one hundred twenty-five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty-five percent of the estimated expenses as opposed to the actual expenses it incurred in rehabilitating the building site. If the actual rehabilitation expenses are below eighty percent of the estimated rehabilitation expenses, the credit is not allowed.

(3)(a) The entire credit is earned in the taxable year in which the applicable phase or portion of the building site is placed in service but must be taken in equal installments over a five-year period beginning with the tax year in which the applicable phase or portion of the building site is placed in service. Unused credit may be carried forward for the succeeding five years.

(b) The entire credit earned pursuant to this subsection may not exceed five hundred thousand dollars for any taxpayer in a tax year for each abandoned building site. The limitation provided in this subitem applies to each unit or parcel deemed to be an abandoned building site.

(4) If the taxpayer qualifies for both the credit allowed by this section and the credit allowed pursuant to the Textiles Communities Revitalization Act or the Retail Facilities Revitalization Act, the taxpayer only may claim one of the three credits. However, the taxpayer is not disqualified from claiming any other tax credit in conjunction with the credit allowed by this section.

(5) The credit allowed by this subsection is limited in use to fifty percent of either:

(a) the taxpayer's income tax liability for the taxable year if the taxpayer claims the credit allowed by this section as a credit against income tax imposed pursuant to Chapter 6 or Chapter 11 of this title, or taxes on associations pursuant to Chapter 13 of this title, or both; or

(b) the taxpayer's corporate license fees for the taxable year if the taxpayer claims the credit allowed by this section as a credit against license fees imposed pursuant to Chapter 20.

(6)(a) If the taxpayer leases the building site, or part of the building site, the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee of the site. If a taxpayer sells the building site, or any phase or portion of the building site, the taxpayer may transfer all or part of the remaining credit, associated with the rehabilitation expenses incurred with respect to that phase or portion of the site, to the purchaser of the applicable portion of the building site.

(b) To the extent that the taxpayer transfers the credit, the taxpayer shall notify the department of the transfer in the manner the department prescribes.

(7) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit may be passed through to the partners or members and may be allocated among any of its partners or members including, without limitation, an allocation of the entire credit to one partner or member, without regard to any provision of the Internal Revenue Code or regulations promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including, without limitation, the treatment of the allocation as a disguised sale.

(C) If the taxpayer elects to receive the credit pursuant to subsection (A)(2), the following provisions apply:

(1) The taxpayer shall file a Notice of Intent to Rehabilitate with the municipality, or the county if the building site is located in an unincorporated area, in which the building site is located before incurring its first rehabilitation expenses at the building site. Failure to

provide the Notice of Intent to Rehabilitate results in qualification of only those rehabilitation expenses incurred after notice is provided.

(2) Once the Notice of Intent to Rehabilitate has been provided to the county or municipality, the municipality or the county first shall determine, by resolution, the eligibility of the building site and the proposed rehabilitation expenses for the credit. A proposed rehabilitation of a building site must be approved by a positive majority vote of the local governing body. For purposes of this subsection, 'positive majority vote' is as defined in Section 6-1-300(5). If the county or municipality determines that the building site and the proposed rehabilitation expenses are eligible for the credit, there must be a public hearing and the municipality or county shall approve the building site for the credit by ordinance. Before approving a building site for the credit, the municipality or county shall make a finding that the credit does not violate a covenant, representation, or warranty in any of its tax increment financing transactions or an outstanding general obligation bond issued by the county or municipality.

(3)(a) The amount of the credit is equal to twenty-five percent of the actual rehabilitation expenses incurred at the building site times the local taxing entity ratio of each local taxing entity that has consented to the credit pursuant to item (4), if the actual rehabilitation expenses incurred in rehabilitating the building site are between eighty percent and one hundred twenty-five percent of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate. If the actual rehabilitation expenses exceed one hundred twenty-five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty-five percent of the estimated expenses as opposed to the actual expenses it incurred in rehabilitating the building site. If the actual rehabilitation expenses are below eighty percent of the estimated rehabilitation expenses, the credit is not allowed. The ordinance must provide for the credit to be taken as a credit against up to seventy-five percent of the real property taxes due on the building site each year for up to eight years.

(b) The local taxing entity ratio is set as of the time the Notice of Intent to Rehabilitate is filed and remains set for the entire period that the credit may be claimed by the taxpayer.

(4) Not fewer than forty-five days before holding the public hearing required by subsection (C)(2), the governing body of the municipality or county shall give notice to all affected local taxing entities in which the building site is located of its intention to grant a credit against real property taxes for the building site and the amount of

estimated credit proposed to be granted based on the estimated rehabilitation expenses. If a local taxing entity does not file an objection to the tax credit with the municipality or county on or before the date of the public hearing, the local taxing entity is considered to have consented to the tax credit.

(5) The credit against real property taxes for each applicable phase or portion of the building site may be claimed beginning with the property tax year in which the applicable phase or portion of the building site is first placed in service.

(D) A taxpayer is not eligible for the credit if the taxpayer owned the otherwise eligible building site when the site was operational and immediately prior to its abandonment.

Section 12-67-150. The provisions of Chapter 31, Title 6 also apply to this chapter, except that the requirements of Section 6-31-40 do not apply."

B. The provisions of Chapter 67, Title 12 contained in this act are repealed on December 31, 2019. Any carryforward credits shall continue to be allowed until the five or eight year time period in Section 12-67-140 is completed.

Time effective

SECTION 2. This act takes effect upon approval by the Governor, and applies to the rehabilitation, renovation, and redevelopment of abandoned buildings begun in tax years beginning after 2012.

Ratified the 11th day of June, 2013.

Approved the 11th day of June, 2013.

No. 58

(R98, H3464)

AN ACT TO AMEND SECTION 63-7-730, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPEDITED PLACEMENT OF A CHILD WITH RELATIVES AT THE PROBABLE CAUSE HEARING, SO AS TO ENCOURAGE

PLACEMENT OF A CHILD WITH A GRANDPARENT OR OTHER RELATIVE OF THE FIRST OR SECOND DEGREE UNDER CERTAIN CIRCUMSTANCES; TO SET FORTH CRITERIA FOR THE COURT TO CONSIDER WHEN DECIDING WHETHER TO PLACE A CHILD WITH A GRANDPARENT OR OTHER RELATIVE OF THE FIRST OR SECOND DEGREE AT THE PROBABLE CAUSE HEARING; TO REQUIRE THE COURT TO CONSIDER A PARENT FOR PLACEMENT OF A CHILD AT THE PROBABLE CAUSE HEARING BEFORE CONSIDERING OTHER RELATIVES OF THE FIRST OR SECOND DEGREE IN CERTAIN CIRCUMSTANCES; AND TO PROVIDE THAT IF THE COURT PLACES A CHILD WITH A GRANDPARENT OR OTHER RELATIVE OF THE FIRST OR SECOND DEGREE AT THE PROBABLE CAUSE HEARING, THE INDIVIDUAL MAY BE ADDED AS A PARTY TO THE ACTION FOR THE DURATION OF THE CASE OR UNTIL FURTHER ORDER OF THE COURT.

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

Child abuse, expedited placement of child with relatives at probable cause hearing

SECTION 1. Section 63-7-730 of the 1976 Code is amended to read:

"Section 63-7-730. (A) If the court finds at the probable cause hearing that the department made reasonable efforts to prevent removal of the child and that continuation of the child in the home would be contrary to the welfare of the child, the court may order expedited placement of the child with a grandparent or other relative of the first or second degree. In making this expedited placement decision, the court shall consider the totality of the circumstances including, but not limited to, the individual's suitability, fitness, and willingness to serve as a placement for the child. A parent who complies with these requirements must be the first relative considered by the court for expedited placement. The court shall require the department to check the names of all adults in the home against the Central Registry of Child Abuse and Neglect, other relevant records of the department, county sex abuse registers, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the person resides and, to the extent reasonably possible, jurisdictions in which the

person has resided during that period. The court may hold open the record of the probable cause hearing for up to twenty-four hours to receive these reports. Nothing in this section precludes the department from requesting or the court from ordering pursuant to the department's request either a full study of the individual's home before placement or the licensing or approval of the individual's home before placement.

(B) If the court orders expedited placement of the child with a grandparent or other relative of the first or second degree, the individual may be added as a party to the action for the duration of the case or until further order of the court."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 59

(R99, H3472)

AN ACT TO AMEND SECTION 59-40-210, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CONVERSION OF A PRIVATE SCHOOL TO A CHARTER SCHOOL AND THE REQUIREMENT THAT THE CONVERTED PRIVATE SCHOOL NOT BE ALLOWED TO OPEN AS A CHARTER SCHOOL FOR A PERIOD OF TWELVE MONTHS, SO AS TO PROVIDE THAT THE PROHIBITION AGAINST THE CONVERTED PRIVATE SCHOOL BEING ALLOWED TO OPEN AS A CHARTER SCHOOL FOR A PERIOD OF TWELVE MONTHS DOES NOT APPLY UNDER SPECIFIED CONDITIONS IF THE ENROLLMENT OF THE CONVERTED PRIVATE SCHOOL FOR THE MOST RECENTLY COMPLETED SCHOOL TERM BEFORE THE DATE OF THE PROPOSED CONVERSION REFLECTS THE RACIAL COMPOSITION OF THE LOCAL SCHOOL DISTRICT IN WHICH THE CONVERTED PRIVATE SCHOOL IS LOCATED; AND TO AMEND SECTION 59-40-100,

AS AMENDED, RELATING TO THE CONVERSION TO A CHARTER SCHOOL, SO AS TO PROVIDE FOR THE MANNER IN WHICH CERTAIN SPECIAL PUBLIC SCHOOLS NOT ASSOCIATED WITH A PUBLIC SCHOOL DISTRICT MAY APPLY TO BECOME A PUBLIC CHARTER SCHOOL, AND TO PROVIDE THAT IF THE SPECIAL PUBLIC SCHOOL BECOMES A PUBLIC CHARTER SCHOOL, IT SHALL NOT BE DEEMED TO BE A CONVERTED CHARTER SCHOOL.

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

Twelve month delay in opening not required

SECTION 1. Section 59-40-210 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

"Section 59-40-210. A school established as a private school, on the effective date of this section, which desires to convert to a charter school shall dissolve and must not be allowed to open as a charter school for a period of twelve months; provided, however, that if the enrollment of the converted private school for the most recently completed school term before the date of the proposed conversion to a charter school reflects the racial composition of the local school district in which the converted private school is located, the provisions of this section prohibiting the private school from opening as a charter school for a period of twelve months do not apply. However, the provisions of Section 59-40-70(D) continue to apply to a private school which was not required to close for a period of twelve months after its conversion to a charter school."

Special public school becoming a public charter school

SECTION 2. A. Section 59-40-100 of the 1976 Code, as last amended by Act 164 of 2012, is further amended by adding an appropriately numbered subsection to read:

"( ) A special public school that is funded directly by the State of South Carolina and, therefore, is not associated with a public school district may apply to become a public charter school if it serves as a professional development school for an institution of higher learning's teacher education program. If a special public school becomes a public

charter school pursuant to this subsection, the provisions of Section 59-127-75 do not apply.

Notwithstanding any other provision of law, if the qualifying special public school becomes a public charter school, it shall be deemed not to be a converted charter school."

B. This SECTION takes effect upon approval by the Governor and applies beginning with the 2013-2014 school year for any special public school that applies to become a public charter school by May 1, 2013.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 60

(R60, S635)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 48-23-300 SO AS TO PROVIDE THAT A MAJOR FACILITY PROJECT REQUESTING THIRD-PARTY CERTIFICATION SHALL NOT BE ALLOWED TO SEEK A RATING POINT THAT WOULD DISCRIMINATE AGAINST WOOD PRODUCTS OF THIS STATE DERIVED FROM FOREST LANDS CERTIFIED BY THE SUSTAINABLE FORESTRY INITIATIVE OR THE AMERICAN TREE FARM SYSTEM.

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

Disallowance of certain rating points

SECTION 1. Chapter 23, Title 48 of the 1976 Code is amended by adding:

"Section 48-23-300. A major facility project as defined in Section 48-52-810(10) requesting third-party certification shall not be allowed to seek a rating point that would discriminate against wood products of this State derived from forest lands certified by the Sustainable Forestry Initiative or the American Tree Farm System."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 61

(R74, S2)

AN ACT TO AMEND SECTION 7-11-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO METHODS OF NOMINATING CANDIDATES, SO AS TO PROHIBIT A PERSON WHO WAS DEFEATED AS A CANDIDATE IN A PARTY PRIMARY OR BY PARTY CONVENTION FROM HAVING HIS NAME PLACED ON THE BALLOT FOR THE ENSUING GENERAL OR SPECIAL ELECTION EXCEPT WHEN THE PARTY'S NOMINEE DIES, RESIGNS, IS DISQUALIFIED, OR OTHERWISE CEASES TO BECOME THE PARTY'S NOMINEE FOR THAT OFFICE; TO AMEND SECTION 7-11-15, AS AMENDED, RELATING TO QUALIFICATIONS TO RUN AS A CANDIDATE IN GENERAL ELECTIONS, SO AS TO PROVIDE STREAMLINED GUIDELINES AND PROCEDURES FOR THE FILING OF STATEMENTS OF INTENTION OF CANDIDACY AND PARTY PLEDGE AND ANY FILING FEES TO THE STATE ELECTION COMMISSION OR THE COUNTY BOARD OF REGISTRATION AND ELECTIONS, AS APPROPRIATE; TO AMEND SECTION 7-11-30, RELATING TO PARTY CONVENTION NOMINATION OF CANDIDATES, SO AS TO PROVIDE A PROCEDURE FOR THE NOMINATION OF CANDIDATES BY PARTY CONVENTION BY A

THREE-FOURTHS VOTE AT THE CONVENTION AND TO USE THE CONVENTION NOMINATION PROCESS WITH A MAJORITY VOTE IN THE PARTY'S NEXT PRIMARY ELECTION TO APPROVE THIS PROCESS; TO AMEND SECTION 7-11-210, AS AMENDED, RELATING TO NOTICE OF CANDIDACY AND PLEDGE, SO AS TO REFERENCE SECTION 7-11-15, DELETE PROVISIONS RELATING TO NOTICE, AND MAKE CONFORMING CHANGES TO THE PARTY PLEDGE; TO AMEND SECTION 7-13-40, AS AMENDED, RELATING TO THE TIME OF THE PARTY PRIMARY, CERTIFICATION OF NAMES, VERIFICATION OF CANDIDATES' QUALIFICATIONS, AND THE FILING FEE, SO AS TO PROVIDE CERTIFICATION OF CANDIDATES NOT LATER THAN NOON ON APRIL FIFTH OR NOON ON THE FOLLOWING MONDAY IF THE FIFTH FALLS ON THE WEEKEND; TO AMEND SECTION 7-13-45, AS AMENDED, RELATING TO FILING AS A CANDIDATE, SO AS TO REFERENCE THE REQUIREMENTS OF SECTION 7-11-15 AND MAKE CONFORMING CHANGES; TO AMEND SECTION 8-13-365, AS AMENDED, RELATING TO ELECTRONIC FILING FOR DISCLOSURES AND REPORTS, SO AS TO EXEMPT FORMS AND REPORTS REQUIRED PURSUANT TO ARTICLE 9, CHAPTER 13, TITLE 8 FROM THE STATE ETHICS COMMISSION'S DIRECTIVE TO ESTABLISH AN ELECTRONIC FILING SYSTEM AND TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 8-13-1140, RELATING TO FILING OF AN UPDATED STATEMENT OF ECONOMIC INTERESTS, SO AS TO REFERENCE SECTION 8-13-365 AND TO CHANGE THE FILING DEADLINE FROM APRIL FIFTEENTH TO NOON ON MARCH THIRTIETH; TO AMEND SECTION 8-13-1356, AS AMENDED, RELATING TO THE FILING OF STATEMENTS OF ECONOMIC INTERESTS BY CANDIDATES, SO AS TO PROVIDE THAT A CANDIDATE WHO FILES A STATEMENT OF INTENTION OF CANDIDACY SEEKING NOMINATION BY POLITICAL PARTY PRIMARY OR CONVENTION MUST ELECTRONICALLY FILE A STATEMENT OF ECONOMIC INTERESTS PRIOR TO THE CLOSE OF FILING FOR THAT PARTICULAR OFFICE, A CANDIDATE WHO FILES A PETITION FOR NOMINATION MUST FILE A STATEMENT OF ECONOMIC INTERESTS WITHIN FIFTEEN DAYS OF SUBMITTING THE PETITION, AND A PERSON WHO

BECOMES A WRITE-IN CANDIDATE MUST ELECTRONICALLY FILE A STATEMENT OF ELECTRONIC INTERESTS WITHIN TWENTY-FOUR HOURS OF FILING AN INITIAL CAMPAIGN FINANCE REPORT OR BEFORE TAKING THE OATH OF OFFICE, WHICHEVER OCCURS EARLIER; TO REPEAL SECTION 7-11-220 RELATING TO NOTICE OR PLEDGE BY CANDIDATES FOR THE STATE SENATE; AND TO REQUIRE THE STATE ELECTION COMMISSION TO NOTIFY EACH COUNTY ELECTION COMMISSION OF THE PROVISIONS OF THIS ACT, TO POST THE PROVISIONS OF THIS ACT ON ITS WEBSITE, AND TO REQUIRE EACH STATE PARTY EXECUTIVE COMMITTEE TO NOTIFY THE COUNTY EXECUTIVE PARTIES OF THE PROVISIONS OF THIS ACT.

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

Nomination of candidates, prohibition of defeated candidates appearing on the ballot, exceptions

SECTION 1. Section 7-11-10 of the 1976 Code is amended to read:

"Section 7-11-10. Nominations for candidates for the offices to be voted on in a general or special election may be by political party primary, by political party convention, or by petition; however, a person who was defeated as a candidate for nomination to an office in a party primary or party convention shall not have his name placed on the ballot for the ensuing general or special election, except that this section does not prevent a defeated candidate from later becoming his party's nominee for that office in that election if the candidate first selected as the party's nominee dies, resigns, is disqualified, or otherwise ceases to become the party's nominee for that office before the election is held."

Candidate qualifications, streamlined guidelines and procedures

SECTION 2. Section 7-11-15 of the 1976 Code, as last amended by Act 3 of 2003, is further amended to read:

"Section 7-11-15. (A) In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary or political party convention must file a statement of

intention of candidacy and party pledge and submit any filing fees between noon on March sixteenth and noon on March thirtieth as provided in this section.

(1) Except as otherwise provided in this section, candidates seeking nomination for a statewide, congressional, or district office that includes more than one county must file their statements of intention of candidacy, and party pledge and submit any filing fees with the State Election Commission.

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy and party pledge and submit any filing fees with the county election commission in the county of their residence. The state executive committees must certify candidates pursuant to Section 7-13-40.

(3) Candidates seeking nomination for a countywide or less than countywide office shall file their statements of intention of candidacy and party pledge and submit any filing fees with the county election commission in the county of their residence.

(B) Except as provided herein, the election commission with whom the documents in subsection (A) are filed must provide a copy of all statements of intention of candidacy, the party pledge, receipt and filing fees, to the appropriate political party executive committee within two days following the deadline for filing. If the second day falls on Saturday, Sunday, or a legal holiday, the statement of intention of candidacy, party pledge, and filing fee must be filed by noon the following day that is not a Saturday, Sunday, or legal holiday. No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot, or special election ballot, except as otherwise provided by law, if (1) the candidate's statement of intention of candidacy and party pledge has not been filed with the county election commission or State Election Commission, as the case may be, as well as any filing fee, by the deadline and (2) the candidate has not been certified by the appropriate political party as required by Sections 7-13-40 and 7-13-350, as applicable. The candidate's name must appear if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy. An error or omission by a person seeking to qualify as a candidate pursuant to this section that is not directly related to a constitutional or statutory qualification for that office must be construed in a manner that favors the person's access to the ballot.

(C) The statement of intention of candidacy required in this section and in Section 7-13-190(B) must be on a form designed and provided by the State Election Commission. This form, in addition to all other

information, must contain an affirmation that the candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. The candidate must file three signed copies and the election commission with whom it is filed must stamp each copy with the date and time received, keep one copy, return one copy to the candidate, and send one copy to the appropriate political party executive committee.

(D) The candidate must file three signed copies of the party pledge, as required pursuant to Section 7-11-210, and the election commission with whom it is filed must stamp each copy with the date and time received, return one copy to the candidate, and send one copy to the appropriate political party executive committee.

(E) The candidate must sign a receipt for the filing fee, and the election commission with whom it is filed must stamp the receipt with the date and time the filing fee was received, provide one copy to the candidate and provide one copy to the appropriate political executive party. The filing fee must be made payable to the appropriate political party.

(F) If, after the closing of the time for filing the documents required pursuant to this section, there are not more than two candidates for any one office and one or more of the candidates dies, or withdraws, the state or county committee, as the case may be, if the nomination is by political party primary or political party convention only may, in its discretion, afford opportunity for the entry of other candidates for the office involved; however, for the office of State House of Representatives or State Senator, the discretion must be exercised by the state committee.

(G) The county chairman of a political party and the chairman of the state executive committee of a political party may designate a person to observe the filings made at the election commission pursuant to this section.

(H) The provisions of this section do not apply to nonpartisan school trustee elections in any school district where local law provisions provide for other dates and procedures for filing statements of candidacy or petitions, and to the extent the provisions of this section and the local law provisions conflict, the local law provisions control."

Nomination of candidates, party convention election procedures

SECTION 3. Section 7-11-30 of the 1976 Code is amended to read:

"Section 7-11-30. (A) A party may choose to nominate candidates for all offices including, but not limited to, Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Circuit Solicitor, State Senator, and members of the State House of Representatives if:

(1) there is a three-fourths vote of the total membership of the convention to use the convention nomination process; and

(2) a majority of voters in that party's next primary election approve the use of the convention nomination process.

(B) A party may not choose to nominate by party convention for an election cycle in which the filing period for candidates has begun.

(C) A political party nominating candidates by party convention shall nominate the party candidates and make the nominations public not later than the time for certifying candidates to the authority charged by law with preparing ballots for the general or special election."

Notice of candidacy and pledge, conforming changes

SECTION 4. Section 7-11-210 of the 1976 Code, as last amended by Act 236 of 2000, is further amended to read:

"Section 7-11-210. Every candidate for selection as a nominee of any political party for any state office, United States Senator, member of Congress, or solicitor, to be voted for in any party primary election or political party convention, shall file with and place in the possession of the appropriate election commission, pursuant to Section 7-11-15 by twelve o'clock noon on March thirtieth a party pledge in the following form, the blanks being properly filled in and the party pledge signed by the candidate: 'I hereby file my notice as a candidate for the nomination as _____ in the primary election or convention to be held on _____. I affiliate with the _____ Party, and I hereby pledge myself to abide by the results of the primary or convention. I shall not authorize my name to be placed on the general election ballot by petition and will not offer or campaign as a write-in candidate for this office or any other office for which the party has a nominee. I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for the office has become deceased or otherwise disqualified for election in the ensuing general election. I hereby affirm that I meet, or will meet by

the time of the general or special election, or as otherwise required by law, the qualifications for this office'.

Every candidate for selection in a primary election as the nominee of any political party for member of the Senate, member of the House of Representatives, and all county and township offices shall file with and place in the possession of the county election commission of the county in which they reside by twelve o'clock noon on March thirtieth a like party pledge.

The party pledge required by this section to be filed by a candidate in a primary must be signed personally by the candidate, and the signature of the candidate must be signed in the presence of an individual authorized by the election commission director. Any party pledge of any candidate signed by an agent on behalf of a candidate shall not be valid.

In the event that a person who was defeated as a candidate for nomination to an office in a party's primary election shall thereafter offer or campaign as a candidate against any nominee for election to any office in the ensuing general election, the state chairman of the party which held the primary (if the office involved is one voted for in the general election by the electors of more than one county), or the county chairman of the party which held the primary (in the case of all other offices), shall forthwith institute an action in a court of competent jurisdiction for an order enjoining the person from so offering or campaigning in the general election, and the court is hereby empowered upon proof of these facts to issue an order."

Certification of candidates, certification date changed

SECTION 5. Section 7-13-40 of the 1976 Code, as last amended by Act 236 of 2000, is further amended to read:

"Section 7-13-40. In the event that a party nominates candidates by party primary, a party primary must be held by the party and conducted by the State Election Commission and the respective county election commissions on the second Tuesday in June of each general election year, and a second and third primary each two weeks successively thereafter, if necessary. Written certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary to the State Election Commission or the county election commission, whichever is responsible under law for preparing the ballot, not later than twelve o'clock noon on April fifth, or if April fifth falls on a Saturday or

Sunday, not later than twelve o'clock noon on the following Monday. Political parties nominating candidates by party primary must verify the qualifications of those candidates prior to certification to the appropriate election commission of the names of candidates to be placed on primary ballots. The written verification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office for which he has filed. A political party must not certify any candidate who does not or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which the candidate has filed, and such candidate's name shall not be placed on a primary ballot. The filing fees for all candidates filing to run in all primaries, except municipal primaries, must be transmitted by the respective political parties to the State Election Commission and placed by the executive director of the commission in a special account designated for use in conducting primary elections and must be used for that purpose. The filing fee for each office is one percent of the total salary for the term of that office or one hundred dollars, whichever amount is greater."

Candidate filing, conforming changes

SECTION 6. Section 7-13-45 of the 1976 Code, as last amended by Act 434 of 1996, is further amended to read:

"Section 7-13-45. (A) In every general election year, the Executive Director of the State Election Commission and the director of each county election commission shall:

(1) establish regular hours of not less than four hours a day during the final seventy-two hours of the filing period in which the director or some person he designates must be present to accept filings as required by Section 7-11-15;

(2) place an advertisement to appear two weeks before the filing period begins in a newspaper of general circulation in the county at least five by seven inches in size that notifies the public of the dates of the filing periods, the offices which may be filed for, the place and street address where filings may be made, and the hours that an authorized person will be present to receive filings."

Economic interests statements, electronic filing, appointee exceptions, technical cleanup

SECTION 7. Section 8-13-365 of the 1976 Code, as last amended by Act 190 of 2010, is further amended to read:

"Section 8-13-365. The commission shall establish a system of electronic filing for all disclosures and reports required pursuant to Chapter 13, Title 8 and Chapter 17, Title 2 except for forms and reports required pursuant to Article 9, Chapter 13, Title 8. These disclosures and reports must be filed using an Internet-based filing system as prescribed by the commission. The information contained in the reports and disclosure forms, with the exception of social security numbers, campaign bank account numbers, and tax ID numbers, must be publicly accessible, searchable, and transferable."

Economic interests statements, deadline for filing changed

SECTION 8. Section 8-13-1140 of the 1976 Code, as added by Act 248 of 1991, is amended to read:

"Section 8-13-1140. A person required to file a statement of economic interests under this chapter annually shall file, pursuant to Section 8-13-365, an updated statement for the previous calendar year, no later than noon on March thirtieth of each calendar year. If the person has filed the description by name, amount, and schedule of payments of a continuing arrangement relating to an item required to be reported under this article, an updating statement need not be filed for each payment under the continuing arrangement, but only if the arrangement is terminated or altered."

Economic interests statements, filing deadlines for particular candidates

SECTION 9. Section 8-13-1356 of the 1976 Code, as last amended by Act 330 of 1996, is further amended to read:

"Section 8-13-1356. (A) A person who becomes a candidate by filing a statement of intention of candidacy seeking nomination by political party primary or political party convention must electronically file a statement of economic interests for the preceding calendar year

pursuant to Section 8-13-365 prior to the close of filing for the particular office.

(B) A person who becomes a candidate by filing a petition for nomination must electronically file a statement of economic interests for the preceding calendar year pursuant to Section 8-13-365 within fifteen days of submitting the petition pursuant to Section 7-11-70 or 7-11-71.

(C) A person who becomes a write-in candidate must electronically file a statement of economic interests for the preceding calendar year within twenty-four hours of filing an initial campaign finance report pursuant to Section 8-13-1308(A) or before taking the oath of office, whichever occurs earlier.

(D) A candidate who is not a public official otherwise filing a statement has the same disclosure requirements as a public official with the exception of reporting gifts.

(E) The appropriate supervisory office shall assess a civil penalty pursuant to Section 8-13-1510 against a candidate who fails to timely file a statement of economic interests as required by this section."

Repeal

SECTION 10. Section 7-11-220 of the 1976 Code is repealed.

Notification of the act

SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

(1) The State Election Commission must notify each county election commission of the provisions of this act.

(2) The State Election Commission must post the provisions of this act on its website.

(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.

One subject

SECTION 12. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of election reform as stated in the title. The General Assembly further

finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

Severability Clause

SECTION 13. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 62

(R75, S8)

AN ACT TO AMEND SECTION 47-3-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LIABILITY OF AN OWNER OR KEEPER OF A DOG FOR A DOG ATTACK, SO AS TO PROVIDE THAT LIABILITY DOES NOT EXTEND TO A DOG WHO WAS PROVOKED OR HARASSED BY THE PERSON ATTACKED OR TO TRAINED LAW

ENFORCEMENT DOGS UNDER CERTAIN DELINEATED CIRCUMSTANCES; AND BY ADDING SECTION 23-23-140 SO AS TO DEFINE THE TERM "PATROL CANINE TEAMS" AND PROVIDE CERTIFICATION REQUIREMENTS FOR THE TEAMS.

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

Liability for attacks by dogs, provoked attacks, trained law enforcement dogs

SECTION 1. Section 47-3-110 of the 1976 Code is amended to read:

"Section 47-3-110. (A) If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, the dog owner or person having the dog in the person's care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, when the person bitten or otherwise attacked is on the property in the performance of a duty imposed upon the person by the laws of this State, the ordinances of a political subdivision of this State, the laws of the United States of America including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the property owner or a lawful tenant or resident of the property.

(B) This section does not apply if, at the time the person is bitten or otherwise attacked:

(1) the person who was attacked provoked or harassed the dog and that provocation was the proximate cause of the attack; or

(2) the dog was working in a law enforcement capacity with a governmental agency and in the performance of the dog's official duties provided that:

(a) the dog's attack is in direct and complete compliance with the lawful command of a duly certified canine officer;

(b) the dog is trained and certified according to the standards adopted by the South Carolina Law Enforcement Training Council;

(c) the governmental agency has adopted a written policy on the necessary and appropriate use of dogs in the dog's official law enforcement duties;

(d) the actions of the dog's handler or dog do not violate the agency's written policy;

(e) the actions of the dog's handler or dog do not constitute excessive force; and

(f) the attack or bite does not occur on a third party bystander."

Patrol canine teams, certification

SECTION 2. Chapter 23, Title 23 of the 1976 Code is amended by adding:

"Section 23-23-140. (A) For purposes of this section, 'patrol canine teams' refers to a certified officer and a specific patrol canine controlled by the handler working together in the performance of law enforcement or correctional duties. 'Patrol canine teams' does not refer to canines used exclusively for tracking or specific detection.

(B) The South Carolina Criminal Justice Academy shall verify that patrol canine teams have been certified by a nationally recognized police dog association or similar organization.

(C) No law enforcement agency may utilize patrol canine teams after July 1, 2014, unless the patrol canine teams have met all certification requirements."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 63

(R76, S127)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 38, TITLE 44 SO AS TO CREATE THE SOUTH CAROLINA BRAIN INJURY LEADERSHIP COUNCIL, TO PROVIDE FOR DUTIES OF THE COUNCIL, TO PROVIDE FOR QUALIFICATIONS AND MEMBERSHIP OF THE COUNCIL; AND TO REPEAL SECTION 44-20-225 RELATING TO CONSUMER ADVISORY BOARDS FOR INDIVIDUALS WITH CERTAIN INTELLECTUAL DISABILITIES AND BRAIN AND SPINAL CORD INJURIES.

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

South Carolina Brain Injury Leadership Council, creation, membership, and duties

SECTION 1. Chapter 38, Title 44 of the 1976 Code is amended by adding:

"Article 6

South Carolina Brain Injury Leadership Council

Section 44-38-610. There is created the South Carolina Brain Injury Leadership Council, within the Department of Disabilities and Special Needs, to provide statewide coordination in promoting support services to persons with brain injuries, their families, and caregivers, and to identify emerging issues and innovations, foster education and advocacy, and build consensus to support necessary policies and programs.

Section 44-38-620. The South Carolina Brain Injury Leadership Council shall:

(1) advise and make recommendations to the State on ways to improve services coordination regarding traumatic brain injury;

(2) encourage citizen participation through the establishment of public hearings and other types of community outreach programs;

(3) identify emerging issues and expand methods and resources to enhance statewide services;

(4) serve as a resource for education, research, and training and provide information and referral services;

(5) provide technical assistance for the development of support groups and other local initiatives to serve individuals, families, and caregivers;

(6) consult with federal, state, and local government agencies and with citizens' groups and other private entities to recommend public policy concerning brain injuries to state policymakers; and

(7) serve as the statewide advisory board for implementing the federal Traumatic Brain Injury Act and applying for federal traumatic brain injury funding.

Section 44-38-630. (A) The members of the South Carolina Brain Injury Leadership Council should have knowledge or expertise in the area of brain injury or related services. The council shall be comprised of representatives of the following agencies and organizations, shall be appointed by the director of the agency or organization and shall serve ex officio:

(1) South Carolina Department of Education;

(2) South Carolina Department of Health and Human Services;

(3) South Carolina Department of Mental Health;

(4) South Carolina Department of Social Services;

(5) South Carolina Department of Health and Environmental Control;

(6) South Carolina Vocational Rehabilitation Department;

(7) South Carolina Department of Disabilities and Special Needs;

(8) Head and Spinal Cord Injury Division within the South Carolina Department of Disabilities and Special Needs;

(9) Medical University of South Carolina;

(10) University Center for Excellence in Developmental Disabilities within the University of South Carolina School of Medicine;

(11) South Carolina Statewide Independent Living Council;

(12) South Carolina Developmental Disabilities Council;

(13) Protection and Advocacy for People with Disabilities, Inc.; and

(14) Brain Injury Association of South Carolina.

(B) Council members shall include persons who are survivors of traumatic brain injury, family members or legal guardians of these persons, health care professionals, representatives of service provider

entities, or other interested parties knowledgeable about brain injuries. Membership shall meet requirements of the State Advisory Board designated by the federal Traumatic Brain Injury Act.

(C) Officers of the council shall be as follows: chairperson, vice chairperson, and secretary. Council officers are to be elected at the final quarterly council meeting of the year, and shall serve a two year term starting the next calendar year.

(D) Council members shall be appointed with consideration given to statewide geographic and demographic representation. When an appointed vacancy on the council exists, nominations to fill the vacancy may be received from members of the council by the secretary.

(E) Members and officers of the council are not entitled to mileage, per diem, subsistence, or any other form of compensation.

Section 44-38-640. The South Carolina Brain Injury Leadership Council shall have the authority to apply for grants for the purposes of carrying out the responsibilities and duties of the council."

Repeal of section

SECTION 2. Section 44-20-225 is repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 64

(R77, S341)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "EMERSON ROSE ACT" BY ADDING SECTION 44-37-70 SO AS TO REQUIRE EACH BIRTHING FACILITY LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO PERFORM

A PULSE OXIMETRY SCREENING, OR ANOTHER APPROVED SCREENING TO DETECT CONGENITAL HEART DEFECTS, ON EVERY NEWBORN IN ITS CARE, WHEN THE BABY IS TWENTY-FOUR TO FORTY-EIGHT HOURS OF AGE, OR AS LATE AS POSSIBLE IF THE BABY IS DISCHARGED FROM THE HOSPITAL BEFORE REACHING TWENTY-FOUR HOURS OF AGE.

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

Citation

SECTION 1. This act may be cited as the "Emerson Rose Act".

Findings

SECTION 2. The General Assembly finds that:

(1) Congenital heart defects are structural abnormalities of the heart that are present at birth and range in severity from simple problems such as holes between chambers of the heart, to severe malformations, such as the complete absence of one or more chambers or valves. Some critical congenital heart defects can cause severe and life-threatening symptoms which require intervention within the first days of life.

(2) Congenital heart defects are the leading cause of infant death due to birth defects. According to the United States Secretary of Health and Human Services' Advisory Committee on Heritable Disorders in Newborns and Children, congenital heart disease affects approximately seven to nine of every thousand live births in the United States and Europe.

(3) Current methods for detecting congenital heart defects generally include prenatal ultrasound screening and repeated clinical examinations. While prenatal ultrasound screenings can detect some major congenital heart defects, these screenings, alone, identify less than half of all congenital heart defect cases, and critical congenital heart defect cases are often missed during routine clinical exams performed prior to a newborn's discharge from a birthing facility.

(4) Pulse oximetry is a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen. When performed on a newborn when the baby is twenty-four to forty-eight hours of age, or as late as possible if the baby is discharged from the hospital before reaching twenty-four hours of age, pulse

oximetry screening is often more effective at detecting critical, life-threatening congenital heart defects which otherwise go undetected by current screening methods.

(5) Newborns with abnormal pulse oximetry results require immediate confirmatory testing and intervention. Many newborn lives potentially could be saved by earlier detection and treatment of congenital heart defects if birthing facilities in the State were required to perform this simple, noninvasive newborn screening in conjunction with current congenital heart defect screening methods.

(6) The American Academy of Pediatrics, the American College of Cardiology Foundation, and the American Heart Association recommend pulse oximetry screening for newborns.

(7) The South Carolina Birth Outcomes Initiative, established by the Department of Health and Human Services to improve care and outcomes for mothers and newborns, has acknowledged the value of pulse oximetry screening of newborns and under this initiative all South Carolina birthing hospitals have committed to implementing this screening for newborns.

Required screening to detect congenital heart defects in newborns

SECTION 3. Chapter 37, Title 44 of the 1976 Code is amended by adding:

"Section 44-37-70. (A) The Department of Health and Environmental Control shall require each birthing facility licensed by the department to perform on every newborn in its care a pulse oximetry or other department-approved screening to detect critical congenital heart defects when the baby is twenty-four to forty-eight hours of age, or as late as possible if the baby is discharged from the hospital before reaching twenty-four hours of age. A department-approved screening must be based on standards set forth by the United States Secretary of Health and Human Services' Advisory Committee on Heritable Disorders in Newborns and Children, the American Heart Association, and the American Academy of Pediatrics. If a parent of a newborn objects, in writing, to the screening, for reasons pertaining to religious beliefs only, the newborn is exempt from the screening required by this subsection.

(B) The Department of Health and Human Services shall work with birthing facilities through its partnership with the Birth Outcomes Initiative to recommend policies for critical congenital heart defect

screening. The Department of Health and Human Services shall provide reimbursement for services provided pursuant to this section.

(C) For purposes of this section, 'birthing facility' means an inpatient or ambulatory health care facility licensed by the Department of Health and Environmental Control that provides birthing and newborn care services.

(D) The department with advice from the Birth Outcome Initiative Leadership Team under the Department of Health and Human Services shall promulgate regulations necessary to implement the provisions of this section. In promulgating the regulations, the department must consider the best practices in screening, current scientific guidelines and recommendations, and advances in medical technology."

Time effective

SECTION 4. This act takes effect ninety days after approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 65

(R78, S348)

AN ACT TO AMEND SECTION 6-9-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA BUILDING CODES COUNCIL PROMULGATING CERTAIN REGULATIONS, SO AS TO EXTEND A PROVISION REGARDING REGULATIONS AND RESIDENTIAL FIRE SPRINKLER SYSTEMS, AND TO PROVIDE THAT SECTION 501.3 OF THE 2012 INTERNATIONAL RESIDENTIAL CODE MUST NOT BE ENFORCED PRIOR TO JULY 1, 2015; AND BY ADDING SECTION 6-10-35 SO AS TO PROVIDE FOR REQUIREMENTS FOR FIREPLACES IN LIEU OF REQUIREMENTS OF THE 2009 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE.

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

Extension of a provision regarding regulations and residential fire sprinkler systems, retention of crawl space ceiling requirements

SECTION 1. Section 6-9-55 of the 1976 Code, as added by Act 232 of 2010, is amended to read:

"Section 6-9-55. (A) The council shall promulgate as regulations, in accordance with the procedure and requirements contained in Article 1, Chapter 23, Title 1, any provision of or amendment to any building code that would affect construction requirements for one-family or two-family dwellings. No building code provision that would otherwise become effective after the effective date of this section concerning construction requirements for one-family or two-family dwellings shall be enforced until the effective date of the regulations required to be promulgated by this section.

(B) Notwithstanding subsection (A), a regulation mandating the installation of an automatic residential fire sprinkler system in one-family or two-family dwellings shall not become effective at any time before July 1, 2015.

(C) Notwithstanding subsection (A), Section 501.3 of the 2012 International Residential Code must not be enforced at any time before July 1, 2015."

Wood-burning fireplace requirements

SECTION 2. Chapter 10, Title 6 of the 1976 Code is amended by adding:

"Section 6-10-35. Notwithstanding Section 402.4.3 of the 2009 Edition of the International Energy Conservation Code, new wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 66

(R79, S460)

AN ACT TO AMEND SECTION 38-45-90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DUTIES OF BROKERS PLACING BUSINESS WITH NONADMITTED INSURERS, SO AS TO REVISE THE PROOF THAT THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY REQUIRE FROM A BROKER SEEKING TO PLACE BUSINESS WITH A NONADMITTED INSURER, TO PROVIDE A NECESSARY DEFINITION, AND TO IMPOSE CERTAIN DUE DILIGENCE REQUIREMENTS ON THE BROKER.

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

Duties of surplus lines brokers

SECTION 1. Section 38-45-90 of the 1976 Code, as last amended by Act 283 of 2012, is further amended to read:

"Section 38-45-90. (A) At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in his domiciliary state, that meets at least the minimum capital and surplus requirements of this State, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any time to maintain the insurer's status as an eligible surplus lines insurer. For the purposes of this section, 'domiciliary state' means the state or jurisdiction in which an insurer is incorporated or organized. The director or his designee

may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains his status as an eligible surplus lines insurer, a duly licensed broker, under the terms of this chapter, may place business with the insurer. An insurance broker shall exercise due care in the placing of insurance, except as provided in subsection (B). Each broker transacting business in the State during a calendar year shall file annually with the department within thirty days after December thirty-first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker's books, papers, and accounts must be open at all times to the inspection of the director or his designee.

(B) A surplus lines broker is not required to search with due diligence to determine whether the full amount or type of insurance can be obtained from an admitted insurer when the broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided the:

(1) broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market and that insurance obtained from the admitted market may provide greater protection with more regulatory oversight; and

(2) exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 67

(R80, S463)

AN ACT TO AMEND SECTION 38-53-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPLICANTS FOR LICENSURE AS PROFESSIONAL BONDSMEN AND

RUNNERS, SO AS TO REQUIRE CERTAIN STATE AND NATIONAL CRIMINAL BACKGROUND CHECKS, TO PROVIDE THE DEPARTMENT OF INSURANCE MUST REPORT THE RESULTS, AND TO PROVIDE THE APPLICANT MUST BEAR THE ASSOCIATED COSTS.

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

Criminal background checks for professional bondsmen and runners

SECTION 1. Section 38-53-90 of the 1976 Code is amended to read:

"Section 38-53-90. (A) Before a license is issued to an applicant permitting him to act as a professional bondsman or runner, the applicant shall furnish to the director or his designee a complete set of his fingerprints and a recent passport size full-face photograph in the manner prescribed by the director. Before a license is issued to a new or renewal applicant permitting him to act as a professional surety bondsman or runner, the applicant must undergo a state criminal records check, supported by his fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by his fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal records checks must be reported by the department. The cost associated with the criminal history record must be borne by the applicant. The applicant's fingerprints must be certified by an authorized law enforcement officer.

(B) Before being issued the license, every applicant for a license as a professional bondsman, surety bondsman, or runner shall certify to the director that he:

(1) is eighteen years of age or older;

(2) is a resident of this State;

(3) is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years;

(4) has knowledge, training, or experience of sufficient duration and extent to satisfy reasonably the director or his designee that he possesses the competence necessary to fulfill the responsibilities of a licensee."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 68

(R81, S481)

AN ACT TO AMEND SECTION 12-21-2425, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ADMISSIONS LICENSE TAX EXEMPTION FOR A MOTORSPORTS ENTERTAINMENT COMPLEX, SO AS TO REQUIRE THE COMPLEX TO BE A NASCAR-SANCTIONED MOTOR SPEEDWAY THAT HOSTED AT LEAST ONE NASCAR SPRINT CUP SERIES RACE IN 2012, AND CONTINUES TO HOST AT LEAST ONE NASCAR SPRINT CUP SERIES RACE, OR ANY SUCCESSOR RACE FEATURING THE SAME NASCAR CUP SERIES.

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

Admissions license tax exemption for motorsports entertainment complex

SECTION 1. Section 12-21-2425(B)(1) of the 1976 Code, as added by Act 313 of 2008, is amended to read:

"(1) is a NASCAR-sanctioned motor speedway or racetrack that hosted at least one NASCAR Sprint Cup Series race in 2012, and continues to host at least one NASCAR Sprint Cup Series race, or any successor race featuring the same NASCAR Cup series;"

Time effective

SECTION 2. This act takes effect for tax years beginning after 2012.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 69

(R82, S484)

AN ACT TO AMEND SECTION 9-11-80, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DISABILITY RETIREMENT FOR MEMBERS OF THE POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO DELETE THE REQUIREMENT THAT CERTAIN MEMBERS BE ELIGIBLE FOR, AND PROVIDE PROOF OF, SOCIAL SECURITY DISABILITY BENEFITS TO CONTINUE TO RECEIVE A DISABILITY RETIREMENT BENEFIT, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 9-11-10, AS AMENDED, RELATING TO DEFINITIONS THAT APPLY TO THE POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO DEFINE "MEDICAL BOARD"; TO AMEND SECTION 9-11-30, AS AMENDED, RELATING TO THE ADMINISTRATION OF THE POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO REQUIRE THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY TO DESIGNATE A MEDICAL BOARD, TO ESTABLISH ITS MEMBERSHIP, AND TO PROVIDE ITS DUTIES; AND TO AMEND ACT 153 OF 2005, RELATING TO THE RETIREMENT SYSTEMS, SO AS TO MAKE CONFORMING CHANGES RELATING TO REFERENCES TO THE MEDICAL BOARD.

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

Requirement for disability retirement allowance

SECTION 1. Section 9-11-80 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

"Section 9-11-80. (1) On the application of a member in service or the member's employer, a member who has the years of earned service

required for the member's class pursuant to Section 9-11-60(1) or any contributing member who is disabled as a result of an injury arising out of and in the course of the performance of the member's duties regardless of length of membership, may be retired by the retirement board not less than thirty days and not more than nine months next following the date of filing the application on a disability retirement allowance if the system, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. For purposes of this section, a member is considered to be in service on the date the application is filed if the member is not retired and the last day the member was employed by a covered employer in the system occurred not more than ninety days before the date of filing.

The South Carolina Retirement System may contract with the Department of Vocational Rehabilitation to evaluate the medical evidence submitted with the disability application relative to the job being performed and make recommendations to the system. The system may approve a disability retirement subject to the member participating in vocational rehabilitation with the Department of Vocational Rehabilitation. Upon determination by the department that a member retired on disability is able to reenter the job market and work is available, the retirement system may adjust the benefit paid by the system in accordance with Sections 9-1-1580, 9-1-1590, 9-9-60, and 9-11-90.

(2)(A) Upon disability retirement based upon an application received by the system before January 1, 2014, the member shall receive a disability retirement allowance which shall be equal to a service retirement allowance computed on the basis of his average final compensation, his years of credited service and his accumulated additional contributions at the date of his disability retirement; provided, however, that, at disability retirement, his disability retirement allowance shall be determined on the basis of the number of years of credited service the member would have completed had he remained in service until attaining age fifty-five and on the basis of the average final compensation. For the purpose of calculating the disability retirement allowance, the additional credited service so determined must be either Class One service, Class Two service, or Class Three service depending upon the classification of the member at the time of retirement.

(B) Upon disability retirement based upon an application received by the system after December 31, 2013, the member shall

receive a disability retirement allowance which is equal to a service retirement allowance computed on the basis of the member's average final compensation, the member's years of credited service, and the member's accumulated additional contributions at the date of the member's disability retirement. However, at disability retirement, the member's disability retirement allowance must be determined on the basis of the member's average final compensation at retirement and on the basis of the number of years of credited service the member would have completed had the member remained in service until attaining age fifty-five or until attaining twenty-five years of credited service, whichever is less. For the purpose of calculating the disability retirement allowance, the additional credited service so determined must be either Class One service, Class Two service, or Class Three service depending upon the classification of the member at the time of retirement.

(3) Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board may require any disability beneficiary who has not yet attained the age of fifty-five years to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by the system. If a disability beneficiary who has not yet attained the age of fifty-five years refuses to submit to any such medical examination, the member's retirement allowance may be discontinued until the member's withdrawal of such refusal, and if the refusal continues for one year, all the member's rights in and to the member's retirement allowance may be revoked, but upon revocation any unexpended portion of the member's accumulated contributions to date of retirement shall be returned to the member.

(4) If the system certifies that the member's disability has been removed and that the member has regained earning capacity, the member's disability retirement allowance may be discontinued, or if the disability has been partly removed and the member's earning capacity regained in part, the disability retirement allowance may be reduced proportionately as provided pursuant to Section 9-1-1580. The determination of the board as to any disputed question, after due consideration accorded to the member, is conclusive. If the retirement allowance of any member retired for disability is discontinued or reduced, and if the member again suffers disability within five years of the date of the member's recovery and again loses earning capacity, the member is entitled to apply to the board for a restoration of the original retirement allowance, and the board may restore all or part of the

member's original retirement allowance. At the expiration of the five-year period, if the retirement allowance has not been restored, all rights in and to the member's disability retirement allowance are revoked. The member then is entitled to a deferred early retirement allowance as provided in Section 9-11-70 based upon the member's average final compensation and credited service at the member's date of disability retirement.

(5) After age fifty-five, a disability retiree is subject to the same earnings limitation as a service retiree.

(6) Notwithstanding any other provision of this section, upon retirement for disability after October 15, 1992, at any age, a member must receive a disability retirement allowance equal to at least fifteen percent of his average final compensation."

Definition and composition of medical board

SECTION 2. A. Section 9-11-10(18) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

"(18) 'Medical board' means the board provided for in Section 9-11-30(2)."

B. Section 9-11-30(2) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

"(2) The board shall designate a medical board composed of three physicians who are not members of the system. If required, other physicians who are not members of the system may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all matters referred to it."

References to medical board

SECTION 3. Part III, SECTION 6 of Act 153 of 2005, is amended to read:

"SECTION 6. Excluding Chapter 11 in Title 9 of the 1976 Code, wherever the phrase 'medical board' or any variant of 'medical board'

appears, it must be construed to mean the 'system' unless the context clearly requires otherwise. The Code Commissioner shall replace the reference in future code supplements and replacement volumes as the Code Commissioner determines appropriate."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 70

(R83, S551)

AN ACT TO AMEND SECTION 50-11-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OPEN HUNTING SEASON FOR ANTLERED DEER, SO AS TO PROVIDE THAT THE OPEN SEASON IN GAME ZONE 1 WITH ARCHERY EQUIPMENT AND FIREARMS IS OCTOBER 11 THROUGH JANUARY 1, AND TO PROVIDE THAT ON WILDLIFE MANAGEMENT AREA LANDS, THE DEPARTMENT OF NATURAL RESOURCES MAY PROMULGATE REGULATIONS IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT TO ESTABLISH SEASONS FOR THE HUNTING AND TAKING OF DEER.

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

Open season for hunting and taking antlered deer

SECTION 1. Section 50-11-310(A)(1) of the 1976 Code, as last amended by Act 286 of 2010, is further amended to read:

"(A) The open season for the hunting and taking of antlered deer is:

(1) In Game Zone 1: October 1 through October 10, with primitive weapons only; October 11 through January 1, with archery equipment and firearms."

Promulgation of regulations

SECTION 2. Section 50-11-310(C) of the 1976 Code, as last amended by Act 286 of 2008, is further amended to read:

"(C) On Wildlife Management Area lands, the department may promulgate regulations in accordance with the Administrative Procedures Act to establish the seasons for the hunting and taking of deer, methods for the hunting and taking of deer, and other restrictions for the hunting and taking of deer."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 71

(R84, S562)

AN ACT TO AMEND SECTION 27-27-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RECOVERY OF THE VALUE OF IMPROVEMENTS MADE IN GOOD FAITH IN AN ACTION TO RECOVER LANDS AND TENEMENTS, SO AS TO PROVIDE THAT THE DEFENDANT SHALL BE ENTITLED TO RECOVER THE FULL VALUE OF ALL IMPROVEMENTS IF THE DEFENDANT PURCHASED OR ACQUIRED TITLE TO THE LANDS AND TENEMENTS.

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

Recovery of certain improvements on acquired lands and tenements

SECTION 1. Section 27-27-10 of the 1976 Code is amended to read:

"Section 27-27-10. After final judgment in favor of the plaintiff in an action to recover lands and tenements, if the defendant has purchased or acquired the lands and tenements recovered in such action or taken a lease thereof or those under whom he holds have purchased or acquired a title to such lands and tenements or taken a lease thereof, supposing at the time of such purchase or acquisition such title to be good in fee or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant or those under whom he claims, in the manner provided in this chapter."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 72

(R86, S590)

AN ACT TO AMEND SECTION 50-5-1705, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CATCH LIMITS FOR CERTAIN FISH, SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO TAKE OR POSSESS MORE THAN ONE TARPON IN ANY ONE DAY OR A TARPON OF LESS THAN SEVENTY-SEVEN INCHES IN FORK LENGTH; AND TO AMEND SECTION 50-5-15, AS AMENDED, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS, SO AS TO DEFINE THE TERM "FORK LENGTH".

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

Taking and possessing of tarpon

SECTION 1. Section 50-5-1705(E) of the 1976 Code, as last amended by Act 7 of 2013, is further amended to read:

"(E) It is unlawful for a person to take or possess more than one tarpon in any one day or a tarpon of less than seventy-seven inches in fork length."

Definition

SECTION 2. Section 50-5-15 of the 1976 Code, as last amended by Act 7 of 2013, is further amended by adding the following appropriately numbered item:

"( ) 'Fork length' means the length of a fish laid flat and measured from the tip of the closed mouth (snout) to the center of the fork of the tail. It is a straight line measure, not over the curvature of the body."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 73

(R87, S610)

AN ACT TO AMEND SECTION 11-41-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT, SO AS TO CLARIFY THAT THE DEFINITION OF "ECONOMIC DEVELOPMENT PROJECT", INCLUDING A NATIONAL AND INTERNATIONAL CONVENTION AND TRADE SHOW CENTER OWNED BY A PUBLIC ENTITY INCLUDES AN ADJACENT FACILITY ALLOWING SPECIFIC EVENTS

THEREBY MAKING ADDITIONAL TIME AND SPACE AVAILABLE FOR THE MAJOR CONVENTIONS, TRADE SHOWS, AND SPECIAL EVENTS CONTEMPLATED BY THE ACT AND REQUIRE JOINT BOND REVIEW COMMITTEE REVIEW AND COMMENT ON SUCH AN ADJACENT FACILITY; AND TO AMEND SECTION 11-41-70, RELATING TO PURPOSES OF THE ISSUE OF BONDS PURSUANT TO THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT AND SPECIFIC REQUIREMENTS APPLICABLE TO A PUBLIC ENTITY RECEIVING BOND PROCEEDS, SO AS TO EXTEND FROM TEN TO FIFTEEN YEARS THE PERIOD IN WHICH A NATIONAL AND INTERNATIONAL CONVENTION AND TRADE SHOW CENTER MUST BE COMPLETED.

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

Definition of "project" expanded

SECTION 1. Section 11-41-30(2)(e) of the 1976 Code is amended to read:

"(e) 'Economic development project' or 'project' also includes a national and international convention and trade show center in this State, owned by the State or any agency, instrumentality, or political subdivision thereof. A 'national and international convention and trade show center' means a not less than two hundred thousand square foot facility consisting of meeting and exhibit space at which are held major conventions, trade shows, and special events that bring delegates into the State and community including, but not limited to, consumer shows, sporting events, and other meetings. Included in the space requirement is an adjacent facility allowing specific events thereby making additional time and space available for the major conventions, trade shows, and special events contemplated by this definition. However, if any adjacent facility is contemplated or initiated under the terms and conditions of this subitem, these plans must be submitted to the Joint Bond Review Committee for review and comment. A national and international convention and trade show center is not subject to the job creation and capital investment requirements imposed on projects as defined in subsections (a) and (b) above."

Project completion time extended

SECTION 2. Section 11-41-70(2)(d) of the 1976 Code is amended to read:

"(d) in the case of a national and international convention and trade show center, partial payment of costs for infrastructure associated with a meeting and exhibit space as defined in Section 11-41-30(2)(e), owned by the State or any agency, instrumentality, or political subdivision thereof for which project there has been executed an agreement between the State and the state agency, instrumentality, or political subdivision owning such meeting and exhibit space providing that, upon either the sale of the meeting and exhibit space partially financed with proceeds of bonds issued pursuant to this chapter or the failure of the state agency, instrumentality, or political subdivision to (1) purchase land within eighteen months of the effective date of this item (d), (2) begin construction within five years of the effective date of this item (d) of a meeting and exhibit space as defined in Section 11-41-30(2)(e), or (3) complete the project within fifteen years of the effective date of this item (d), then the state agency, instrumentality, or political subdivision owning such meeting and exhibit space will reimburse the amount of bond proceeds to the general fund of the State, plus interest thereon from the date of expenditure to the date of such reimbursement at a rate equal to the total interest cost rate on the issuance of bonds used to make such expenditure. The state agency, instrumentality, or political subdivision must notify the State Treasurer immediately upon the sale of any land acquired with proceeds of bonds issued pursuant to this chapter. The state agency, instrumentality, or political subdivision also must provide sufficient proof to the State Treasurer that the deadlines to purchase land, begin construction, and complete the project imposed pursuant to this item have been met. If the state agency, instrumentality, or political subdivision sells the land or fails to meet any of these deadlines, then the State Treasurer shall take the appropriate action necessary to recover all bond proceeds and interest disbursed to the state agency, instrumentality, or political subdivision to finance the project;"

Time effective

SECTION 3. This act takes effect upon approval by the Governor and the definition clarified and time limit extension included in Sections

11-41-30 and 11-41-70 of the 1976 Code, as amended by this act, apply with respect from the original effective date of Act 114 of 2005.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 74

(R92, H3099)

AN ACT TO AMEND SECTION 63-17-2310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ENTITIES REQUIRED TO PROVIDE INFORMATION TO THE DEPARTMENT OF SOCIAL SERVICES FOR THE PURPOSE OF ESTABLISHING, MODIFYING, AND ENFORCING CHILD SUPPORT OBLIGATIONS, SO AS TO ALSO REQUIRE THESE ENTITIES TO PROVIDE THIS INFORMATION TO CLERKS OF COURT FOR THE SAME PURPOSE IN CASES NOT BEING ADMINISTERED PURSUANT TO TITLE IV-D OF THE SOCIAL SECURITY ACT BY THE DEPARTMENT OF SOCIAL SERVICES; AND TO MAKE TECHNICAL CORRECTIONS.

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

Paternity and child support, clerk of court authority to attempt to locate and right to obtain information from organizations

SECTION 1. Section 63-17-2310 of the 1976 Code is amended to read:

"Section 63-17-2310. (A) The Department of Social Services shall attempt to locate individuals for the purposes of establishing paternity and establishing, modifying, and enforcing child support obligations. In all cases not being administered pursuant to Title IV-D of the Social Security Act by the department, the clerk of court may attempt to locate individuals for the purpose of enforcing child support obligations. Notwithstanding any other provision of law making this information confidential, these entities in this State promptly shall provide to the department, its designee or a federally approved child

support agency of another state, or to the clerk of court, information upon request of the department or another agency for the purpose of establishing paternity or establishing, modifying, or enforcing a support obligation or the clerk of court for the purpose of enforcing child support obligations:

(1) All entities in the State including, but not limited to, for-profit, nonprofit and governmental employers, and labor organizations shall provide the full name, social security number or the alien identification number assigned to a resident alien who does not have a social security number, date of birth, home address, wages or salary, existing or available medical, hospital, and dental insurance coverage, and number of dependents listed for tax purposes on all employees, contractors, and members of labor organizations.

(2) All utility companies, including wire and nonwire telecommunication companies, cable television companies, and financial institutions, shall provide the full name, social security number or the alien identification number assigned to a resident alien who does not have a social security number, date of birth, home address, telephone number, account numbers, and other identifying data, including information on assets and liabilities, on all persons who maintain an account with that entity. For purposes of this item, a financial institution is defined as a federal, state, commercial, or savings bank, savings and loan association, cooperative bank, federal or state chartered credit union, benefit association, insurance company, safe deposit company, money market mutual fund, or investment company doing business in this State.

(3) The appropriate state or local agency of this State shall provide access to information contained in these records:

(a) vital statistics;

(b) state and local tax and revenue records;

(c) records concerning real and titled property;

(d) records of occupational and professional licenses;

(e) records concerning the ownership and control of corporations, partnerships, and other business entities;

(f) employment security records;

(g) records of motor vehicle departments; and

(h) corrections records.

A state or local agency, board, or commission that provides information pursuant to this subsection to the department, or to the clerk of court in non-Title IV-D cases, may not charge the department or the clerk of court a fee for providing the information; however, a

commission that receives federal grants, the uses of which are restricted, may charge a fee for providing the information.

(B) An entity that provides information pursuant to this section in good faith reliance upon certification by the department, or to the clerk of court in non-Title IV-D cases, that the information is needed to establish paternity or to establish, modify, or enforce a support obligation is not liable for damages resulting from the disclosure.

(C) An entity that fails to provide the requested information within thirty days of the request may be subject to a civil penalty of one hundred dollars for each occurrence. Fines imposed pursuant to this subsection must be enforced as provided for in Section 63-3-530(A)(43) and distributed according to Section 63-17-520."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 75

(R93, H3184)

AN ACT TO AMEND SECTION 22-5-910, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO PROVIDE THAT A PERSON MAY BE ELIGIBLE FOR EXPUNGEMENT OF A FIRST OFFENSE CRIME WHICH CARRIES A FINE OF ONE THOUSAND DOLLARS RATHER THAN FIVE HUNDRED DOLLARS; TO AMEND SECTION 17-1-40, AS AMENDED, RELATING TO THE DESTRUCTION OF CRIMINAL RECORDS WHEN CHARGES ARE DISMISSED, SO AS TO PROVIDE FOR DESTRUCTION OF CRIMINAL RECORDS WHEN A COURTESY SUMMONS WAS ISSUED UNDER CERTAIN CIRCUMSTANCES AND TO REQUIRE REMOVAL OF ANY INTERNET-BASED PUBLIC RECORD OF A CHARGE THAT IS DISMISSED OR

DISCHARGED NO LATER THAN THIRTY DAYS FROM THE DISPOSITION DATE.

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

Expungement of criminal records, persons fined up to one thousand dollars for a first offense eligible

SECTION 1. Section 22-5-910 of the 1976 Code, as last amended by Act 36 of 2009, is further amended to read:

"Section 22-5-910. (A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to:

(1) an offense involving the operation of a motor vehicle;

(2) a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses are authorized; or

(3) an offense contained in Chapter 25, Title 16, except first offense criminal domestic violence as contained in Section 16-25-20, which may be expunged five years from the date of the conviction.

(B) If the defendant has had no other conviction during the three-year period, or during the five-year period as provided in subsection (A)(3), following the first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of not more than one thousand dollars, or both, including a conviction in magistrates or general sessions court, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

(C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34-11-95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in

order to prevent the rights afforded by this section from being taken advantage of more than once.

(D) As used in this section, 'conviction' includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail."

Destruction of criminal records, courtesy summons, Internet-based public records destruction

SECTION 2. Section 17-1-40 of the 1976 Code, as last amended by Act 167 of 2010, is further amended to read:

"Section 17-1-40. (A)(1) A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(2) If a person has been issued a courtesy summons pursuant to Section 22-3-330 or another provision of law and the charge for which the courtesy summons was issued is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or

state law enforcement agency in accordance with the provisions of item (1).

In addition, a person who violates the provisions of this item is subject to the same penalty as provided in item (1).

(B) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.

(C) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5, or any other state criminal offense if the person is not fingerprinted for the violation.

(D) If a charge enumerated in subsection (C) is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the charge must be removed from any Internet-based public record no later than thirty days from the disposition date.

(E) The State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 76

(R95, H3378)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-1-90 SO AS TO ENACT THE "VOLUNTEER SERVICE PERSONNEL APPRECIATION ACT" AND TO ALLOW THE GOVERNING BODY OF A LOCAL GOVERNMENT TO AUTHORIZE THE DISTRIBUTION OF CERTAIN REWARDS TO THREE ENUMERATED CATEGORIES OF VOLUNTEER SERVICE PERSONNEL SO LONG AS ALL PERSONNEL IN A RESPECTIVE CATEGORY ARE TREATED EQUALLY.

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

Citation

SECTION 1. This act shall be known as the "Volunteer Service Personnel Appreciation Act".

Authorization of gifts to certain emergency services responders

SECTION 2. Article 1, Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Section 6-1-90. (A) Notwithstanding another provision of law, the governing body of a local government may authorize the distribution of a gratuitous year-end or holiday monetary or other type of gift to the following categories of volunteer service personnel:

(1) reserve law enforcement officers;
(2) volunteer firefighters; or
(3) volunteer emergency medical service personnel.

(B) If the governing body of a local government elects to authorize the distribution of a gratuitous year-end or holiday monetary or other type of gift, it shall ensure all personnel in that respective category bequeathed pursuant to this section are treated equally."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 77

(R96, H3409)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-59-25 SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A PERSON MAY

CANCEL A WRITTEN CONTRACT FOR ROOFING SYSTEMS GOODS AND SERVICES TO BE PAID FOR BY PROPERTY AND CASUALTY INSURANCE PROCEEDS IF COVERAGE IS SUBSEQUENTLY DENIED, TO SPECIFY APPLICABILITY OF THIS PROVISION TO CERTAIN PROVIDERS OF ROOFING SYSTEMS GOODS AND SERVICES, TO PROVIDE THE MANNER OF CANCELLATION, AND TO PROVIDE NECESSARY DEFINITIONS; AND TO AMEND SECTION 40-59-110, RELATING TO BASES FOR REVOCATION, SUSPENSION, OR RESTRICTION OF CERTAIN LICENSEES OR REGISTRANTS BY THE RESIDENTIAL HOME BUILDERS COMMISSION, SO AS TO MAKE A RELATED CHANGE.

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

Roofing contract cancellations for insurance coverage denial

SECTION 1. Article 1, Chapter 59, Title 40 of the 1976 Code is amended by adding:

"Section 40-59-25. (A)(1) A person who enters into a written contract for goods or services related to a roofing system with a party who will be paid from proceeds of a property and casualty insurance policy and who subsequently receives written notice from the insurer that all or part of the claim or contract is not a covered loss under the policy may cancel the contract prior to midnight on the fifth business day after the insured has received the written notice of the denial of coverage.

(2) This section applies to the following persons performing goods or services related to a roofing system:

(a) a licensed residential builder;

(b) a registered residential specialty contractor; and

(c) a person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission.

(3) Cancellation must be evidenced by the insured giving written notice of cancellation to the builder or contractor at the address provided in the contract. Notice of cancellation, if given by mail, must be effective upon deposit into the United States mail, postage prepaid and properly addressed to the builder or contractor. Notice of

cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

(4) For purposes of this subsection, 'roof system' means a roof covering, roof sheathing, roof weatherproofing, roof framing, roof ventilation system, or insulation.

(B) Before entering a contract as provided in subsection (A), the builder or contractor shall:

(1) provide the insured a statement in boldface type of a minimum size of ten points, in substantially the following form:

'You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right'; and

(2) provide each insured a fully completed form, in duplicate, prominently captioned 'NOTICE OF CANCELLATION', which must be attached to the contract but easily detachable, and which must contain in boldface type of a minimum size of ten points the following statement:

'NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (insert name of contractor) at (insert address of contractor's place of business) any time prior to midnight on the fifth business day after you have received such notices from your insurer.

I HEREBY CANCEL THIS TRANSACTION

_____

DATE

_____

SIGNATURE OF INSURED'

(C) In circumstances in which payment may be made from the proceeds of a property and casualty insurance policy, a builder or contractor shall not require any payments from an insured until the five-day cancellation period has expired. If, however, the builder or contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the builder or contractor must be entitled to collect the

amount due for the emergency services at the time they are rendered. A provision in a contract as provided in subsection (A) that requires payment of any fee for anything except emergency services must not be enforceable against an insured who has canceled a contract under this section.

(D)(1) A builder or contractor shall not represent or negotiate, or offer or advertise to represent or negotiate, on behalf of an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems.

(2) Notwithstanding item (1), or any other provision of state law, an owner is not prevented from consulting with a builder, contractor, or other person of his choice to provide an evaluation of the condition of his roof system and using the evaluation he receives in the negotiation for the repair or replacement of his roof system.

(E)(1) A builder or contractor shall not advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services.

(2) A person who violates a provision of this subsection is guilty of a misdemeanor. The violation is grounds for suspension or revocation of licenses issued pursuant to this chapter.

(3) As used in this subsection, the term 'promise to pay or rebate' means:

(a) granting any allowance or offering any discount against the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a sign or other advertisement at the insured's premises; or

(b) paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason."

Residential Home Builders Commission powers, misconduct

SECTION 2. Section 40-59-110 of the 1976 Code is amended to read:

"Section 40-59-110. In addition to the grounds provided for in Section 40-1-110, the commission, upon a majority vote, may revoke, suspend, or restrict the license or registration of a licensee or registrant who the commission finds has committed fraud or deceit in obtaining a license or registration under this chapter or has engaged in misconduct in the practice of residential building or residential specialty contracting. For purposes of this section, misconduct includes a

violation of Section 40-59-25, or a pattern of repeated failure by a residential builder or residential specialty contractor to pay labor or material bills. For purposes of disciplinary matters, or otherwise, compliance with the construction standards adopted by the commission is prima facie evidence of compliance with applicable professional standards."

Time effective

SECTION 3. This act takes effect on July 1, 2013.

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 78

(R97, H3451)

AN ACT TO AMEND SECTION 56-7-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OFFENSES THAT A PERSON MAY BE CHARGED ON A UNIFORM TRAFFIC TICKET, SO AS TO PROVIDE THAT THE OFFENSES OF SHOPLIFTING AND CRIMINAL DOMESTIC VIOLENCE FIRST OFFENSE AND SECOND OFFENSE MUST BE CHARGED ON A UNIFORM TRAFFIC TICKET, AND THAT A UNIFORM TRAFFIC TICKET MAY BE USED IN AN ARREST FOR CERTAIN MISDEMEANOR OFFENSES UNDER THE JURISDICTION OF THE MAGISTRATES COURT; AND TO AMEND SECTION 56-7-15, AS AMENDED, RELATING TO THE USE OF THE UNIFORM TRAFFIC TICKET BY A LAW ENFORCEMENT OFFICER TO MAKE AN ARREST, SO AS TO PROVIDE THAT THE OFFENSE MUST HAVE BEEN FRESHLY COMMITTED OR IS COMMITTED IN THE PRESENCE OF A LAW ENFORCEMENT OFFICER, AND TO PROVIDE THAT THIS PROVISION ALSO APPLIES TO THE ARREST OF A PERSON WHO IS CHARGED WITH SHOPLIFTING.

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

Uniform traffic ticket

SECTION 1. Section 56-7-10 of the 1976 Code, as last amended by Act 68 of 2005, is further amended to read:

"Section 56-7-10. (A) There will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses:

Offense	Citation
Interfering with Police Officer Serving Process	Section 16-5-50
Dumping Trash on Highway/Private Property	Section 16-11-700
Indecent Exposure	Section 16-15-130
Disorderly Conduct	Section 16-17-530
Damaging Highway	Section 57-7-10
Place Glass, Nails, Etc. on Highway	Section 57-7-20
Obstruction of Highway by Railroad Cars, Etc.	Section 57-7-240
Signs Permitted on Interstate	Section 57-25-140
Brown Bagging	Section 61-5-20
Drinking Liquors in Public Conveyance	Section 61-13-360
Poles Dragging on Highway	Section 57-7-80
Open Container	Section 61-9-87
Purchase or Possession of Beer or Wine by a Person Under Age	Section 63-19-2440
Purchase or Possession of Alcoholic Liquor by a Person Under Age Twenty-One	Section 63-19-2450
Unlawful Possession and Consumption of Alcoholic Liquors	Section 61-5-30
Sale of Beer or Wine on Which Tax Has Not Been Paid	Section 61-9-20
Falsification of Age to Purchase Beer or Wine	Section 61-9-50
Unlawful Purchase of Beer or Wine for a Person Who Cannot Legally Buy	Section 61-9-60
Unlawful Sale or Purchase of Beer or Wine, Giving False Information as to Age, Buying Beer or Wine Unlawfully for Another	Section 61-9-85

Employment of a Person Under the Age of Twenty-One as an Employee in Retail orWholesale or Manufacturing Liquor Business	Section 61-13-340
Failure to Remove Doors from Abandoned Refrigerators	Section 16-3-1010
Malicious Injury to Animals or Personal Property	Section 16-11-510
Timber, Logs, or Lumber Cutting, Removing, Transporting Without Permission, Valued at Less Than Fifty Dollars	Section 16-11-580
Littering	Section 16-11-700
Larceny of a Bicycle Valued at Less Than One Hundred Dollars	Section 16-13-80
Shoplifting	Section 16-13-110
Cock Fighting	Section 16-17-650
Ticket Scalping	Section 16-17-710
Criminal Domestic Violence, First Offense and Second Offense	Section 16-25-20 (B)(1) and (2)
Glue Sniffing	Section 44-53-1110
Trespassing	Section 16-11-755
Trespassing	Section 16-11-600
Trespassing	Section 16-11-610
Trespassing	Section 16-11-620
Negligent Operation of Watercraft; Operation of Watercraft While Under Influence of Alcohol or Drugs	Section 50-21-110
Negligence of Boat Livery to Provide Proper Equipment and Registration	Section 50-21-120
Interference with Aids to Navigation or Regulatory Markers or Operation of Watercraft in Prohibited Area	Section 50-21-170
Operation of Watercraft Without a Certificate of Title	Section 50-23-190
Parking on private property without permission	Section 16-11-760
Certificate of Veterinary Inspection; Requirement for Out-of-State Livestock or Poultry	Section 47-4-60

Inhibition of Livestock Inspection	Section 47-4-120
Imported Swine	Section 47-6-50
Operating Equine Sales Facility or Livestock Market Without Permit	Section 47-11-20
Liability of Person Removing Livestock for Slaughter	Section 47-11-120
Notice to Disinfect	Section 47-13-310
Quarantine of Livestock or Poultry	Section 47-4-70
Unlawful for Horse to Enter State Unless Tested	Section 47-13-1350
Quarantine of Exposed Horses	Section 47-13-1360
Proof of Test Required for Public Assembly of Horses	Section 47-13-1370
False Certificates	Section 47-13-1390
Unlawful to Feed Garbage to Swine	Section 47-15-20
Notification Required from Certain Persons Disposing of Garbage	Section 47-15-40
Sale of Uninspected Meat and Meat Products	Section 47-17-60
Sale of Uninspected Poultry and Poultry Product	Section 47-19-70

(B) In addition to the offenses contained in subsection (A), a uniform traffic ticket may be used in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been freshly committed or is committed in the presence of a law enforcement officer.

(C) No other ticket may be used for these offenses. The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. This ticket will be designed by the department and approved by the Attorney General within thirty days of submission by the department. A law enforcement agency may utilize computers and other electronic devices to issue uniform traffic citations and store information resulting from the issuance of a traffic citation if this method of issuing a citation has been approved by the Department of Public Safety."

Uniform traffic ticket

SECTION 2. Section 56-7-15 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

"Section 56-7-15. (A) The uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, may be used by law enforcement officers to arrest a person for an offense that has been freshly committed or is committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court. A law enforcement agency processing an arrest made pursuant to this section must furnish the information to the State Law Enforcement Division as required in Chapter 3, Title 23.

(B) An officer who effects an arrest, by use of a uniform traffic ticket, for a violation of Chapter 25, Title 16 or Section 16-13-110 shall complete and file an incident report immediately following the issuance of the uniform traffic ticket."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 79

(R100, H3502)

AN ACT TO AMEND SECTION 59-121-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TRANSFER OF FUNDS OR PROPERTY BY THE CITADEL BOARD OF VISITORS TO A NONPROFIT ELEEMOSYNARY CORPORATION ESTABLISHED BY THE BOARD AND KNOWN AS THE CITADEL FOUNDATION, SO AS TO REMOVE A LIMIT ON THE AMOUNT OF FUNDS AND PROPERTY THAT THE BOARD MAY TRANSFER TO THE CORPORATION, AND TO PROVIDE THE BOARD MAY TRANSFER FUNDS AND PROPERTY PRIVATELY DONATED TO THE COLLEGE, AND INCOME AND PROCEEDS DERIVED FROM THOSE FUNDS AND PROPERTY.

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

The Citadel Foundation, transfer of funds and property

SECTION 1. Section 59-121-55(B) of the 1976 Code is amended to read:

"(B) The Board of Visitors is further authorized to transfer funds and property privately donated to the college, and income or proceeds derived from these privately donated funds and property, that the board holds in its name or in the college's name for scholarship and other college support purposes to the nonprofit corporation formed pursuant to subsection (A). These funds, property, and income and proceeds derived from them, must be used by the nonprofit corporation for its stated purposes, except that any restrictions or limitations applicable to a specified portion of these funds or property continue to be applicable after the transfer of the funds, property, and income and proceeds derived from them, to the nonprofit corporation. Any encumbrances or liability on the funds, property, and income and proceeds derived from them so transferred must be assumed by the nonprofit corporation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 80

(R101, H3505)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 44 TO TITLE 11 SO AS TO ENACT THE "HIGH GROWTH SMALL BUSINESS JOB CREATION ACT OF 2013" BY PROVIDING FOR STATE NONREFUNDABLE INCOME TAX CREDITS FOR QUALIFIED INVESTMENTS IN BUSINESSES MEETING CERTAIN CRITERIA AND PRIMARILY ENGAGED IN SPECIFIED ACTIVITIES, TO ESTABLISH THE CRITERIA

AND PROCEDURES FOR THE CREDIT, TO MAKE THE CREDIT TRANSFERABLE AND PROVIDE FOR LIMITATIONS ON AND REPORTING OF CERTAIN INFORMATION ON THE CREDITS, TO PROVIDE FOR CERTAIN ADJUSTED NET CAPITAL GAIN AND LOSS COMPUTATIONS FOR INVESTOR TAXPAYERS WHO RECOGNIZE SUCH A GAIN OR LOSS ON THE SALE OF CREDIT ASSETS AS DEFINED IN THIS CHAPTER, AND TO PROVIDE THAT THE PROVISIONS OF CHAPTER 44, TITLE 11 ARE REPEALED ON DECEMBER 31, 2019; AND TO AMEND SECTION 12-54-240, AS AMENDED, RELATING TO DISCLOSURE OF RECORDS, REPORTS, AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO AUTHORIZE THE EXCHANGE BETWEEN THE DEPARTMENT OF REVENUE AND THE SECRETARY OF STATE OF ANY INFORMATION THAT ASSISTS THE DEPARTMENT OF REVENUE OR THE SECRETARY OF STATE IN DETERMINING OR VERIFYING INFORMATION CONCERNING WHETHER A BUSINESS IS A QUALIFIED BUSINESS UNDER CHAPTER 44, TITLE 11.

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

High Growth Small Business Job Creation

SECTION 1. A. Title 11 of the 1976 Code is amended by adding:

"CHAPTER 44

High Growth Small Business Job Creation Act

Section 11-44-10. This chapter may be cited as the 'High Growth Small Business Job Creation Act of 2013'.

Section 11-44-20. The General Assembly desires to support the economic development goals of this State by improving the availability of early stage capital for emerging high-growth enterprises in South Carolina. To further these goals, this chapter is intended to:

(1) encourage individual angel investors to invest in early stage, high-growth, job-creating businesses;

(2) enlarge the number of high-quality, high-paying jobs within the State;

(3) expand the economy of this State by enlarging its base of wealth-creating businesses; and

(4) support businesses seeking to commercialize technology invented in this state's institutions of higher education.

Section 11-44-30. For purposes of this chapter:

(1) 'Angel investor' means an accredited investor as defined by the United States Securities and Exchange Commission, who is:

(a) an individual person who is a resident of this State or a nonresident who is subject to taxes imposed by Chapter 6, Title 12; or

(b) a pass-through entity which is formed for investment purposes, has no business operations, does not have committed capital under management exceeding five million dollars, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as an angel investor.

(2) 'Headquarters' means the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's or company business unit's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled.

(3) 'Net income tax liability' means South Carolina state income tax liability reduced by all other credits allowed under Titles 11, 12, and 48.

(4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) 'Qualified business' means a registered business that:

(a) is either a corporation, limited liability company, or a general or limited partnership located in this State and has its headquarters located in this State at the time the investment was made and has maintained these headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this section;

(b) was organized no more than five years before the qualified investment was made;

(c) employs twenty-five or fewer people in this State at the time it is registered as a qualified business;

(d) has had in any complete fiscal year before registration gross income as determined in accordance with the Internal Revenue Code of two million dollars or less on a consolidated basis;

(e) is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information

technology services, research and development, or a business providing services set forth in Section 12-6-3360(M)(13), other than those described in subitem (f); and

(f) does not engage substantially in:

(i) retail sales;

(ii) real estate or construction;

(iii) professional services;

(iv) gambling;

(v) natural resource extraction;

(vi) financial brokerage, investment activities, or insurance;

(vii) entertainment, amusement, recreation, or athletic or fitness activity for which an admission or fee is charged.

A business is substantially engaged in one of the activities defined in subitem (f) if its gross revenue from an activity exceeds twenty-five percent of its gross revenues in a fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage as one of its primary purposes such activity.

(6) 'Qualified investment' means an investment by an angel investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of subordinated debt in a qualified business. Investment of common or preferred stock or an equity interest or purchase of subordinated debt does not qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting an investment or a purchase.

(7) 'Registered' or 'registration' means that a business has been certified by the Secretary as a qualified business at the time of application to the Secretary.

(8) 'Secretary' means the Secretary of State.

Section 11-44-40. (A) An angel investor is entitled to a nonrefundable income tax credit of thirty-five percent of its qualified investment made pursuant to this chapter.

(B) Fifty percent of the allowed credit may be applied to the angel investor's net income tax liability in the tax year during which the qualified investment is made, and fifty percent of the allowed credit may be applied to the angel investor's net income tax liability in the tax years after the qualified investment is made and may be carried forward for a period not to exceed ten years for these purposes as provided in Section 11-44-50.

(C) For any pass-through entity making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the entity must be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. The pass-through entity must make an irrevocable election with the Department of Revenue as to the manner in which the credit is allocated. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this chapter for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

Section 11-44-50. Tax credits claimed pursuant to this chapter are subject to the following conditions and limitations:

(1) the total amount of credits allowed pursuant to this chapter may not exceed in the aggregate five million dollars for all taxpayers for any one calendar year;

(2) the aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this chapter, whether made directly or by a pass-through entity and allocated to an individual, shall not exceed one hundred thousand dollars each year, not including any carry forward credits;

(3) the amount of the tax credit allowed an individual under this chapter for a taxable year shall not exceed an individual's net income tax liability. An unused credit amount is allowed to be carried forward for ten years from the close of the taxable year in which the qualified investment was made. Credit is not allowed against prior years' tax liability;

(4) the credit is transferrable by the angel investor to his heirs and legatees upon his or her death and to his or her spouse or incident to divorce;

(5) the credit may be sold, exchanged, or otherwise transferred, and may be carried forward for a period of ten taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may be transferred only once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but the transferred credit may not be used more than ten years after it was originally issued; and

(6) the Department of Revenue may develop procedures for the transfer of the credits.

Section 11-44-60. (A) A qualified business shall register with the Secretary for purposes of this chapter. Approval of this registration constitutes certification by the Secretary for twelve months after being issued. A business is permitted to renew its registration with the Secretary so long as, at the time of renewal, the business remains a qualified business.

(B) If the Secretary finds that any information contained in an application of a business for registration under this chapter is false, the Secretary shall revoke the registration of the business. The Secretary shall not revoke the registration of a business only because it ceases business operations for an indefinite period of time, as long as the business renews its registration.

(C) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the twelve-month registration period without further application to the Secretary. In this case, the qualified business shall provide the Secretary with written notice of the merger, conversion, consolidation, or similar transaction and other information as required by the Secretary.

(D) By January thirty-first each year, the Secretary shall report to the House Ways and Means Committee, the Senate Finance Committee, and the Governor, a list of the businesses that have registered with the Secretary as a qualified business. The report must include, by county, the name and address of each business, the location of its headquarters, a description of the type of business in which it engages, the amount of capital it has raised including the amount of qualified investment as defined by this chapter, the number of full-time, part-time, and temporary jobs created by the business during the period covered by the report, and the average wages paid by these jobs. An aggregated statewide report containing the number of businesses, the amount of capital raised by the businesses including the amount of qualified investment as defined by this chapter, the number of full-time, part-time and temporary jobs created by the businesses, and the average wages paid by these jobs also must be made available in a conspicuous place on the Secretary’s website. The report must be updated annually.

Section 11-44-65. (A) For purposes of this section:

(1) 'Angel investor taxpayer' means a taxpayer who invested in a capital asset and as a result of that investment was eligible to claim the tax credit allowed pursuant to this chapter.

(2) 'Credit asset' means a capital asset acquired by an angel investor taxpayer who was eligible to claim the tax credit allowed pursuant to this chapter with respect to the acquisition.

(3) 'Net capital gain' is as defined in Internal Revenue Code Section 1222 and related sections.

(4) 'Net capital loss' is as defined in Internal Revenue Code Section 1211(b), not including the limitation imposed pursuant to Section 1211(b)(1).

(B)(1) If an angel investor taxpayer recognized net capital gain on the sale or exchange of credit assets in a taxable year, then the amount of net capital gain of that taxpayer eligible for the deduction otherwise allowed pursuant to Section 12-6-1150 must be reduced by the net capital gain on the sale or exchange of credit assets by the angel investor taxpayer.

(2) In a separate computation in each taxable year the angel investor taxpayer shall attribute the net capital gain on credit assets to each credit asset in the ratio that the long term capital gain on each separate credit asset as a proportion of all such long term gain bears to the net capital gain reduction required pursuant to item (1). If cumulative net capital gain on a credit asset multiplied by seven percent equals the total credit claimed on the credit asset, the excess of the net capital gain attributable to this credit asset over that necessary to produce the total credit amount in the computation is deducted from the reduction otherwise required pursuant to item (1).

(C)(1) If an angel investor taxpayer recognized net capital loss on the sale or exchange of credit assets in a taxable year in an amount equal to or less than the total of tax credits claimed on those credit assets, then there is added to the angel investor taxpayer's South Carolina taxable income for that taxable year the amount of the net capital loss on those credit assets not to exceed the tax credits claimed on those credit assets.

(2) If an angel investor taxpayer recognized net capital loss on the sale or exchange of credit assets in a taxable year in an amount greater than the amount of the tax credits claimed on those credit assets, then there is added to the angel investor taxpayer's South Carolina taxable income for that taxable year the amount of the tax credit claimed on those credit assets.

Section 11-44-70. (A) An angel investor seeking to claim a tax credit provided for under this chapter shall submit an application to the Department of Revenue for tentative approval for the tax credit in the year for which the tax credit is claimed or allowed. The Department of Revenue shall provide for the manner in which the application is to be submitted. The Department of Revenue shall review the application and tentatively shall approve the application upon determining that it meets the requirements of this chapter.

(B) The Department of Revenue shall provide tentative approval of the applications by the date provided in subsection (C).

(C) The Department of Revenue shall notify each qualified investor of the tax credits tentatively approved and allocated to the qualified investor by January thirty-first of the year after the application was submitted. If the credit amounts on the tax credit applications filed with the Department of Revenue exceed the maximum aggregate limit of tax credits, then the tax credit must be allocated among the angel investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this chapter. Once the tax credit application has been approved and the amount has been communicated to the applicant, the angel investor then may apply the amount of the approved tax credit to its tax liability for the tax year of which the approved application applies.

(D) By March thirty-first each year, the Department of Revenue shall report to the House Ways and Means Committee, the Senate Finance Committee, and the Governor, by county, the number of angel investor tax credit applications the department has received, the number of tax credit applications approved, and the tax credits approved. This report must be made available in a conspicuous place on the department's website.

Section 11-44-80. Tax credits generated as a result of these investments are not considered securities under the laws of this State."

B. The provisions of Chapter 44, Title 11, contained in this act are repealed on December 31, 2019. Any carry forward credits shall continue to be allowed until the ten year time period in Section 11-44-40(B) is completed.

Exchange of information authorized

SECTION 2. Section 12-54-240(B) of the 1976 Code, as last amended by Act 116 of 2007, is further amended by adding an appropriately numbered item at the end to read:

"( ) exchange between the Department of Revenue and the Secretary of State of any information that assists the Department of Revenue or the Secretary of State in determining or verifying information concerning whether a business is a qualified business pursuant to Section 11-44-60."

Time effective

SECTION 3. This act takes effect upon approval by the Governor, and the tax credits permitted by this chapter are first available for investments made after December 31, 2012.

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 81

(R102, H3557)

AN ACT TO AMEND SECTION 12-6-3375, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO AS TO EXPAND THE TYPES OF BUSINESSES THAT QUALIFY FOR THE CREDIT, TO GIVE THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT DISCRETION IN AWARDING CREDITS, TO FURTHER DEFINE TERMS, TO PROVIDE THAT TAXPAYERS ENGAGED IN THE MOVEMENT OF GOODS IMPORTED OR EXPORTED THROUGH SOUTH CAROLINA'S PORT FACILITIES MAY BE ELIGIBLE FOR THE CREDIT IF THE CARGO SUPPORTS A PRESENCE IN THE STATE AND MEETS OTHER JOB AND CAPITAL INVESTMENT REQUIREMENTS, AND TO PROVIDE THAT A

TAXPAYER THAT FAILS TO MEET THE REQUIREMENTS OF THE CREDIT MUST REPAY A PRO RATA PORTION OF THE CREDIT.

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

Revised port cargo volume tax credit, definitions, credits for certain new distribution facilities

SECTION 1. Section 12-6-3375 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

"Section 12-6-3375. (A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed eight million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12-6-530 and 12-6-545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) factors related to the economic benefit of the State or other factors.

(3)(a) If the income tax credit exceeds the taxpayer's income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the credit against withholding taxes exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refunded under Title 12 of the 1976 Code, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refunded under Title 12 of the 1976 Code in the next twenty succeeding taxable quarters.

(B)(1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the council after the calendar year in which the increase in port cargo volume occurs. Allocations of the credit may be made on a monthly, quarterly, or annual basis. The taxpayer shall attach a schedule to the taxpayer's application to the council with the following information and information requested by the council or the department:

(a) a description of how the base year port cargo volume and the increase in port cargo volume was determined;

(b) the amount of the base year port cargo volume;

(c) the amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of non-containerized cargo, measurement of cargo, and TEUs of cargo, including information which demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

(d) any tax credit utilized by the taxpayer in prior years; and

(e) the amount of tax credit carried over from prior years.

(2) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(C) As used in this section:

(1) 'TEU' means a twenty-foot equivalent unit; a volumetric measure based on the size of a container twenty feet long by eight feet wide by eight feet, six inches high. A 'weighted TEU' is equal to seven and one-half tons. A 'measured TEU' is equal to thirty-eight and one-half cubic meters.

(2) 'Base year port cargo volume' initially means the total amount of net tons of non-containerized cargo, measured equivalent of non-cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during the period from January first through December thirty-first of the same year. Base year port cargo volume must be at least seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December thirty-first of the previous year, including a taxpayer who locates in South Carolina after December thirty-first of the previous year, its base cargo volume will be measured by the initial January first through December thirty-first calendar year in which it

meets the requirements of seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

(3) 'Port facility' means any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

(4) 'Port cargo volume' means the total amount of net tons of non-containerized cargo or containers measured in twenty-foot equivalent units (TEUs) of cargo transported by way of a waterborne ship or vehicle through a port facility, or measured cubic meters of cargo.

(D) The council annually may award up to one million dollars of the eight million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full-time jobs, and the base year cargo shall not be less than five thousand TEUs or its non-containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(E)(1) A taxpayer engaged in the movement of goods imported or exported through South Carolina's port facilities may be eligible for the port volume tax credit if the cargo supports a presence in the State and the taxpayer does not have a distribution center in the State at the time of initial approval of the port volume tax credit, so long as:

(a) the taxpayer employs at least two hundred and fifty full-time or full-time equivalent South Carolinians in operations statewide;

(b) the taxpayer completes the construction of the distribution facility in South Carolina, and is operational, within five years of the initial approval of the port volume tax credit; and

(c) the base year for the taxpayer shall be not less than five thousand TEUs or its non-containerized equivalent.

(2) Any credit certificate expires three years after issuance if satisfactory proof has not been received.

(F) The council has discretion to award the credits pursuant to either subsection (D) or (E).

(G) Notwithstanding Section 12-54-240, the department and the Department of Commerce may exchange information submitted by a taxpayer pursuant to this section.

(H)(1) If a taxpayer receives the credit under subsection (D) but fails to meet the requirements of subsection (D) at the end of the three-year period, the taxpayer must repay the department a pro rata portion of the credits claimed.

(2) If a taxpayer receives the credit under subsection (E) but fails to meet the requirements of subsection (E)(1) at the end of the five-year period, the taxpayer must repay the department a pro rata portion of the credits claimed."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 82

(R103, H3602)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-13-131 SO AS TO CREATE OFFENSES RELATING TO STEALING GOODS OR MERCHANDISE FROM A MERCHANT BY CREATING OR AFFIXING A PRODUCT CODE AND TO PROVIDE GRADUATED PENALTIES; BY ADDING SECTION 16-13-135 SO AS TO DEFINE NECESSARY TERMS, CREATE OFFENSES RELATING TO RETAIL THEFT, AND TO PROVIDE GRADUATED PENALTIES; TO AMEND SECTION

16-13-440, RELATING TO THE USE OF A FALSE OR FICTITIOUS NAME OR ADDRESS TO OBTAIN A REFUND FROM A BUSINESS ESTABLISHMENT FOR MERCHANDISE, SO AS TO INCLUDE USING A FALSE OR ALTERED DRIVER'S LICENSE OR IDENTIFICATION CARD TO COMMIT CERTAIN RETAIL THEFT OFFENSES; TO AMEND SECTION 17-25-323, RELATING TO DEFAULT ON COURT-ORDERED PAYMENTS INCLUDING RESTITUTION BY PERSONS ON PROBATION OR PAROLE AND CIVIL JUDGMENTS AND LIENS, SO AS TO INCLUDE DEFENDANTS WHO DEFAULT ON THE VARIOUS MAGISTRATES OR MUNICIPAL COURT-ORDERED PAYMENTS INCLUDING RESTITUTION IN THE PURVIEW OF THE STATUTE AND TO PROVIDE THAT A FILING FEE OR OTHER FEE MAY NOT BE REQUIRED WHEN SEEKING A CIVIL JUDGMENT; TO AMEND SECTION 14-25-65, AS AMENDED, RELATING TO PENALTIES THE MAGISTRATES COURT MAY IMPOSE, RESTITUTION, AND CONTEMPT, SO AS TO ALLOW A MAGISTRATE TO CONVERT CERTAIN UNPAID COURT-ORDERED PAYMENTS TO A CIVIL JUDGMENT; TO AMEND SECTION 22-3-550, AS AMENDED, RELATING TO THE JURISDICTION OF THE MAGISTRATES COURT OVER MINOR OFFENSES, RESTITUTION, AND CONTEMPT, SO AS TO ALLOW A MAGISTRATE TO CONVERT CERTAIN UNPAID COURT-ORDERED PAYMENTS TO A CIVIL JUDGMENT; AND TO AMEND SECTION 16-13-180, AS AMENDED, RELATING TO RECEIVING STOLEN GOODS, SO AS TO INCLUDE RECEIVING OR POSSESSING STOLEN GOODS FROM AN AGENT OF A LAW ENFORCEMENT AGENCY AND TO REVISE THE PENALTIES FOR THE OFFENSE.

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

Retail theft, creating or affixing a product code to fraudulently obtain goods or merchandise for less than the actual sales price, graduated penalties

SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

"Section 16-13-131. (A) It is unlawful for a person to create or conspire with another person to create a product code for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(B) It is unlawful for a person to commit or conspire with another person to commit larceny against a merchant by affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(C) A person who violates this section:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both; and

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both."

Retail theft, offense created, graduated penalties

SECTION 2. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

"Section 16-13-135. (A) As used in this section:

(1) 'Retail property' means a new article, product, commodity, item, or component intended to be sold in retail commerce.

(2) 'Retail property fence' means a person or business that buys retail property knowing or believing that the retail property is stolen.

(3) 'Theft' means to take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) 'Value' means the retail value of an item as offered for sale to the public by the affected retail establishment and includes all applicable taxes.

(B) It is unlawful for a person to:

(1) commit theft of retail property from a retail establishment, with a value exceeding two thousand dollars aggregated over a ninety-day period, with the intent to sell the retail property for monetary or other gain, and sell, barter, take, or cause the retail property to be placed in the control of a retail property fence or other person in exchange for consideration;

(2) conspire with another person to commit theft of retail property from a retail establishment, with a value exceeding two

thousand dollars aggregated over a ninety-day period, with the intent to:

(a) sell, barter, or exchange the retail property for monetary or other gain; or

(b) place the retail property in the control of a retail property fence or other person in exchange for consideration; or

(3) receive, possess, or sell retail property that has been taken or stolen in violation of item (1) or (2) while knowing or having reasonable grounds to believe the property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

(C) Acts committed in different counties that have been aggregated in one count may be indicted and prosecuted in any one of the counties in which the acts occurred. In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur within one city, county, or local jurisdiction.

(D) Property, funds, and interest a person has acquired or maintained in violation of this section are subject to forfeiture pursuant to the procedures for forfeiture as provided in Section 44-53-530.

(E) A person who violates this section:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both; and

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than twenty years, or both."

Retail theft, fraudulent refunds from businesses, use of false or fictitious driver's licenses or identification cards

SECTION 3. Section 16-13-440 of the 1976 Code is amended to read:

"Section 16-13-440. (A) It is unlawful for a person to give a false or fictitious name or address, or to give the name or address of another person without that person's approval, for the purpose of obtaining or attempting to obtain a refund from a business establishment for merchandise.

A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

(B) It is unlawful for a person to obtain or attempt to obtain a refund in the form of cash, check, credit on a credit card, merchant gift

card, or credit in any other form from a merchant using a motor vehicle driver's license not issued to the person, a motor vehicle driver's license containing false information, an altered motor vehicle driver's license, an identification card containing false information, an altered identification card, or an identification card not issued to the person. A person who violates the provisions of this subsection:

(1) when the value is less than two thousand dollars, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned for not more than six months, or both;

(2) when the value is two thousand dollars or more, is guilty of a felony and, upon conviction, must be fined not more than five thousand five hundred dollars or imprisoned for not more than five years, or both; or

(3) regardless of the value involved, if the person has two or more prior convictions for a violation of this subsection, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years."

Court-ordered payments, magistrates and municipal court payments included

SECTION 4. Section 17-25-323 of the 1976 Code is amended to read:

"Section 17-25-323. (A) The trial court retains jurisdiction of the case for the purpose of modifying the manner in which court-ordered payments are made until paid in full, or until the defendant's active sentence and probation or parole expires.

(B) When a defendant is placed on probation by the court or parole by the Board of Probation, Parole and Pardon Services, and ordered to make restitution, and the defendant is in default in the payment of them or any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the court, before the defendant completes his period of probation or parole, on motion of the victim or the victim's legal representative, the Attorney General, the solicitor, or a probation and parole agent, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The court must enter:

(1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

(2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney's fees and cost ordered by the court.

(C) When a defendant is ordered to make restitution by a magistrate or municipal court, and the defendant is in default in the payment of restitution or of any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the magistrate or municipal court, within one year of the imposition of the sentence, on motion of the victim or the victim's legal representative, the Attorney General, the solicitor, or the prosecuting law enforcement agency, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The magistrate or municipal court must enter:

(1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

(2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney's fees and cost ordered by the court.

Notwithstanding the provisions of Section 14-25-65, municipal courts shall have the authority and jurisdiction to convert unpaid restitution, fines, costs, fees, surcharges, and assessments to civil judgments.

The magistrate or municipal court, upon a conversion to a judgment, must transmit the judgment to the clerk of the circuit court in the county for entry pursuant to subsection (F). Judgments entered and docketed pursuant to this subsection must be handled in the same manner and have the same force and effect as judgments entered and docketed pursuant to Sections 22-3-300, 22-3-310, and 22-3-320.

(D) The judgments may be enforced as a civil judgment.

(E) A judgment issued pursuant to this section has the force and effect of a final judgment and may be enforced by the judgment creditor in the same manner as any other civil judgment with enforcement to take place in the court of common pleas.

(F) The clerk of the circuit court must enter a judgment issued pursuant to this section in the civil judgment records of the court. A judgment issued pursuant to this section is not effective until entry is made in the civil judgment records of the court as required pursuant to this subsection.

(G) A filing or other fee may not be required for seeking or for the filing of a civil judgment obtained or issued pursuant to this section.

(H) Upon full satisfaction of a judgment entered pursuant to this section, the judgment creditor must record the satisfaction on the

margin of the copy of the judgment on file in the civil judgment records of the court.

(I) Any funds resulting from the collection of a judgment for unpaid fines, costs, fees, surcharges, or assessments must be distributed in the same manner and proportion as fines, costs, fees, surcharges, or assessments are distributed as otherwise set forth by law."

Court-ordered payments, unpaid payments converted to civil judgments

SECTION 5. Section 14-25-65 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 14-25-65. (A) If a municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of the court, he may impose a fine of not more than five hundred dollars or imprisonment for thirty days, or both. In addition, a municipal judge may order restitution in an amount not to exceed the civil jurisdictional amount of magistrates court provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

(B) A municipal judge may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a municipal judge may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C)."

Court-ordered payments, unpaid payments converted to civil judgments

SECTION 6. Section 22-3-550 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 22-3-550. (A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C).

(B) However, a magistrate does not have the power to sentence a person to consecutive terms of imprisonment totaling more than ninety days except for convictions resulting from violations of Chapter 11, Title 34, pertaining to fraudulent checks, or violations of Section 16-13-110(B)(1), relating to shoplifting. Further, a magistrate must specify an amount of restitution in damages at the time of sentencing as an alternative to any imprisonment of more than ninety days which is lawfully imposed. The provisions of this subsection do not affect the transfer of criminal matters from the general sessions court made pursuant to Section 22-3-545."

Receiving stolen goods, receiving stolen goods from law enforcement

SECTION 7. Section 16-13-180 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 16-13-180. (A) It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

(B) It is unlawful for a person to knowingly receive or possess property from an agent of a law enforcement agency that was represented to the person by the same or other agent of the law enforcement agency as stolen. For purposes of this section, the person receiving or possessing the property need not know the person is receiving or has received the property from an agent of a law enforcement agency, and the property need not be actually stolen.

(C) A person who violates this section is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days;

(2) misdemeanor and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than three years, if

the value of the property is more than two thousand dollars but less than ten thousand dollars; or

(3) felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years, if the value of the property is ten thousand dollars or more.

(D) For purposes of this section, the receipt of multiple items in a single transaction or event constitutes a single offense.

(E) For purposes of this section, multiple offenses occurring within a ninety-day period may be aggregated into a single count with the aggregated value used to determine whether the violation is a misdemeanor or felony as provided in subsection (C).”

Savings clause

SECTION 8. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 83

(R105, H3735)

AN ACT TO AMEND SECTION 50-5-2730, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE'S ADOPTION OF CERTAIN FEDERAL LAWS AND REGULATIONS THAT REGULATE THE TAKING OF FISH IN STATE WATERS, SO AS TO PROVIDE THAT THESE LAWS AND REGULATIONS DO NOT APPLY TO BLACK SEA BASS (CENTROPRISTIS STRIATA), TO PROVIDE A LAWFUL CATCH LIMIT AND SIZE FOR THIS SPECIES OF FISH, AND TO PROVIDE THAT THERE IS NO CLOSED SEASON ON THE CATCHING OF BLACK SEA BASS (CENTROPRISTIS STRIATA).

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

Taking of black sea bass in federal and state waters

SECTION 1. Section 50-5-2730 of the 1976 Code is amended to read:

"Section 50-5-2730. (A) Unless otherwise provided by law, any regulations promulgated by the federal government under the Fishery Conservation and Management Act (PL 94-265) or the Atlantic Tuna Conservation Act (PL 94-70) which establishes seasons, fishing periods, gear restrictions, sales restrictions, or bag, catch, size, or possession limits on fish are declared to be the law of this State and apply statewide including in state waters.

(B) This provision does not apply to black sea bass (Centropristis striata) whose lawful catch limit is five fish per person per day or the same as the federal limit for black sea bass, whichever is higher. The lawful minimum size is thirteen inches total length. Additionally, there is no closed season on the catching of black sea bass (Centropristis striata)."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 84

(R106, H3752)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "EXPANDED VIRTUAL LEARNING ACT"; TO AMEND SECTION 59-16-15, RELATING TO THE SOUTH CAROLINA VIRTUAL SCHOOL PROGRAM, SO AS TO RESTYLE THE PROGRAM AS A VIRTUAL EDUCATION PROGRAM AND TO REMOVE LIMITS ON THE NUMBER OF ONLINE CREDITS A STUDENT MAY BE AWARDED UNDER THE PROGRAM; AND TO AMEND SECTION 59-40-65, RELATING TO ENROLLMENT OF CHARTER SCHOOL STUDENTS IN THE SOUTH CAROLINA VIRTUAL SCHOOL PROGRAM, SO AS TO MAKE A CONFORMING CHANGE.

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

Expanded Virtual Learning Act

SECTION 1. Section 59-16-15 of the 1976 Code, as added by Act 26 of 2007, is amended to read:

"Section 59-16-15. (A) The State Board of Education is authorized to establish a virtual education program to provide South Carolina students access to distance, online, or virtual learning courses offered for an initial unit of credit. Additionally, the virtual education program shall offer access to credit recovery programs for students who have been identified by a school district as not having received credit for a course previously taken or for students who have been identified by a school district as not likely to receive credit for a course in which the student is currently enrolled. Students may enroll in courses for credit recovery based on policies established by the State Board of Education. The virtual education program shall not award a South Carolina High School diploma.

(B) A public, private, or homeschool student residing in South Carolina who is twenty-one years of age or younger must be eligible to enroll in the virtual education program. A private school or home school student enrolled in the virtual education program must not be entitled to any rights, privileges, courses, activities, or services available to a public school student other than receiving an appropriate unit of credit for a completed course.

(C) Local school districts shall accurately transcribe a student's final numeric grade to the student's permanent record and transcript. Home school students and private school students shall receive a certified grade report indicating date, course, and final numeric grade from the virtual education program or an entity approved by the State Board of Education.

(D) Students enrolled in an online course for a unit of credit must be administered final exams and appropriate state assessments in a proctored environment.

(E) It is not the responsibility of the school, district, or state to provide home computer equipment and Internet access for enrollment in courses provided by the virtual education program. However, nothing in this section shall prohibit a school or district from providing home computer equipment or Internet access to students enrolled in the virtual education program."

Conformity change

SECTION 2. Section 59-40-65(D) of the 1976 Code, as added by Act 26 of 2007, is amended to read:

"(D) Charter school students may enroll in the Department of Education's virtual education program pursuant to program requirements."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 85

(R107, H3870)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-49-65 SO AS TO PROVIDE IN THE "FIREFIGHTER MOBILIZATION ACT OF 2000" THAT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) HAS SPECIFIC AND EXCLUSIVE JURISDICTION ON BEHALF OF THE STATE IN MATTERS PERTAINING TO THE RESPONSE TO AND CRISIS MANAGEMENT OF ACTS OF TERRORISM AND EMERGENCY EVENT MANAGEMENT OF EXPLOSIVE DEVICES; TO AMEND SECTION 23-49-20, RELATING TO THE SOUTH CAROLINA FIREFIGHTER MOBILIZATION OVERSIGHT COMMITTEE, SO AS TO ADD THE CHIEF OF SLED TO THE COMMITTEE AND TO CORRECT ARCHAIC REFERENCES; TO AMEND SECTION 23-49-50, RELATING TO THE SOUTH CAROLINA FIREFIGHTER MOBILIZATION PLAN, SO AS TO RENAME THE COMMITTEE AS THE SOUTH CAROLINA FIREFIGHTER MOBILIZATION AND EMERGENCY RESPONSE TASK FORCE PLAN, TO ADD THE TASK FORCE TO THOSE RESOURCES THAT THE PLAN IS INTENDED TO OFFER, AND TO PROVIDE THE PLAN IS OPERATIONAL WHEN THE CHIEF OF SLED DIRECTS A RESPONSE TO A TERRORIST OR EXPLOSIVE DEVICE EVENT; TO AMEND SECTION 23-49-60, RELATING TO THE DUTIES OF THE COMMITTEE, SO AS TO PROVIDE THE COMMITTEE SHALL DEVELOP GUIDELINES FOR USING RESOURCES ALLOCATED TO THE TASK FORCE AT THE STATE AND REGIONAL LEVEL; TO AMEND SECTION 23-49-70, RELATING TO STATE AND REGIONAL COORDINATORS APPOINTED BY THE COMMITTEE TO EXECUTE THE PLAN, SO AS TO MAKE A CONFORMING CHANGE TO THE NAME OF THE PLAN, TO REQUIRE THE OFFICE OF STATE FIRE MARSHAL TO PROVIDE ADMINISTRATIVE SUPPORT AS REQUIRED BY THE COMMITTEE TO PERFORM ITS PRESCRIBED FUNCTIONS, AND TO PROVIDE THAT THE STATE COORDINATOR APPOINTED BY THE COMMITTEE SHALL REPORT TO THE STATE FIRE MARSHAL AND PROVIDE ADMINISTRATIVE SUPPORT TO THE COMMITTEE; TO AMEND SECTION

23-49-80, RELATING TO INFORMATION REQUIRED OF THE SOUTH CAROLINA STATE FIREMEN'S ASSOCIATION, SO AS TO CORRECT ARCHAIC LANGUAGE; AND TO AMEND SECTION 23-49-110, RELATING TO DEFINITIONS, SO AS TO DEFINE ADDITIONAL TERMS.

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

SLED jurisdiction

SECTION 1. Chapter 49, Title 23 of the 1976 Code is amended by adding:

"Section 23-49-65. Pursuant to Section 23-3-15, the South Carolina Law Enforcement Division has specific and exclusive jurisdiction on behalf of the State in matters pertaining to the response to and crisis management of acts of terrorism and emergency event management of explosive devices."

Oversight committee revised

SECTION 2. Section 23-49-20 of the 1976 Code is amended to read:

"Section 23-49-20. There is created the South Carolina Firefighter Mobilization Oversight Committee, to be comprised of the following persons: (1) the State Fire Marshal; (2) the State Emergency Management Division Director of the Adjutant General's Office; (3) the State Forester; (4) a county emergency management division coordinator appointed by the Governor upon consideration of the written recommendations of the Emergency Management Association for a term of three years; (5) the Chief of the South Carolina Law Enforcement Division or his designee; and (6) six fire prevention and control personnel appointed by the Governor upon consideration of the written recommendations of the South Carolina State Firefighters' Association for three-year terms, three of whom shall serve initial terms of two years, and three of whom shall serve initial terms of three years; thereafter, all fire prevention and control personnel shall serve three-year terms. The Executive Director of the South Carolina State Firefighters' Association shall serve as an ex officio, nonvoting member of the committee."

Task force plan

SECTION 3. Section 23-49-50 of the 1976 Code is amended to read:

"Section 23-49-50. The South Carolina Firefighter Mobilization Oversight Committee shall establish the South Carolina Firefighter Mobilization and Emergency Response Task Force Plan. The purpose of the plan is to provide for responding firefighting and rescue resources, including the South Carolina Emergency Response Task Force, from one part of the State to another part of the State or from one state to another state. The plan is operative (1) under emergencies declared by the Governor or by the President of the United States, (2) when a local fire chief needs additional resources after existing mutual aid agreements have been utilized, (3) when another state requests assistance in dealing with an emergency when a state mutual aid agreement exists between South Carolina and the other state, or (4) when the Chief of the State Law Enforcement Division directs a response to a terrorist or explosive device event. In addition, the plan operates and is a part of the State Emergency Response Plan."

Resource allocation guidelines mandated

SECTION 4. Section 23-49-60 of the 1976 Code is amended to read:

"Section 23-49-60. (A) The South Carolina Firefighter Mobilization Oversight Committee shall (1) develop procedures and guidelines for dispatching and deploying rural and municipal fire and rescue resources, and (2) establish a system of regions in the State for managing fire and rescue emergencies utilizing an incident command system.

(B) The committee shall develop a Firefighter Mobilization Mutual Aid Agreement and, with the assistance from the offices of the State Fire Marshal and State Emergency Management Director of the Adjutant General's Office, secure local governments' and other states' participation in the agreement.

(C) In order to receive fire and rescue resources under the South Carolina Firefighter Mobilization Plan, each county and municipality in the State must sign a mutual aid agreement. Other participating states must sign a mutual aid agreement with the State Emergency Management Division of the Adjutant General's Office in order to receive the same, or similar, fire and rescue resources.

(D) The committee shall develop guidelines for using resources allocated to the task force at the state and regional level."

Administrative support

SECTION 5. Section 23-49-70 of the 1976 Code is amended to read:

"Section 23-49-70. The South Carolina Firefighter Mobilization Oversight Committee shall appoint the number of state and regional coordinators the committee considers necessary and sufficient for the execution of the South Carolina Firefighter Mobilization and Emergency Response Task Force Plan. A state coordinator shall be designated by the committee to be in overall charge of coordinating the state response for fire and rescue services. A regional coordinator is in overall charge of a region for the purpose of coordinating the regional response for fire and rescue services and must report directly to the state coordinator designated by the committee. The Office of State Fire Marshal shall provide administrative support as required by the Firefighter Mobilization Oversight Committee to perform its prescribed functions. The state coordinator shall report to the State Fire Marshal and provide administrative support to the Firefighter Mobilization Oversight Committee."

Archaic reference corrected

SECTION 6. Section 23-49-80 of the 1976 Code is amended to read:

"Section 23-49-80. The committee may request and utilize information regarding equipment, personnel, and other fire and rescue resources maintained by the South Carolina State Firefighters' Association."

Definitions

SECTION 7. Section 23-49-110(A) of the 1976 Code is amended to read:

"(A) For purposes of this chapter:

(1) 'Dry fire hydrant' means a fire hydrant that is connected to a source of water from which water is pumped for fire suppression or fire suppression training.

(2) 'Firefighting agency' means any entity that provides firefighting services including, but not limited to:

(a) a fire department;

(b) a political subdivision of this State authorized to provide firefighting services; and

(c) the South Carolina Forestry Commission or commission cooperators.

(3) 'Source of water' means a water system, water tank, ditch, pool, pond, lake, or river.

(4) 'Fire and rescue resources' means local firefighting and rescue resources that include structural firefighting teams, firefighting water supply teams, wild land firefighting teams, rescue teams, and hazardous materials teams.

(5) 'South Carolina Emergency Response Task Force' means an organization of specialized units manned through voluntary participation by various agencies and overseen by the State Fire Marshal that provides a comprehensive all-hazard tiered response to incidents by providing services including, but not limited to, firefighting, urban search and rescue, aviation search and rescue, technical rescue, incident support, and the mitigation of hazardous materials.

(6) 'Hazardous materials team' means a specialized unit that responds to the spill, leak, or disbursement of a hazardous product in order to identify, mitigate, and recover from the effects of that incident."

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 86

(R108, H3944)

AN ACT TO AMEND SECTION 4-23-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BOARD OF

FIRE CONTROL FOR THE MURRELL'S INLET - GARDEN CITY FIRE DISTRICT IN GEORGETOWN AND HORRY COUNTIES, SO AS TO PROVIDE THAT THE MEMBERS OF THAT BOARD REPRESENTING GEORGETOWN COUNTY MUST BE APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF A MAJORITY OF THE GEORGETOWN COUNTY LEGISLATIVE DELEGATION NOTWITHSTANDING THE PROVISIONS OF ACT 515 OF 1996 DEVOLVING THAT APPOINTMENT AUTHORITY ON THE GOVERNING BODY OF GEORGETOWN COUNTY AND TO DELETE OBSOLETE LANGUAGE.

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

Murrell's Inlet - Garden City Fire District, appointment of board members revised

SECTION 1. Section 4-23-20 of the 1976 Code is amended to read:

"Section 4-23-20. After the creation of the Murrell's Inlet-Garden City Fire District, there is established a Board of Fire Control for the District to be composed of three members from Georgetown County who must be appointed by the Governor upon the recommendation of a majority of the Georgetown County legislative delegation notwithstanding the provisions of Act 515 of 1996 and three members from Horry County who must be appointed by the Governor upon the recommendation of a majority of the members of the Horry County legislative delegation. The members of the board shall serve without pay and shall file annually a report with the governing bodies of Georgetown and Horry Counties not later than the first of November of each year, showing all activities and disbursements made by the board during the year. The board shall elect a chairman from its membership and such other officers as it considers necessary. The chairman shall not vote except in case of a tie.

If at least twenty percent of the qualified electors residing in the District petition the commissioners of election by the first of September of any general election year, the commissioners shall call an election to be held at the following general election for the purpose of electing a member to the board to succeed the member whose term expires during the year, for a four-year term. Thereafter, members must be elected in each succeeding general election for terms of four years."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and first applies to members from Georgetown County on the Board of Fire Control of the Murrell's Inlet - Garden City Fire District whose terms expire on or after that date.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 87

(R109, H3956)

AN ACT TO AMEND SECTION 61-6-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE ALCOHOLIC BEVERAGE CONTROL ACT, SO AS TO REVISE THE DEFINITION OF "FURNISHING LODGING" TO PROVIDE FOR AT LEAST EIGHTEEN INSTEAD OF TWENTY ROOMS THAT A BUSINESS MUST OFFER FOR ACCOMMODATIONS ON A REGULAR BASIS.

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

Definition revised

SECTION 1. Section 61-6-20(5) of the 1976 Code, as last amended by Act 67 of 2011, is further amended to read:

"(5) 'Furnishing lodging' means those businesses which rent accommodations for lodging to the public on a regular basis consisting of not less than eighteen rooms."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 88

(R110, H3960)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-41-35 SO AS TO REQUIRE AN EMPLOYER WHO PARTICIPATES IN A MULTIPLE EMPLOYER SELF-INSURED HEALTH PLAN TO EXECUTE HOLD HARMLESS AGREEMENTS IN WHICH THE EMPLOYER AGREES TO PAY ALL UNPAID PORTIONS OF INSURED CLAIMS, TO REQUIRE THESE AGREEMENTS MUST BE MADE ON CERTAIN FORMS THAT THE DEPARTMENT OF INSURANCE SHALL PROVIDE, AND TO IMPOSE CERTAIN RELATED RESPONSIBILITIES ON THE EMPLOYER AND INSURER; AND TO AMEND SECTION 38-41-50, AS AMENDED, RELATING TO STOP-LOSS COVERAGE IN MULTIPLE EMPLOYER SELF-INSURED PLANS, SO AS TO REVISE THE REQUIREMENTS FOR DETERMINING POLICY COVERAGE LIMITS, AND TO REQUIRE A PARTICIPATING EMPLOYER'S FUND FOR AN EXCESS STOP-LOSS POLICY.

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

Hold harmless agreements

SECTION 1. Chapter 41, Title 38 of the 1976 Code is amended by adding:

"Section 38-41-35. Each participating employer, as a condition of participation in a multiple employer self-insured health plan, shall execute an agreement by which the employer agrees to personally pay all claims for benefits covered under the multiple employer self-insured health plan which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay. Such agreements shall be made on forms prescribed by the director and shall

extend to all unpaid claims for benefits incurred by the employer's employees and their dependents during the time such employees and dependents were covered under the multiple employer self-insured health plan. Neither failure of a participating employer to execute an agreement, nor failure of the plan to require such execution, shall excuse the employer from liability for unpaid claims incurred by covered employees and dependents. An employer shall be deemed to have notice of the requirements of this section, and upon joining a multiple employer self-insured health plan, the employer shall be deemed to have agreed to liability for unpaid claims of his covered employees and their dependents in the same manner as if an agreement had been executed.

The multiple employer self-insured health plan shall provide each participating employer annual notice of the participating employer's responsibilities. This notice shall be in a form approved by the director or his designee and shall state that the participating employer is responsible for all claims incurred by the participating employer's covered employees and their covered dependents that the multiple employer self-insured health plan has failed to pay. The multiple employer self-insured health plan must obtain written certification from each participating employer annually that the participating employer understands that it is liable for covered claims which the multiple employer self-insured health plan fails to pay. The multiple employer self-insured health plan shall file an affidavit signed by the multiple employer self-insured health plan's chief executive officer that it has obtained each participating employer's certification. The multiple employer self-insured health plan shall maintain copies of each participating employer's annual certification for the duration of the multiple employer self-insured health plan. Failure of the multiple employer self-insured health plan to comply with any of its obligations under this section shall not be a defense to, or in any way diminish, an employer's obligation to personally pay all claims for benefits covered under the multiple employer self-insured health plan which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay."

Stop-loss coverage

SECTION 2. Section 38-41-50 of the 1976 Code, as last amended by Act 137 of 2012, is further amended to read:

"Section 38-41-50. A multiple employer self-insured health plan shall include aggregate excess stop-loss coverage and individual excess stop-loss coverage provided by an insurer licensed, approved, or eligible by the State. A MEWA shall maintain excess insurance coverage written by an insurer that the Department of Insurance considers approved or eligible to do business in this State. This coverage must have a net retention level determined in accordance with sound actuarial principles approved by the director or his designee, and based on the number of risks insured by the MEWA. The MEWA must file the policy contract providing this coverage with the director or his designee. The terms of this policy contract must require that before the insurer may cancel or modify the terms of this policy contract, the insurer must give notice of the pending cancellation or modification of terms to the director at least thirty days before the cancellation or modification may occur. Aggregate excess stop-loss coverage shall include provisions to cover incurred, unpaid claim liability in the event of plan termination. The excess or stop-loss insurer shall bear the risk of coverage for any member of the pool that becomes insolvent with outstanding contributions due. The limits required for an excess stop-loss policy shall be determined by the director or his designee in accordance with sound actuarial principles, so that the probability of incurred claims exceeding the participating employers' fund and the aggregate limit of the excess or stop-loss coverage is de minimus. A plan shall submit its proposed excess or stop-loss insurance contract to the director or his designee at least thirty days prior to the proposed contract's effective date and at least thirty days prior to any renewal date. The director or his designee shall review the contract to determine whether it meets the standards established by this chapter and respond within a thirty-day period. In reviewing an excess stop-loss agreement for approval, the director or his designee will closely scrutinize the agreement to determine whether the levels of individual and aggregate risk retained by the plan will put the plan in an unsound condition or will render its proceedings hazardous to the public or to persons covered under the plan. Any excess or stop-loss insurance contract must be noncancelable for a minimum term of two years. In addition, the plan shall have a participating employer's fund in an amount at least equal to the point at which the excess or stop-loss insurer shall assume a one hundred percent share of additional liability. The amount required for the employer's fund must be determined in accordance with sound actuarial principles and approved by the director or his designee and

based upon the number of risks insured by the plan. This employer's fund must be funded via cash or cash equivalent securities."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 89

(R111, H3962)

AN ACT TO AMEND SECTION 7-7-290, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN GREENWOOD COUNTY, SO AS TO ADD CERTAIN PRECINCTS AND TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Greenwood County voting precincts revised

SECTION 1. Section 7-7-290 of the 1976 Code, as last amended by Act 21 of 2009, is further amended to read:

"Section 7-7-290. (A) In Greenwood County there are the following voting precincts:

Greenwood No. 1
Greenwood No. 2
Greenwood No. 3
Greenwood No. 4
Greenwood No. 5
Greenwood No. 6
Greenwood No. 7

Greenwood No. 8
Glendale
Harris
Laco
Ninety Six
Ninety Six Mill
Ware Shoals
Hodges
Cokesbury
Coronaca
Greenwood High
Georgetown
Sandridge
Callison
Bradley
Troy
Epworth
Verdery
New Market
Emerald
Airport
Emerald High
Civic Center
Riley
Shoals Junction
Greenwood Mill
Stonewood
Mimosa Crest
Lower Lake
Pinecrest
Maxwellton Pike
New Castle
Rutherford Shoals
Liberty
Biltmore Pines
Marshall Oaks
Sparrows Grace
Mountain Laurel
Allie’s Crossing
Gideon’s Way
Parson’s Mill

(B) The precinct lines defining the precincts are as shown on the official map P-47-13 on file with the Office of Research and Statistics of the State Budget and Control Board and as shown on copies provided to the Greenwood Board of Voter Registration. The official map may not be changed except by act of the General Assembly.

(C) The Greenwood County Election Commission shall designate the polling places of each precinct."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 90

(R113, H3974)

AN ACT TO AMEND SECTION 12-54-240, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISCLOSURE OF RECORDS AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO ALLOW THE DISCLOSURE OF CERTAIN INFORMATION TO THE SECRETARY OF STATE ABOUT A TAXPAYER WHO FILED AN INITIAL OR FINAL CORPORATE RETURN; AND BY ADDING SECTION 12-58-165 SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO EXPUNGE THE RECORDING OF A LIEN ONCE THE LIEN IS FULLY PAID AND SATISFIED.

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

Disclosure of corporate return to Secretary of State

SECTION 1. Section 12-54-240(B)(17) of the 1976 Code is amended to read:

"(17) disclosure of information to the Secretary of State about a taxpayer who filed an initial or final corporate return or failed to pay a tax or fee or file a return, where the Secretary of State has the power to dissolve administratively the taxpayer or to revoke the taxpayer's authority to transact business in this State for failure to pay taxes or fees or file returns."

Expungement of a recorded lien

SECTION 2. Chapter 58, Title 12 of the 1976 Code is amended by adding:

"Section 12-58-165. The department may take necessary action to expunge the recording of any lien imposed pursuant to Section 12-54-120, or any other provision authorizing the department to collect monies due, once the lien is fully paid and satisfied. If, upon investigation, the department determines that no taxes were due, the provisions of this section apply and the recorded lien shall be expunged as if it were fully paid and satisfied."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 91

(R115, H4192)

AN ACT TO AMEND SECTION 7-7-120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN BERKELEY COUNTY, SO AS TO REDESIGNATE AN EXISTING PRECINCT, TO ADD FOUR PRECINCTS, TO DELETE AN OBSOLETE REFERENCE, AND TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF

RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Berkeley County voting precincts revised

SECTION 1. Section 7-7-120 of the 1976 Code, as last amended by Act 163 of 2010, is further amended to read:

"Section 7-7-120. (A) In Berkeley County there are the following voting precincts:

Alvin
Bethera
Beverly Hills
Bonneau
Bonneau Beach
Central
Cainhoy
Carnes Cross Road No. 1
Carnes Cross Road No. 2
Cordesville
Cross
Daniel Island No. 1
Daniel Island No. 2
Daniel Island No. 3
Daniel Island No. 4
Devon Forest No. 1
Devon Forest No. 2
Eadytown
Foster Creek
Goose Creek No. 1
Goose Creek No. 2
Hanahan No. 1
Hanahan No. 2
Hanahan No. 3
Hanahan No. 4
Hilton Cross Roads
Howe Hall No. 1
Howe Hall No. 2
Huger
Jamestown

Lebanon
Liberty Hall
Macedonia
McBeth
Medway
Moncks Corner No. 1
Moncks Corner No. 2
Moncks Corner No. 3
Moncks Corner No. 4
Pimlico
Pinopolis
Russellville
Sangaree No. 1
Sangaree No. 2
Sangaree No. 3
Shulerville
St. Stephen No. 1
St. Stephen No. 2
Stratford No. 1
Stratford No. 2
Stratford No. 3
Stratford No. 4
The Village
Wassamassaw No. 1
Wassamassaw No. 2
Westview No. 1
Westview No. 2
Westview No. 3
Whitesville No. 1
Whitesville No. 2
Yellow House

(B) The precinct lines defining the precincts provided in subsection (A) are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-15-13 and as shown on copies provided to the Board of Elections and Voter Registration of Berkeley County.

(C) The polling places for the precincts provided in this section must be established by the Board of Elections and Voter Registration of Berkeley County subject to the approval of a majority of the Senators and a majority of the House members of the Berkeley County Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 92

(R116, H4204)

AN ACT TO AMEND SECTION 7-7-170, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PRECINCTS IN CHESTER COUNTY, SO AS TO REDESIGNATE CERTAIN PRECINCTS, TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, AND TO CORRECT ARCHAIC LANGUAGE.

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

Chester County voting precincts revised

SECTION 1. Section 7-7-170 of the 1976 Code, as last amended by Act 240 of 1996, is further amended to read:

"Section 7-7-170. (A) In Chester County there are the following voting precincts:

Baldwin Mill
Baton Rouge
Beckhamville
Blackstock
Edgemoor
Eureka Mill
Fort Lawn
Halsellville

Hazelwood
Lando
Lansford
Lowrys
Richburg
Rodman
Rossville
Wilksburg
Great Falls Nos. 1 and 2
Great Falls No. 3
Chester, Ward 1
Chester, Ward 2
Chester, Ward 3
Chester, Ward 4
Chester, Ward 5

(B) The precinct lines defining the precincts provided in subsection (A) are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-23-13 and as shown on copies of the official map provided to the Registration and Election Commission of Chester County by the Office of Research and Statistics.

(C) The polling places for the above precincts must be determined by the Registration and Election Commission of Chester County with the approval of a majority of the Chester County Legislative Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 93

(R117, H4216)

AN ACT TO AMEND SECTION 7-7-465, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE

DESIGNATION OF VOTING PRECINCTS IN RICHLAND COUNTY, SO AS TO REVISE AND ADD CERTAIN PRECINCTS, TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES AND PRECINCT LINES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, TO CORRECT REFERENCES, AND TO PROVIDE FOR ALTERNATE PRECINCT POLLING PLACES UNDER SPECIFIED CONDITIONS.

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

Richland County voting precincts revised

SECTION 1. Section 7-7-465 of the 1976 Code, as last amended by Act 24 of 2007, is further amended to read:

"Section 7-7-465. (A) In Richland County there are the following voting precincts:

Ward 1
Ward 2
Ward 3
Ward 4
Ward 5
Ward 6
Ward 7
Ward 8
Ward 9
Ward 10
Ward 11
Ward 12
Ward 13
Ward 14
Ward 15
Ward 16
Ward 17
Ward 18
Ward 19
Ward 20
Ward 21
Ward 22

Ward 23
Ward 24
Ward 25
Ward 26
Ward 29
Ward 30
Ward 31
Ward 32
Ward 33
Ward 34
Arcadia
Ardincaple
Ballentine 1
Ballentine 2
Barrier Free
Beatty Road
Bluff
Blythewood 1
Blythewood 2
Blythewood 3
Bookman
Brandon 1
Brandon 2
Briarwood
Bridge Creek
Caughman Road
College Place
Cooper
Dennyside
Dentsville
Dutch Fork 1
Dutch Fork 2
Dutch Fork 3
Dutch Fork 4
Eastover
Edgewood
Estates
Fairlawn
Fairwold
East Forest Acres
North Forest Acres
South Forest Acres

Friarsgate 1
Friarsgate 2
Old Friarsgate
Gadsden
Garners
Greenview
Gregg Park
Hampton
Harbison 1
Harbison 2
Hopkins 1
Hopkins 2
Horrell Hill
Hunting Creek
Keels 1
Keels 2
Keenan
Kelly Mill
Killian
Kingswood
Lake Carolina
Lincolnshire
Longcreek
Longleaf
Lykesland
Mallet Hill
Meadowfield
Meadowlake
McEntire
Midway
Mill Creek
Monticello
North Springs 1
North Springs 2
North Springs 3
Oak Pointe 1
Oak Pointe 2
Oak Pointe 3
Oakwood
Olympia
Parkridge 1
Parkridge 2

Parkway 1
Parkway 2
Parkway 3
Pennington 1
Pennington 2
Pine Grove
Pine Lakes 1
Pine Lakes 2
Pinewood
Polo Road
Pontiac 1
Pontiac 2
Rice Creek 1
Rice Creek 2
Ridge View 1
Ridge View 2
Ridgewood
Riverside
Riversprings 1
Riversprings 2
Riversprings 3
Riverwalk
Round Top
St. Andrews
Sandlapper
Satchelford
Skyland
South Beltline
Spring Hill
Spring Valley
Spring Valley West
Springville 1
Springville 2
Trenholm Road
Trinity
Valhalla
Valley State Park
Walden
Webber
Westminster
Whitewell
Wildewood

Woodfield
Woodlands

(B) The precinct lines defining the precincts provided in subsection (A) are as shown on the official map prepared by and on file with the Office of Research and Statistics of the South Carolina Budget and Control Board designated as document P-79-13 and as shown on copies of the official map provided to the Board of Elections and Voter Registration of Richland County by the Office of Research and Statistics.

(C) The polling places for the precincts provided in this section must be established by the Board of Elections and Voter Registration of Richland County subject to the approval of the majority of the Richland County Legislative Delegation.

(D) If the Board of Elections and Voter Registration of Richland County determines that a precinct contains no suitable location for a polling place, the board, upon approval by a majority of the county's legislative delegation, may locate the polling place inside the county and within five miles of the precinct's boundaries."

Time effective

SECTION 2. This act takes effect on January 1, 2014.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 94

(R85, S584)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-9-15 SO AS TO DEFINE THE TERMS "LICENSE SALES VENDOR" AND "LICENSE YEAR"; TO AMEND SECTION 50-9-20, AS AMENDED, RELATING TO THE DURATION OF HUNTING AND FISHING LICENSES ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES, SO AS TO PROVIDE FOR THE DURATION OF LICENSES FOR RECREATIONAL AND COMMERCIAL USE, AND PERMIT THE DEPARTMENT TO

DISCONTINUE THE ISSUANCE OF STAMPS AND PERMIT THE DEPARTMENT TO ISSUE A LICENSE THAT EXPIRES ON THE DAY BEFORE THE ANNIVERSARY OF ITS ISSUANCE; TO AMEND SECTION 50-9-30, AS AMENDED, RELATING TO RESIDENCY REQUIREMENTS IMPOSED FOR THE ISSUANCE OF CERTAIN LICENSES, SO AS TO REVISE THE REQUIREMENTS; TO AMEND SECTION 50-9-350, AS AMENDED, RELATING TO APPRENTICE HUNTING LICENSES, SO AS TO PROVIDE THAT THE HOLDER OF AN APPRENTICE HUNTING LICENSE WHO OBTAINS A CERTIFICATE OF COMPLETION PRIOR TO THE EXPIRATION DATE OF HIS APPRENTICE HUNTING LICENSE MUST USE HIS APPRENTICE HUNTING LICENSE AS HIS STATEWIDE HUNTING LICENSE, PROVIDED THAT THE LICENSEE MUST HAVE THE CERTIFICATE OF COMPLETION IN HIS POSSESSION WHILE HUNTING; TO AMEND SECTION 50-9-510, AS AMENDED, RELATING TO LICENSES FOR PURCHASE FOR THE PRIVILEGE OF HUNTING, SO AS TO DISCONTINUE ISSUANCE OF HUNTING LICENSES THAT ARE VALID ONLY IN A SINGLE COUNTY, TO REMOVE RESTRICTIONS ON THE THREE YEAR LICENSE PURCHASE, TO CLARIFY REQUIREMENTS FOR MIGRATORY WATERFOWL PERMITS, AND TO PROVIDE FOR THE RETAINED VENDOR FEE; TO AMEND SECTION 50-9-525, RELATING TO THE ISSUANCE OF HUNTING AND FISHING LICENSES TO DISABLED RESIDENTS, SO AS TO REVISE THE CRITERIA USED TO DETERMINE WHO MAY OBTAIN A LICENSE UNDER THIS PROVISION; TO AMEND SECTION 50-9-530, AS AMENDED, RELATING TO CATAWBA LICENSES, SO AS TO PROVIDE THAT THERE IS NO COST TO A CATAWBA HUNTING AND FISHING LICENSEE FOR ANY OTHER TAGS REQUIRED BY LAW FOR RECREATIONAL HUNTING AND FISHING EXCEPT FOR THOSE DEPARTMENT HUNTING AND FISHING ACTIVITIES CONTROLLED BY LOTTERY; TO AMEND SECTION 50-9-540, AS AMENDED, RELATING TO RECREATIONAL FISHING LICENSES, SO AS TO PROVIDE THAT RESIDENTS AND NONRESIDENTS MUST PURCHASE ANY OTHER LICENSE THAT GRANTS FISHING PRIVILEGES, TO DELETE THE LAKES AND RESERVOIRS PERMIT, AND TO CHANGE THE TEMPORARY NONRESIDENT FISHING LICENSE FROM SEVEN TO

FOURTEEN DAYS; TO AMEND SECTION 50-9-610, RELATING TO ADDITIONAL REQUIREMENTS FOR TAKING NONGAME FRESHWATER FISH, SO AS TO DELETE THE PROVISION THAT EXEMPTS A RESIDENT WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER FROM PURCHASING A PERMIT FOR RECREATIONAL FISHING OF CERTAIN SET HOOKS AND PROVIDE THAT TAGS MUST BE ATTACHED AS PRESCRIBED; TO AMEND SECTION 50-9-665, RELATING TO BEAR HUNTING, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 50-9-920, AS AMENDED, RELATING TO REVENUES FROM THE SALE OF PRIVILEGES, LICENSES, PERMITS, AND TAGS, SO AS TO MAKE CONFORMING CHANGES, AND TO PROVIDE FOR REVISED LICENSE REVENUE DISTRIBUTION; TO AMEND SECTION 50-9-950, RELATING TO THE FISH AND WILDLIFE PROTECTION FUND, SO AS TO REVISE THE FUND'S PURPOSE, SOURCES OF REVENUE, AND DISTRIBUTION OF REVENUES; TO AMEND SECTION 50-9-955, RELATING TO THE FISH AND WILDLIFE DEFERRED LICENSE FUND, SO AS TO MAKE A TECHNICAL CHANGE, AND REVISE THE FORMULA FOR DISTRIBUTING REVENUES CONTAINED IN THE FUND; TO AMEND SECTION 50-9-960, RELATING TO THE MARINE RESOURCES FUND, SO AS TO REVISE THE PURPOSE OF THE FUND, REVISE THE SOURCES OF REVENUE CONTAINED IN THE FUND, AND REVISE THE PROJECTS THAT MAY BE SUPPORTED BY THE FUND; TO AMEND SECTION 50-9-965, RELATING TO THE MARINE RESOURCES DEFERRED LICENSE FUND, SO AS TO MAKE A TECHNICAL CHANGE, AND REVISE THE FORMULA FOR TRANSFERRING REVENUES INTO THE FUND; TO REPEAL SECTION 50-15-65(E) RELATING TO ALLIGATOR HUNTING, CONTROL, AND MANAGEMENT; TO AMEND SECTION 50-9-35, RELATING TO A PERSON WHO TRANSFERS HIS RESIDENCY, SO AS TO REVISE THE PROVISIONS THAT REGULATE WHO MAY LAWFULLY HOLD A RESIDENT LICENSE PERMIT, STAMP, OR TAG ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES.

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

Definitions

SECTION 1. Article 1, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-15. For the purposes of this title:

(1) 'License sales vendor' means a business, not for profit entity, or unit of state or local government that has entered into an agreement with the department to offer for sale hunting and fishing licenses.

(2) 'License year' means the period beginning July first and ending June thirtieth."

Hunting and fishing licenses, permits, and tags

SECTION 2. Section 50-9-20 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-20. (A) The duration for hunting and fishing licenses, permits, and tags for recreational purposes is as follows:

(1) a temporary license, permit, or tag expires after the specified number of consecutive days inclusive of the start date and expiration date;

(2) an annual license, permit, or tag expires on the last day of the license year for which the license was issued; provided, the department may issue an annual license, permit, or tag that expires the day before the anniversary of the date of its issuance;

(3) a three year license or permit expires on the last day of the third license year of issue; provided, the department may issue a three year license or permit that expires the day before the third anniversary of the date of its issuance;

(4) a three year disability license expires the day before the third anniversary of the date of its issuance; and

(5) the Catawba Indian license expires October 27, 2092.

(B) For commercial purposes, an annual license, permit, or tag expires on the last day of the license year for which the license, permit, or tag was issued.

(C) This section does not alter the start date or expiration date of a permit which by law has other terms."

Residency requirements

SECTION 3. Section 50-9-30 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-30. (A) For the purposes of obtaining:

(1) a recreational license, permit, or tag with a duration of three years or less, 'resident', unless otherwise specified, means a United States citizen or a citizen of a foreign country lawfully in the United States who:

(a) has been domiciled in this State for thirty consecutive days or more immediately preceding the date of application;

(b) is a regularly enrolled full-time student in a high school, technical school, college, or university within this State; or

(c) is an active member of the United States Armed Forces, or the member's dependent, stationed in this State for thirty consecutive days or more immediately preceding the date of application;

(2) a lifetime recreational license, 'resident' means a United States citizen who has been domiciled in this State for one hundred eighty consecutive days or more immediately preceding the date of application;

(3) a disability recreational license, 'resident' means a United States citizen who has been domiciled in this State for three hundred sixty-five consecutive days or more immediately preceding the date of application;

(4)(a) a commercial license, permit, or tag, 'resident' means a United States citizen who has been domiciled in this State for three hundred sixty-five consecutive days or more immediately preceding the date of application; and

(b) a commercial license or permit issued for a business, 'resident' means a business that has been incorporated and operating in this State for three hundred sixty-five days or more immediately preceding the date of application.

(B) An applicant for a resident license must furnish proof of residency as may be required by the department.

(C) 'Nonresident' means an individual or business that is not a resident under subitem (A)."

Apprentice hunting license

SECTION 4. Section 50-9-350 of the 1976 Code, as last amended by Act 257 of 2012, is further amended to read:

"Section 50-9-350. To encourage the recruitment of persons as responsible hunters:

(1) The certificate of completion requirement may be waived for one license year if a person obtains an apprentice hunting license, and a person may receive such a waiver only one time. An apprentice hunting license may be issued if the applicant:

(a) is at least sixteen years of age and otherwise required to obtain a certificate of completion to obtain a hunting license;

(b) has not been convicted of or received deferred adjudication for violation of the hunter education requirement in this State; and

(c) has not been convicted of a hunting violation.

(2) While afield, the apprentice hunter must be accompanied by a licensed hunter who:

(a) has attained the age of twenty-one years;

(b) is not licensed as an apprentice hunter; and

(c) stays within a distance that enables uninterrupted, unaided, visual, and oral communication with the apprentice hunter and provides adequate direction to the apprentice.

(3) If the holder of an apprentice hunting license obtains a certificate of completion prior to the expiration date of his apprentice hunting license, his apprentice hunting license will be used as his statewide hunting license; provided, the licensee must have the certificate of completion in his possession while hunting.

(4) In addition to obtaining the apprentice hunting license, an apprentice license holder must obtain any other license, permit, receipt, stamp, and tag required to participate in a specific hunting activity."

Hunting and fishing licenses

SECTION 5. Section 50-9-510 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-510. (A) For the privilege of hunting:

(1) a resident must purchase:

(a) an annual statewide hunting license for twelve dollars, one dollar of which the issuing sales vendor may retain;

(b) a three year statewide hunting license for thirty-six dollars, three dollars of which the issuing sales vendor may retain;

(c) a lifetime statewide hunting license for three hundred dollars at designated licensing locations; or

(d) any other license which grants statewide hunting privileges;

(2) a resident who meets the qualifications as an apprentice hunter must purchase an annual statewide apprentice hunting license for twelve dollars, one dollar of which the issuing sales vendor may retain;

(3) a nonresident must purchase:

(a) a three day temporary statewide hunting license for forty dollars, one dollar of which the issuing sales vendor may retain;

(b) a ten day temporary statewide hunting license for seventy-five dollars, two dollars of which the issuing sales vendor may retain;

(c) an annual statewide hunting license for one hundred twenty-five dollars, two dollars of which the issuing sales vendor may retain; or

(d) any other license which grants statewide hunting privileges;

(4) a nonresident who meets the qualifications as an apprentice hunter must purchase an annual statewide apprentice hunting license for one hundred twenty-five dollars, two dollars of which the issuing sales vendor may retain.

(B) For the privilege of hunting big game:

(1) a resident must purchase in addition to the required hunting license:

(a) an annual big game permit for six dollars, one dollar of which the issuing sales vendor may retain;

(b) a three year big game permit for eighteen dollars, three dollars of which the issuing sales vendor may retain; or

(c) any other license which grants big game privileges;

(2) a nonresident must purchase in addition to the required hunting license:

(a) an annual big game permit for one hundred dollars, two dollars of which the issuing sales vendor may retain; or

(b) any other license which grants big game privileges.

(C) For the privilege of hunting on wildlife management areas:

(1) a resident must purchase in addition to the required hunting license:

(a) an annual wildlife management area permit for thirty dollars and fifty cents, one dollar of which the issuing sales vendor may retain;

(b) a three year wildlife management area permit for ninety-one dollars and fifty cents, three dollars of which the issuing sales vendor may retain; or

(c) any other license which grants wildlife management area privileges;

(2) the department may issue residents temporary wildlife management area permits from the department's designated licensing locations for department specified hunting events for five dollars and fifty cents, fifty cents of which the issuing sales vendor may retain;

(3) a nonresident must purchase in addition to the required hunting license:

(a) a wildlife management area permit for seventy-six dollars, one dollar of which the issuing sales vendor may retain; or

(b) any other license which grants wildlife management area privileges.

(D) For the privilege of hunting migratory game birds, in addition to the required hunting license:

(1) a resident must obtain an annual migratory game bird permit at no cost;

(2) a nonresident must obtain an annual migratory game bird permit at no cost.

(E) For the privilege of hunting migratory waterfowl, in addition to the required hunting license and permits and any required federal stamp or permit:

(1) a resident must purchase a migratory waterfowl permit for five dollars and fifty cents, fifty cents of which the issuing sales vendor may retain;

(2) a nonresident must purchase a migratory waterfowl permit for five dollars and fifty cents, fifty cents of which the issuing sales vendor may retain.

(F) For the privilege of hunting only the authorized released species on a licensed shooting preserve, in lieu of a hunting license, an individual may purchase an annual statewide shooting preserve license for eight dollars and fifty cents, one dollar of which the issuing sales vendor may retain."

Licenses for disabled residents

SECTION 6. Section 50-9-525(A) of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"(A) A resident who is determined to be disabled and receiving benefits under a Social Security program, the Civil Service Retirement System, the South Carolina State Retirement System, the Railroad Retirement Board, the Veterans Administration, or Medicaid, or their successor agencies or programs, may obtain a three year disability combination license or a three year disability fishing license at no cost. The license must be issued by the department from its designated offices and is valid for three years from the date of issue. Disability recertification is required for renewal. To recertify, an applicant must furnish proof, in the manner prescribed by the department, that he or she is currently receiving disability benefits and is a domiciled resident of this State. The department may waive the proof of disability benefit requirement for renewals where the resident is at least sixty-five years of age."

Catawba hunting and fishing licenses

SECTION 7. Section 50-9-530 of the 1976 Code, as last amended by Act 233 of 2010, is further amended by adding at the end:

"(G) There is no cost to a Catawba hunting and fishing licensee for any other tags required by law for recreational hunting and fishing except for those department hunting and fishing activities controlled by lottery."

Fishing licenses

SECTION 8. Section 50-9-540 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-540. (A) For the privilege of recreational statewide fishing in saltwater:

(1) a resident must purchase:

(a) a fourteen day temporary saltwater fishing license for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual saltwater fishing license for ten dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year saltwater fishing license for thirty dollars, one dollar of which the issuing sales vendor may retain;

(d) a lifetime statewide saltwater fishing license for three hundred dollars at designated licensing locations; or

(e) any other license which grants saltwater fishing privileges;

(2) a nonresident must purchase:

(a) a fourteen day temporary saltwater fishing license for eleven dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual saltwater fishing license for thirty-five dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year saltwater fishing license for one hundred five dollars, three dollars of which the issuing sales vendor may retain; or

(d) any other license which grants saltwater fishing privileges.

(B) For the privilege of recreational statewide fishing in freshwater:

(1) a resident must purchase:

(a) a fourteen day temporary freshwater fishing license for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual freshwater fishing license for ten dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year freshwater fishing license for thirty dollars, three dollars of which the issuing sales vendor may retain;

(d) a lifetime statewide freshwater fishing license for three hundred dollars at designated licensing locations; or

(e) any other license which grants freshwater fishing privileges;

(2) a nonresident must purchase:

(a) a fourteen day temporary freshwater fishing license for eleven dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual freshwater fishing license for thirty-five dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year freshwater fishing license for one hundred five dollars, three dollars of which the issuing sales vendor may retain; or

(d) any other license which grants freshwater fishing privileges.

(C) For the privilege of operating a public fishing pier in the salt waters of this State, the owner or operator must purchase an annual saltwater public fishing pier license. For a pier with a total length:

(1) of one hundred feet or less, the fee is one hundred fifty dollars;

(2) greater than one hundred feet, the fee is three hundred fifty dollars.

(D) For the privilege of operating a charter fishing vessel in the salt waters of this State, the owner or operator must purchase an annual charter vessel license for each vessel. For a vessel:

(1) to carry six or fewer passengers, the fee is one hundred fifty dollars;

(2) to carry seven but no more than forty-nine passengers, the fee is two hundred fifty dollars;

(3) to carry fifty or more passengers, the fee is three hundred fifty dollars."

Taking of nongame freshwater fish

SECTION 9. Section 50-9-610 of the 1976 Code, as added by Act 200 of 2010, is amended to read:

"Section 50-9-610. (A) In addition to the licenses required for freshwater fishing, each licensee attempting to take nongame freshwater fish must obtain:

(1) a tag for each eel pot, at five dollars a tag for residents and fifty dollars a tag for nonresidents;

(2) a tag for each fyke net, at ten dollars for residents and fifty dollars for nonresidents;

(3) a tag for each gill net, at five dollars a tag for residents and fifty dollars a tag for nonresidents;

(4) a tag for each hoop net, at ten dollars a tag for residents and fifty dollars a tag for nonresidents;

(5) a tag for each trap, at five dollars a tag for residents and fifty dollars a tag for nonresidents;

(6) a tag for each trotline, not to exceed fifty hooks each, at two dollars fifty cents a tag for residents and fifty dollars a tag for nonresidents;

(7) a permit for using up to fifty jugs, at five dollars a permit for residents and fifty dollars for nonresidents;

(8) a permit for using up to fifty set hooks, at five dollars a permit for residents and fifty dollars for nonresidents.

(B) Permits for jugs and set hooks are not required for residents assisting permit holders.

(C) The licensee must affix the tag or identification information to the respective device."

Bear hunting

SECTION 10. Section 50-9-665(A) of the 1976 Code, as added by Act 286 of 2010, is amended to read:

"(A) For the privilege of hunting bear, in addition to the required hunting license and big game permit the licensee must obtain a bear tag issued in his name, and the fee:

(1) for a resident is twenty-five dollars per tag, one dollar of which may be retained by the license sales vendor;

(2) for a nonresident is one hundred dollars per tag, two dollars of which may be retained by the license sales vendor."

Revenue distribution

SECTION 11. Section 50-9-920 of the 1976 Code, as last amended by Act 286 of 2010, is further amended to read:

"Section 50-9-920. (A) Revenue generated from the sale of lifetime privileges shall be deposited in the Wildlife Endowment Fund.

(B) Revenue generated from the sale of other hunting and freshwater fishing licenses, permits, and tags shall be remitted to the State Treasurer and unless otherwise required by law credited to the Fish and Wildlife Protection Fund. Revenue from each:

(1) wildlife management area permit shall be used for the management and the procurement of wildlife management area lands;

(2) nonresident annual statewide hunting license shall be used as follows:

(a) one dollar for the propagation, management, and protection of ducks and geese in this State;

(b) one dollar contributed by the department to proper agencies along the Atlantic Flyway for the propagation, management, and protection of ducks and geese; and

(c) the balance to the Fish and Wildlife Protection Fund;

(3) nonresident temporary statewide hunting license shall be used as follows:

(a) fifty cents for the propagation, management, and protection of ducks and geese in this State;

(b) fifty cents contributed by the department to proper agencies along the Atlantic Flyway for the propagation, management, and protection of ducks and geese; and

(c) the balance to the Fish and Wildlife Protection Fund;

(4) nonresident annual freshwater fishing license shall be distributed as follows:

(a) twenty-five percent to the County Game and Fish Fund account for the respective county in which the license was sold, except that these licenses sold through a central point such as online, call

centers, and department mass mailings shall be equally allocated to the counties;

(b) twenty-five percent for the operation and management of department freshwater fish hatcheries; and

(c) the balance to the Fish and Wildlife Protection Fund;

(5) application fee, permit, tag, and nonresident hunting fee for the privilege of hunting alligators shall be used to administer the alligator management program;

(6) antlerless deer quota permit (ADQP) shall be exclusively used to administer the ADQP program and for deer management and research;

(7) individual antlerless deer tags shall be used as follows:

(a) eighty percent to administer the tag program, deer management, and research; and

(b) the remaining twenty percent for law enforcement;

(8) application fee, permit, and tag for the privilege of hunting bear shall be used to administer the tag program, protect bear habitats, and support bear research and management;

(9) field trial permit and shooting preserve operation permit shall be used to support the management of small game programs;

(10) lottery hunt application fee shall be used to administer the lottery hunt program and support management of lands on which the lottery hunts take place;

(11) falconry permit shall be used to support the falconry permitting program.

(C) Revenue generated from the sale of recreational and commercial marine licenses, permits, and tags shall be deposited to the Marine Resources Fund unless otherwise required by law. Revenue shall be distributed as follows, from each:

(1) annual or temporary recreational saltwater fishing license:

(a) twenty-five cents to saltwater administration;

(b) one dollar to law enforcement; and

(c) the balance to recreational saltwater programs;

(2) charter vessel license:

(a) five percent to saltwater administration;

(b) twenty percent to law enforcement; and

(c) the balance to recreational saltwater programs;

(3) saltwater fishing pier license:

(a) five percent to saltwater administration;

(b) twenty percent to law enforcement; and

(c) the balance to recreational saltwater programs;

(4) shrimp baiting license:

(a) seventy percent for additional enforcement efforts during the established shrimp baiting period to assist existing law enforcement personnel in monitoring and enforcement of the shrimp baiting laws; and

(b) the balance to the Marine Resources Fund;

(5) sale of stamps, prints, and related articles:

(a) five percent to saltwater administration;

(b) twenty percent to saltwater enforcement; and

(c) the balance to recreational saltwater programs.

(D) Two-thirds of the revenue generated from the sale of three year recreational saltwater licenses shall be allocated to the Marine Resources Deferred License Fund.

(E) Two-thirds of the revenue generated from the sale of three year recreational freshwater fishing and hunting licenses shall be allocated to the Fish and Wildlife Deferred License Fund.

(F) Revenue generated from the sale of duplicate or replacement licenses, permits, and tags shall be credited to the Fish and Wildlife Protection Fund."

Fish and Wildlife Protection Fund

SECTION 12. Section 50-9-950 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-950. (A) The Fish and Wildlife Protection Fund is created for the purpose of supporting the department and its effort to conserve freshwater fisheries and wildlife. The assets of the fund are derived from the following sources:

(1) revenue from the sale of freshwater fisheries and wildlife licenses, permits, stamps, and tags;

(2) application fees for recreational events and charges for room and board on state property where the property was procured with proceeds from the fund and its predecessor funds;

(3) revenue generated from the sale of timber and property procured with proceeds from the fund and its predecessor funds;

(4) revenue transmitted to the department from the Department of Motor Vehicles for specialty license plates to support department operations;

(5) restricted interest income, contributions, and donations;

(6) indirect cost recoveries where the department matched a grant using the fund; and

(7) any other source of revenue recognized by the United States Fish and Wildlife Service, where the disposition of such revenue to any other fund could be interpreted as a loss of control or misdirection of funds by the department.

These funds shall be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund.

(B) Revenue shall be expended by the department for the protection, propagation, and management of freshwater fisheries and wildlife, the enforcement of related laws, the administration of the department, and the dissemination of information, facts, and findings the department considers necessary. Revenue may be expended on permanent improvement or deferred maintenance projects consistent with the purposes of the fund.

(C) Interest earned on balances in the fund shall be credited to the fund and expended for those same purposes.

(D) Balances in the fund shall be retained and carried forward annually and may be used to match available federal funds."

Fish and Wildlife Deferred License Fund

SECTION 13. Section 50-9-955 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-955. (A) The Fish and Wildlife Deferred License Fund is created for the purpose of receiving revenue generated from the sale of three year hunting and freshwater fishing licenses, permits, stamps, and tags.

(B) Receipts from each license year shall be transferred to the Fish and Wildlife Protection Fund as follows:

(1) fifty percent during the first fiscal year after receipt; and

(2) the balance during the second fiscal year after receipt.

Where applicable, each transfer shall distribute the receipts based on the allocations specified in Section 50-9-920(B).

(C) Interest earned on balances in the fund shall be credited to the fund and transferred to the Fish and Wildlife Protection Fund in the same manner.

(D) Balances in the fund shall be retained and carried forward annually."

Marine Resources Fund

SECTION 14. Section 50-9-960 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-960. (A) The Marine Resources Fund is created for the purpose of supporting the department and its effort to conserve marine fisheries. The assets of the fund are derived from the following sources:

(1) revenue from the sale of saltwater licenses, permits, stamps, and tags;

(2) revenue generated from the sale of posters, prints, and related articles;

(3) revenue generated from the sale of property procured with proceeds from the fund and its predecessor funds;

(4) revenue transmitted to the department from the Department of Motor Vehicles for specialty license plates;

(5) restricted interest income, contributions, and donations;

(6) indirect cost recoveries where the department matched a grant using the fund; and

(7) any other source of revenue recognized by the United States Fish and Wildlife Service, where the disposition of such revenue to any other fund could be interpreted as a loss of control or misdirection of funds by the department.

(B) Revenue generated from the sale of:

(1) recreational saltwater privileges shall be expended by the department for purposes authorized pursuant to the South Carolina Marine Resources Act of 2000. The Saltwater Recreational Fishing Advisory Committee shall assist in prioritizing the expenditure of saltwater license funds for:

(a) the protection, maintenance, or enhancement of saltwater habitat important to the continued production of marine fish stocks and their food sources of significance to recreational saltwater fisheries;

(b) development of recreational saltwater fishing facilities;

(c) scientific research and management of recreational saltwater fisheries;

(d) permanent improvement or deferred maintenance projects consistent with the purposes described herein;

(e) other programs directly benefiting recreational saltwater fisheries recommended by the Saltwater Recreational Fisheries Advisory Committee; and

(f) an annual report made available on the department website indicating how the previous year's funds were expended;

(2) commercial saltwater privileges, culture and mariculture permits, and marine permits shall be expended for the administration and implementation of programs in the Marine Resources Division and may be expended on permanent improvement or deferred maintenance projects consistent with the purposes of the fund.

(C) Funds generated pursuant to this section shall be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund.

(D) Interest earned on balances in the fund shall be credited to the fund and expended for the same purposes.

(E) Balances in the fund shall be retained and carried forward annually and may be used to match available federal funds."

Marine Resources Deferred License Fund

SECTION 15. Section 50-9-965 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-965. (A) The Marine Resources Deferred License Fund is created for the purpose of receiving revenue generated from the sale of three year saltwater licenses, permits, stamps, and tags.

(B) Receipts from each license year shall be transferred to the Marine Resources Fund as follows:

(1) fifty percent during the first fiscal year after receipt; and

(2) the balance during the second fiscal year after receipt. Where applicable, each transfer shall distribute the receipts based on the allocations specified in Section 50-9-920(C).

(C) Interest earned on balances in the fund shall be credited to the fund and transferred to the Marine Resources Fund in the same manner.

(D) Balances in the fund shall be retained and carried forward annually."

Repeal

SECTION 16. Section 50-15-65(E) of the 1976 Code is repealed.

Residency requirements

SECTION 17. Section 50-9-35 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-35. Any person licensed by another state as a resident for any purpose is not eligible to apply for, obtain, or hold any South Carolina resident license, permit, stamp, or tag required by this title. It is unlawful to obtain, attempt to obtain, or possess a license, permit, stamp, or tag required by this title while licensed as a resident of another state for any purpose.

Any person who lawfully acquires a resident South Carolina license, permit, stamp, or tag and who during the term of that instrument transfers their domicile outside of this State, may continue the privileges until expiration of that license, permit, stamp, or tag."

Time effective

SECTION 18. This act takes effect July 1, 2013.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 95

(R104, H3632)

AN ACT TO AMEND SECTION 42-5-190, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MAINTENANCE TAX IMPOSED BY THE WORKERS' COMPENSATION COMMISSION ON SELF INSURERS, SO AS TO PROVIDE THAT THE COMMISSION SHALL RETAIN A PORTION OF THE ANNUAL MAINTENANCE TAX REVENUE TO PAY THE SALARIES AND EXPENSES OF THE COMMISSION, TO PROVIDE THAT THE COMMISSION SHALL RETAIN ONE-HALF OF THE INTEREST CHARGED ON DELINQUENT MAINTENANCE TAX FOR THE SAME PURPOSE, AND TO PROVIDE DURATION PROVISIONS AND REPORTING REQUIREMENTS.

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

Workers' Compensation Commission, revenues retained

SECTION 1. Section 42-5-190 of the 1976 Code, as last amended by Act 153 of 1989, is further amended to read:

"Section 42-5-190. Every employer carrying his own risk under the provisions of Section 42-5-20 shall report under oath to the commission the employer's actual cost incurred under the provisions of this title. The report must be made in the form prescribed by the commission by the fifteenth day of the third month following the close of the self-insurer's fiscal year. The commission shall assess against the actual cost incurred a maintenance tax computed by taking two and one-half percent of the actual cost of operating under the provisions of this title as determined by the commission. The assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission. The balance of the maintenance tax revenues must be remitted to the State Treasurer for the credit of the general fund of the State. In the event of failure to pay the tax within fifteen days of the date set forth in this section, the commission may assess against the self-insurer a penalty of five percent of the unpaid tax. If the self-insurer fails to pay the tax and penalty within fifteen days of notice by the commission, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the tax was due originally until the date the deficiency is paid and the commission may initiate proceedings to withdraw the privilege of self-insuring in this State. The total maximum interest to be charged may not exceed twenty-five percent. The penalty under this section is payable to the commission. Fifty percent of the interest must be retained by the commission and used by it as retained maintenance tax revenues are used and the balance of the interest must be remitted to the State Treasurer for the credit of the general fund of the State."

Time effective

SECTION 2. This act takes effect July 1, 2013, and must be terminated five years after the effective date of the act unless otherwise authorized by the General Assembly. Beginning on July 1, 2014, and on each July first thereafter, the South Carolina Workers' Compensation Commission must report to the Chairman of House

Ways and Means Committee, the Chairman of Senate Finance, and the Governor the amount of money the agency has received in the previous fiscal year pursuant to this act.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 96

(R51, S323)

AN ACT TO AMEND THE OFFICIAL COMMENT TO SECTION 36-9-101, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CHAPTER TITLED "UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS", SO AS TO, INTER ALIA, IDENTIFY THE SPECIFIC VERSION OF THE UNITED STATES BANKRUPTCY CODE REFERENCED THROUGHOUT THE COMMENTS TO CHAPTER 9, TITLE 36; TO AMEND SECTION 36-9-102, RELATING TO THE DEFINITIONS APPLICABLE TO CHAPTER 9, TITLE 36, SO AS TO REVISE EXISTING OR PROVIDE NEW DEFINITIONS FOR CERTAIN TERMS, AND TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 36-9-105, RELATING TO THE CONTROL OF ELECTRONIC CHATTEL PAPER, SO AS TO CLARIFY THE CONDITIONS UNDER WHICH A SECURED PARTY IS DEEMED TO HAVE CONTROL OF ELECTRONIC CHATTEL PAPER; TO AMEND SECTION 36-9-307, RELATING TO THE DEBTOR'S LOCATION, SO AS TO INCLUDE PROVISIONS FOR DESIGNATING A MAIN OFFICE, HOME OFFICE, OR OTHER COMPATIBLE OFFICE; TO AMEND SECTION 36-9-311, RELATING TO THE PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES, SO AS TO MAKE A TECHNICAL CORRECTION; TO AMEND SECTION 36-9-316, RELATING TO THE CONTINUED PERFECTION OF A SECURITY INTEREST FOLLOWING A CHANGE IN THE GOVERNING LAW, SO AS TO PROVIDE RULES THAT APPLY TO COLLATERAL TO WHICH A SECURITY INTEREST ATTACHES WITHIN FOUR

MONTHS AFTER A DEBTOR CHANGES LOCATION; TO AMEND SECTION 36-9-317, RELATING TO THE PRIORITY OF INTERESTS, SO AS REVISE THE TERMINOLOGY OF CERTAIN TYPES OF INTERESTS AND PRIORITIES; TO AMEND SECTION 36-9-326, RELATING TO THE PRIORITY OF SECURITY INTERESTS CREATED BY A NEW DEBTOR, SO AS TO CLARIFY PROVISIONS REGARDING THE PERFECTION OF A SECURITY INTEREST; TO AMEND SECTION 36-9-406, RELATING TO THE DISCHARGE OF AN ACCOUNT DEBTOR, SO AS TO CLARIFY PROVISIONS REGARDING A SALE UNDER A DISPOSITION PURSUANT TO SECTION 36-9-610, OR AN ACCEPTANCE OF COLLATERAL PURSUANT TO SECTION 36-9-620; TO AMEND SECTION 36-9-408, RELATING TO RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, SO AS TO CLARIFY PROVISIONS REGARDING A SALE UNDER A DISPOSITION PURSUANT TO SECTION 36-9-610, OR AN ACCEPTANCE OF COLLATERAL PURSUANT TO SECTION 36-9-620; TO AMEND SECTION 36-9-502, RELATING TO THE CONTENTS OF A FINANCING STATEMENT AND A RECORD OF MORTGAGE AS A FINANCING STATEMENT, SO AS TO CLARIFY PROVISIONS REGARDING THE NAME OF A DEBTOR ON A RECORD OF MORTGAGE AS A FINANCING STATEMENT; TO AMEND SECTION 36-9-503, RELATING TO THE NAME OF A DEBTOR AND SECURED PARTY, SO AS TO REVISE PROVISIONS REGARDING THE PROPER NAME OF A DEBTOR ON A FINANCING STATEMENT; TO AMEND SECTION 36-9-507, RELATING TO THE EFFECT OF CERTAIN EVENTS ON THE EFFECTIVENESS OF A FINANCING STATEMENT, SO AS TO REVISE PROVISIONS REGARDING THE SUFFICIENCY OF THE DEBTOR'S NAME; TO AMEND SECTION 36-9-515, RELATING TO THE DURATION AND EFFECTIVENESS OF A FINANCING STATEMENT, SO AS TO CLARIFY THE EFFECTIVENESS OF CERTAIN INITIALLY FILED FINANCING STATEMENTS; TO AMEND SECTION 36-9-516, AS AMENDED, RELATING TO WHAT CONSTITUTES FILING AND THE EFFECTIVENESS OF FILING, SO AS TO CLARIFY WHEN A DEBTOR IS AN INDIVIDUAL OR AN ORGANIZATION; TO AMEND SECTION 36-9-518, AS AMENDED, RELATING TO A CLAIM CONCERNING AN INACCURATE OR WRONGFULLY FILED RECORD, SO AS TO INCLUDE PROVISIONS REGARDING

THE FILING OF AN INFORMATION STATEMENT; TO AMEND SECTION 36-9-521, REGARDING THE UNIFORM FORM OF A WRITTEN FINANCING STATEMENT AND AMENDMENT, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 36-9-607, RELATING TO COLLECTION AND ENFORCEMENT BY A SECURED PARTY, SO AS TO REVISE PROVISIONS REGARDING THE SECURED PARTY'S SWORN AFFIDAVIT; BY ADDING PART 8 TO CHAPTER 9, TITLE 36 SO AS TO ENTITLE PART 8 AS "TRANSITION"; AND TO MAKE CORRESPONDING CHANGES TO APPROPRIATE OFFICIAL COMMENTS AS NECESSARY TO REFLECT THE CHANGES TO CHAPTER 9, TITLE 36.

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

Citation

SECTION 1. Section 36-9-101 of the 1976 Code is amended to read:

"Section 36-9-101. This chapter may be cited as 'Uniform Commercial Code-Secured Transactions'."

OFFICIAL COMMENT

1. Source. This Article supersedes former Uniform Commercial Code (UCC) Article 9. As did its predecessor, it provides a comprehensive scheme for the regulation of security interests in personal property and fixtures. For the most part this Article follows the general approach and retains much of the terminology of former Article 9. In addition to describing many aspects of the operation and interpretation of this Article, these Comments explain the material changes that this Article makes to former Article 9. Former Article 9 superseded the wide variety of pre-UCC security devices. Unlike the Comments to former Article 9, however, these Comments dwell very little on the pre-UCC state of the law. For that reason, the Comments to former Article 9 will remain of substantial historical value and interest. They also will remain useful in understanding the background and general conceptual approach of this Article.

Citations to the "Bankruptcy Code" in these Comments are to Title 11 of the United States Code as in effect on July 1, 2010.

2. Background and History. In 1990, the Permanent Editorial Board for the UCC with the support of its sponsors, The American Law Institute and the National Conference of Commissioners on Uniform

State Laws, established a committee to study Article 9 of the UCC. The study committee issued its report as of December 1, 1992, recommending the creation of a drafting committee for the revision of Article 9 and also recommending numerous specific changes to Article 9. Organized in 1993, a drafting committee met fifteen times from 1993 to 1998. This Article was approved by its sponsors in 1998. This Article was conformed to revised Article 1 in 2001 and to amendment to Article 7 in 2003. The sponsors approved amendments to selected section of this Article in 2010.

3. Reorganization and Renumbering; Captions; Style. This Article reflects a substantial reorganization of former Article 9 and renumbering of most sections. New Part 4 deals with several aspects of third-party rights and duties that are unrelated to perfection and priority. Some of these were covered by Part 3 of former Article 9. Part 5 deals with filing (covered by former Part 4) and Part 6 deals with default and enforcement (covered by former Part 5). Appendix I contains conforming revisions to other articles of the UCC, and Appendix II contains model provisions for production-money priority.

This Article also includes headings for the subsections as an aid to readers. Unlike Section captions, which are part of the UCC, see Section 1-107, subsection headings are not a part of the official text itself and have not been approved by the sponsors. Each jurisdiction in which this Article is introduced may consider whether to adopt the headings as a part of the statute and whether to adopt a provision clarifying the effect, if any, to be given to the headings. This Article also has been conformed to current style conventions.

4. Summary of Revisions. Following is a brief summary of some of the more significant revisions of Article 9 that are included in the 1998 revision of this Article.

a. Scope of Article 9. This Article expands the scope of Article 9 in several respects.

Deposit accounts. Section 9-109 includes within this Article's scope deposit accounts as original collateral, except in consumer transactions. Former Article 9 dealt with deposit accounts only as proceeds of other collateral.

Sales of payment intangibles and promissory notes. Section 9-109 also includes within the scope of this Article most sales of "payment intangibles" (defined in Section 9-102 as general intangibles under which an account debtor's principal obligation is monetary) and "promissory notes" (also defined in Section 9-102). Former Article 9 included sales of accounts and chattel paper, but not sales of payment intangibles or promissory notes. In its inclusion of sales of payment

intangibles and promissory notes, this Article continues the drafting convention found in former Article 9; it provides that the sale of accounts, chattel paper, payment intangibles, or promissory notes creates a "security interest." The definition of "account" in Section 9-102 also has been expanded to include various rights to payment that were general intangibles under former Article 9.

Health-care-insurance receivables. Section 9-109 narrows Article 9's exclusion of transfers of interests in insurance policies by carving out of the exclusion "health-care-insurance receivables" (defined in Section 9-102). A health-care-insurance receivable is included within the definition of "account" in Section 9-102.

Nonpossessory statutory agricultural liens. Section 9-109 also brings nonpossessory statutory agricultural liens within the scope of Article 9.

Consignments. Section 9-109 provides that "true" consignments-bailments for the purpose of sale by the bailee-are security interests covered by Article 9, with certain exceptions. See Section 9-102 (defining "consignment"). Currently, many consignments are subject to Article 9's filing requirements by operation of former Section 2-326.

Supporting obligations and property securing rights to payment. This Article also addresses explicitly (i) obligations, such as guaranties and letters of credit, that support payment or performance of collateral such as accounts, chattel paper, and payment intangibles, and (ii) any property (including real property) that secures a right to payment or performance that is subject to an Article 9 security interest. See Sections 9-203, 9-308.

Commercial tort claims. Section 9-109 expands the scope of Article 9 to include the assignment of commercial tort claims by narrowing the exclusion of tort claims generally. However, this Article continues to exclude tort claims for bodily injury and other nonbusiness tort claims of a natural person. See Section 9-102 (defining "commercial tort claim").

Transfers by States and governmental units of States. Section 9-109 narrows the exclusion of transfers by States and their governmental units. It excludes only transfers covered by another statute (other than a statute generally applicable to security interests) to the extent the statute governs the creation, perfection, priority, or enforcement of security interests.

Nonassignable general intangibles, promissory notes, health-care-insurance receivables, and letter-of-credit rights. This Article enables a security interest to attach to letter-of-credit rights, health-care-insurance receivables, promissory notes, and general

intangibles, including contracts, permits, licenses, and franchises, notwithstanding a contractual or statutory prohibition against or limitation on assignment. This Article explicitly protects third parties against any adverse effect of the creation or attempted enforcement of the security interest. See Sections 9-408, 9-409.

Subject to Sections 9-408 and 9-409 and two other exceptions (Sections 9-406, concerning accounts, chattel paper, and payment intangibles, and 9-407, concerning interests in leased goods), Section 9-401 establishes a baseline rule that the inclusion of transactions and collateral within the scope of Article 9 has no effect on non-Article 9 law dealing with the alienability or inalienability of property. For example, if a commercial tort claim is nonassignable under other applicable law, the fact that a security interest in the claim is within the scope of Article 9 does not override the other applicable law's effective prohibition of assignment.

b. Duties of Secured Party. This Article provides for expanded duties of secured parties.

Release of control. Section 9-208 imposes upon a secured party having control of a deposit account, investment property, or a letter-of-credit right the duty to release control when there is no secured obligation and no commitment to give value. Section 9-209 contains analogous provisions when an account debtor has been notified to pay a secured party.

Information. Section 9-210 expands a secured party's duties to provide the debtor with information concerning collateral and the obligations that it secures.

Default and enforcement. Part 6 also includes some additional duties of secured parties in connection with default and enforcement. See, e.g., Section 9-616 (duty to explain calculation of deficiency or surplus in a consumer-goods transaction).

c. Choice of Law. The choice-of-law rules for the law governing perfection, the effect of perfection or nonperfection, and priority are found in Part 3, Subpart 1 (Sections 9-301 through 9-307). See also Section 9-316.

Where to file: Location of debtor. This Article changes the choice-of-law rule governing perfection (i.e., where to file) for most collateral to the law of the jurisdiction where the debtor is located. See Section 9-301. Under former Article 9, the jurisdiction of the debtor's location governed only perfection and priority of a security interest in accounts, general intangibles, mobile goods, and, for purposes of perfection by filing, chattel paper and investment property.

Determining debtor's location. As a baseline rule, Section 9-307 follows former Section 9-103, under which the location of the debtor is the debtor's place of business (or chief executive office, if the debtor has more than one place of business). Section 9-307 contains three major exceptions. First, a "registered organization," such as a corporation or limited liability company, is located in the State under whose law the debtor is organized, e.g., a corporate debtor's State of incorporation. Second, an individual debtor is located at his or her principal residence. Third, there are special rules for determining the location of the United States and registered organizations organized under the law of the United States.

Location of non-U.S. debtors. If, applying the foregoing rules, a debtor is located in a jurisdiction whose law does not require public notice as a condition of perfection of a nonpossessory security interest, the entity is deemed located in the District of Columbia. See Section 9-307. Thus, to the extent that this Article applies to non-U.S. debtors, perfection could be accomplished in many cases by a domestic filing.

Priority. For tangible collateral such as goods and instruments, Section 9-301 provides that the law applicable to priority and the effect of perfection or nonperfection will remain the law of the jurisdiction where the collateral is located, as under former Section 9-103 (but without the confusing "last event" test). For intangible collateral, such as accounts, the applicable law for priority will be that of the jurisdiction in which the debtor is located.

Possessory security interests; agricultural liens. Perfection, the effect of perfection or nonperfection, and priority of a possessory security interest or an agricultural lien are governed by the law of the jurisdiction where the collateral subject to the security interest or lien is located. See Sections 9-301, 9-302.

Goods covered by certificates of title; deposit accounts; letter-of-credit rights; investment property. This Article includes several refinements to the treatment of choice-of-law matters for goods covered by certificates of title. See Section 9-303. It also provides special choice-of-law rules, similar to those for investment property under current Articles 8 and 9, for deposit accounts (Section 9-304), investment property (Section 9-305), and letter-of-credit rights (Section 9-306).

Change in applicable law. Section 9-316 addresses perfection following a change in applicable law.

d. Perfection. The rules governing perfection of security interests and agricultural liens are found in Part 3, Subpart 2 (Sections 9-308 through 9-316).

Deposit accounts; letter-of-credit rights. With certain exceptions, this Article provides that a security interest in a deposit account or a letter-of-credit right may be perfected only by the secured party's acquiring "control" of the deposit account or letter-of-credit right. See Sections 9-312, 9-314. Under Section 9-104, a secured party has "control" of a deposit account when, with the consent of the debtor, the secured party obtains the depositary bank's agreement to act on the secured party's instructions (including when the secured party becomes the account holder) or when the secured party is itself the depositary bank. The control requirements are patterned on Section 8-106, which specifies the requirements for control of investment property. Under Section 9-107, "control" of a letter-of-credit right occurs when the issuer or nominated person consents to an assignment of proceeds under Section 5-114.

Electronic chattel paper. Section 9-102 includes a new defined term: "electronic chattel paper." Electronic chattel paper is a record or records consisting of information stored in an electronic medium (i.e., it is not written). Perfection of a security interest in electronic chattel paper may be by control or filing. See Sections 9-105 (sui generis definition of control of electronic chattel paper), 9-312 (perfection by filing), 9-314 (perfection by control).

Investment property. The perfection requirements for "investment property" (defined in Section 9-102), including perfection by control under Section 9-106, remain substantially unchanged. However, a new provision in Section 9-314 is designed to ensure that a secured party retains control in "repledge" transactions that are typical in the securities markets.

Instruments, agricultural liens, and commercial tort claims. This Article expands the types of collateral in which a security interest may be perfected by filing to include instruments. See Section 9-312. Agricultural liens and security interests in commercial tort claims also are perfected by filing, under this Article. See Sections 9-308, 9-310.

Sales of payment intangibles and promissory notes. Although former Article 9 covered the outright sale of accounts and chattel paper, sales of most other types of receivables also are financing transactions to which Article 9 should apply. Accordingly, Section 9-102 expands the definition of "account" to include many types of receivables (including "health-care-insurance receivables," defined in Section 9-102) that former Article 9 classified as "general intangibles." It thereby subjects to Article 9's filing system sales of more types of receivables than did former Article 9. Certain sales of payment intangibles- primarily bank loan participation transactions-should not

be subject to the Article 9 filing rules. These transactions fall in a residual category of collateral, "payment intangibles" (general intangibles under which the account debtor's principal obligation is monetary), the sale of which is exempt from the filing requirements of Article 9. See Sections 9-102, 9-109, 9-309 (perfection upon attachment). The perfection rules for sales of promissory notes are the same as those for sales of payment intangibles.

Possessory security interests. Several provisions of this Article address aspects of security interests involving a secured party or a third party who is in possession of the collateral. In particular, Section 9-313 resolves a number of uncertainties under former Section 9-305. It provides that a security interest in collateral in the possession of a third party is perfected when the third party acknowledges in an authenticated record that it holds for the secured party's benefit. Section 9-313 also provides that a third party need not so acknowledge and that its acknowledgment does not impose any duties on it, unless it otherwise agrees. A special rule in Section 9-313 provides that if a secured party already is in possession of collateral, its security interest remains perfected by possession if it delivers the collateral to a third party and the collateral is accompanied by instructions to hold it for the secured party or to redeliver it to the secured party. Section 9-313 also clarifies the limited circumstances under which a security interest in goods covered by a certificate of title may be perfected by the secured party's taking possession.

Automatic perfection. Section 9-309 lists various types of security interests as to which no public-notice step is required for perfection (e.g., purchase-money security interests in consumer goods other than automobiles). This automatic perfection also extends to a transfer of a health-care-insurance receivable to a health-care provider. Those transfers normally will be made by natural persons who receive health-care services; there is little value in requiring filing for perfection in that context. Automatic perfection also applies to security interests created by sales of payment intangibles and promissory notes. Section 9-308 provides that a perfected security interest in collateral supported by a "supporting obligation" (such as an account supported by a guaranty) also is a perfected security interest in the supporting obligation, and that a perfected security interest in an obligation secured by a security interest or lien on property (e.g., a real-property mortgage) also is a perfected security interest in the security interest or lien.

e. Priority; Special Rules for Banks and Deposit Accounts. The rules governing priority of security interests and agricultural liens are

found in Part 3, Subpart 3 (Sections 9-317 through 9-342). This Article includes several new priority rules and some special rules relating to banks and deposit accounts (Sections 9-340 through 9-342).

Purchase-money security interests: General; consumer-goods transactions; inventory. Section 9-103 substantially rewrites the definition of purchase-money security interest (PMSI) (although the term is not formally "defined"). The substantive changes, however, apply only to non-consumer-goods transactions. (Consumer transactions and consumer-goods transactions are discussed below in Comment 4.j.) For non-consumer-goods transactions, Section 9-103 makes clear that a security interest in collateral may be (to some extent) both a PMSI as well as a non-PMSI, in accord with the "dual status" rule applied by some courts under former Article 9 (thereby rejecting the "transformation" rule). The definition provides an even broader conception of a PMSI in inventory, yielding a result that accords with private agreements entered into in response to the uncertainty under former Article 9. It also treats consignments as purchase-money security interests in inventory. Section 9-324 revises the PMSI priority rules, but for the most part without material change in substance. Section 9-324 also clarifies the priority rules for competing PMSIs in the same collateral.

Purchase-money security interests in livestock; agricultural liens. Section 9-324 provides a special PMSI priority, similar to the inventory PMSI priority rule, for livestock. Section 9-322 (which contains the baseline first-to-file-or-perfect priority rule) also recognizes special non-Article 9 priority rules for agricultural liens, which can override the baseline first-in-time rule.

Purchase-money security interests in software. Section 9-324 contains a new priority rule for a software purchase-money security interest. (Section 9-102 includes a definition of "software.") Under Section 9-103, a software PMSI includes a PMSI in software that is used in goods that are also subject to a PMSI. (Note also that the definition of "chattel paper" has been expanded to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods.)

Investment property. The priority rules for investment property are substantially similar to the priority rules found in former Section 9-115, which was added in conjunction with the 1994 revisions to UCC Article 8. Under Section 9-328, if a secured party has control of investment property (Sections 8-106, 9-106), its security interest is senior to a security interest perfected in another manner (e.g., by filing). Also under Section 9-328, security interests perfected by

control generally rank according to the time that control is obtained or, in the case of a security entitlement or a commodity contract carried in a commodity account, the time when the control arrangement is entered into. This is a change from former Section 9-115, under which the security interests ranked equally. However, as between a securities intermediary's security interest in a security entitlement that it maintains for the debtor and a security interest held by another secured party, the securities intermediary's security interest is senior.

Deposit accounts. This Article's priority rules applicable to deposit accounts are found in Section 9-327. They are patterned on and are similar to those for investment property in former Section 9-115 and Section 9-328 of this Article. Under Section 9-327, if a secured party has control of a deposit account, its security interest is senior to a security interest perfected in another manner (i.e., as cash proceeds). Also under Section 9-327, security interests perfected by control rank according to the time that control is obtained, but as between a depositary bank's security interest and one held by another secured party, the depositary bank's security interest is senior. A corresponding rule in Section 9-340 makes a depositary bank's right of set-off generally senior to a security interest held by another secured party. However, if the other secured party becomes the depositary bank's customer with respect to the deposit account, then its security interest is senior to the depositary bank's security interest and right of set-off. Sections 9-327, 9-340.

Letter-of-credit rights. The priority rules for security interests in letter-of-credit rights are found in Section 9-329. They are somewhat analogous to those for deposit accounts. A security interest perfected by control has priority over one perfected in another manner (i.e., as a supporting obligation for the collateral in which a security interest is perfected). Security interests in a letter-of-credit right perfected by control rank according to the time that control is obtained. However, the rights of a transferee beneficiary or a nominated person are independent and superior to the extent provided in Section 5-114. See Section 9-109(c)(4).

Chattel paper and instruments. Section 9-330 is the successor to former Section 9-308. As under former Section 9-308, differing priority rules apply to purchasers of chattel paper who give new value and take possession (or, in the case of electronic chattel paper, obtain control) of the collateral depending on whether a conflicting security interest in the collateral is claimed merely as proceeds. The principal change relates to the role of knowledge and the effect of an indication of a previous assignment of the collateral. Section 9-330 also affords

priority to purchasers of instruments who take possession in good faith and without knowledge that the purchase violates the rights of the competing secured party. In addition, to qualify for priority, purchasers of chattel paper, but not of instruments, must purchase in the ordinary course of business.

Proceeds. Section 9-322 contains new priority rules that clarify when a special priority of a security interest in collateral continues or does not continue with respect to proceeds of the collateral. Other refinements to the priority rules for proceeds are included in Sections 9-324 (purchase-money security interest priority) and 9-330 (priority of certain purchasers of chattel paper and instruments).

Miscellaneous priority provisions. This Article also includes (i) clarifications of selected good-faith-purchase and similar issues (Sections 9-317, 9-331); (ii) new priority rules to deal with the "double debtor" problem arising when a debtor creates a security interest in collateral acquired by the debtor subject to a security interest created by another person (Section 9-325); (iii) new priority rules to deal with the problems created when a change in corporate structure or the like results in a new entity that has become bound by the original debtor's after-acquired property agreement (Section 9-326); (iv) a provision enabling most transferees of funds from a deposit account or money to take free of a security interest (Section 9-332); (v) substantially rewritten and refined priority rules dealing with accessions and commingled goods (Sections 9-335, 9-336); (vi) revised priority rules for security interests in goods covered by a certificate of title (Section 9-337); and (vii) provisions designed to ensure that security interests in deposit accounts will not extend to most transferees of funds on deposit or payees from deposit accounts and will not otherwise "clog" the payments system (Sections 9-341, 9-342).

Model provisions relating to production-money security interests. Appendix II to this Article contains model definitions and priority rules relating to "production-money security interests" held by secured parties who give new value used in the production of crops. Because no consensus emerged on the wisdom of these provisions during the drafting process, the sponsors make no recommendation on whether these model provisions should be enacted.

f. Proceeds. Section 9-102 contains an expanded definition of "proceeds" of collateral which includes additional rights and property that arise out of collateral, such as distributions on account of collateral and claims arising out of the loss or nonconformity of, defects in, or damage to collateral. The term also includes collections on account of "supporting obligations," such as guarantees.

g. Part 4: Additional Provisions Relating to Third-Party Rights. New Part 4 contains several provisions relating to the relationships between certain third parties and the parties to secured transactions. It contains new Sections 9-401 (replacing former Section 9-311) (alienability of debtor's rights), 9-402 (replacing former Section 9-317) (secured party not obligated on debtor's contracts), 9-403 (replacing former Section 9-206) (agreement not to assert defenses against assignee), 9-404, 9-405, and 9-406 (replacing former Section 9-318) (rights acquired by assignee, modification of assigned contract, discharge of account debtor, restrictions on assignment of account, chattel paper, promissory note, or payment intangible ineffective), 9-407 (replacing some provisions of former Section 2A-303) (restrictions on creation or enforcement of security interest in leasehold interest or lessor's residual interest ineffective). It also contains new Sections 9-408 (restrictions on assignment of promissory notes, health-care-insurance receivables ineffective, and certain general intangibles ineffective) and 9-409 (restrictions on assignment of letter-of-credit rights ineffective), which are discussed above.

h. Filing. Part 5 (formerly Part 4) of Article 9 has been substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that have arisen over the years.

Medium-neutrality. This Article is "medium-neutral"; that is, it makes clear that parties may file and otherwise communicate with a filing office by means of records communicated and stored in media other than on paper.

Identity of person who files a record; authorization. Part 5 is largely indifferent as to the person who effects a filing. Instead, it addresses whose authorization is necessary for a person to file a record with a filing office. The filing scheme does not contemplate that the identity of a "filer" will be a part of the searchable records. This approach is consistent with, and a necessary aspect of, eliminating signatures or other evidence of authorization from the system (except to the extent that filing offices may choose to employ authentication procedures in connection with electronic communications). As long as the appropriate person authorizes the filing, or, in the case of a termination statement, the debtor is entitled to the termination, it is largely insignificant whether the secured party or another person files any given record.

Section 9-509 collects in one place most of the rules that determine when a record may be filed. In general, the debtor's authorization is required for the filing of an initial financing statement or an

amendment that adds collateral. With one further exception, a secured party of record's authorization is required for the filing of other amendments. The exception arises if a secured party has failed to provide a termination statement that is required because there is no outstanding secured obligation or commitment to give value. In that situation, a debtor is authorized to file a termination statement indicating that it has been filed by the debtor.

Financing statement formal requisites. The formal requisites for a financing statement are set out in Section 9-502. A financing statement must provide the name of the debtor and the secured party and an indication of the collateral that it covers. Sections 9-503 and 9-506 address the sufficiency of a name provided on a financing statement and clarify when a debtor's name is correct and when an incorrect name is insufficient. Section 9-504 addresses the indication of collateral covered. Under Section 9-504, a super-generic description (e.g., "all assets" or "all personal property") in a financing statement is a sufficient indication of the collateral. (Note, however, that a super-generic description is inadequate for purposes of a security agreement. See Sections 9-108, 9-203.) To facilitate electronic filing, this Article does not require that the debtor's signature or other authorization appear on a financing statement. Instead, it prohibits the filing of unauthorized financing statements and imposes liability upon those who violate the prohibition. See Sections 9-509, 9-626.

Filing-office operations. Part 5 contains several provisions governing filing operations. First, it prohibits the filing office from rejecting an initial financing statement or other record for a reason other than one of the few that are specified. See Sections 9-520, 9-516. Second, the filing office is obliged to link all subsequent records (e.g., assignments, continuation statements, etc.) to the initial financing statement to which they relate. See Section 9-519. Third, the filing office may delete a financing statement and related records from the files no earlier than one year after lapse (lapse normally is five years after the filing date), and then only if a continuation statement has not been filed. See Sections 9-515, 9-519, 9-522. Thus, a financing statement and related records would be discovered by a search of the files even after the filing of a termination statement. This approach helps eliminate filing-office discretion and also eases problems associated with multiple secured parties and multiple partial assignments. Fourth, Part 5 mandates performance standards for filing offices. See Sections 9-519, 9-520, 9-523. Fifth, it provides for the promulgation of filing-office rules to deal with details best left out of

the statute and requires the filing office to submit periodic reports. See Sections 9-526, 9-527.

Defaulting or missing secured parties and fraudulent filings: Defaulting or missing secured parties and fraudulent filings. In some areas of the country, serious problems have arisen from fraudulent financing statements that are filed against public officials and other persons. This Article addresses the fraud problem by providing the opportunity for a debtor to file a termination statement when a secured party wrongfully refuses or fails to provide a termination statement. See Section 9-509. This opportunity also addresses the problem of secured parties that simply disappear through mergers or liquidations. In addition, Section 9-518 affords a statutory method by which a debtor who believes that a filed record is inaccurate or was wrongfully filed may indicate that fact in the files, albeit without affecting the efficacy, if any, of the challenged record.

Extended period of effectiveness for certain financing statements. Section 9-515 contains an exception to the usual rule that financing statements are effective for five years unless a continuation statement is filed to continue the effectiveness for another five years. Under that Section, an initial financing statement filed in connection with a "public-finance transaction" or a "manufactured-home transaction" (terms defined in Section 9-102) is effective for 30 years.

National form of financing statement and related forms. Section 9-521 provides for uniform, national written forms of financing statements and related written records that must be accepted by a filing office that accepts written records.

i. Default and Enforcement. Part 6 of Article 9 extensively revises former Part 5. Provisions relating to enforcement of consumer-goods transactions and consumer transactions are discussed in Comment 4.j.

Debtor, secondary obligor; waiver. Section 9-602 clarifies the identity of persons who have rights and persons to whom a secured party owes specified duties under Part 6. Under that Section, the rights and duties are enjoyed by and run to the "debtor," defined in Section 9-102 to mean any person with a non-lien property interest in collateral, and to any "obligor." However, with one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties concerned affect non-debtor obligors only if they are "secondary obligors." "Secondary obligor" is defined in Section 9-102 to include one who is secondarily obligated on the secured obligation, e.g., a guarantor, or one who has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. However, under Section 9-628, the secured party is relieved from any

duty or liability to any person unless the secured party knows that the person is a debtor or obligor. Resolving an issue on which courts disagreed under former Article 9, this Article generally prohibits waiver by a secondary obligor of its rights and a secured party's duties under Part 6. See Section 9-602. However, Section 9-624 permits a secondary obligor or debtor to waive the right to notification of disposition of collateral and, in a non-consumer transaction, the right to redeem collateral, if the secondary obligor or debtor agrees to do so after default.

Rights of collection and enforcement of collateral. Section 9-607 explains in greater detail than former 9-502 the rights of a secured party who seeks to collect or enforce collateral, including accounts, chattel paper, and payment intangibles. It also sets forth the enforcement rights of a depositary bank holding a security interest in a deposit account maintained with the depositary bank. Section 9-607 relates solely to the rights of a secured party vis-a-vis a debtor with respect to collections and enforcement. It does not affect the rights or duties of third parties, such as account debtors on collateral, which are addressed elsewhere (e.g., Section 9-406). Section 9-608 clarifies the manner in which proceeds of collection or enforcement are to be applied.

Disposition of collateral: Warranties of title. Section 9-610 imposes on a secured party who disposes of collateral the warranties of title, quiet possession, and the like that are otherwise applicable under other law. It also provides rules for the exclusion or modification of those warranties.

Disposition of collateral: Notification, application of proceeds, surplus and deficiency, other effects. Section 9-611 requires a secured party to give notification of a disposition of collateral to other secured parties and lienholders who have filed financing statements against the debtor covering the collateral. (That duty was eliminated by the 1972 revisions to Article 9.) However, that Section relieves the secured party from that duty when the secured party undertakes a search of the records and a report of the results is unreasonably delayed. Section 9-613, which applies only to non-consumer transactions, specifies the contents of a sufficient notification of disposition and provides that a notification sent 10 days or more before the earliest time for disposition is sent within a reasonable time. Section 9-615 addresses the application of proceeds of disposition, the entitlement of a debtor to any surplus, and the liability of an obligor for any deficiency. Section 9-619 clarifies the effects of a disposition by a secured party, including the rights of transferees of the collateral.

Rights and duties of secondary obligor. Section 9-618 provides that a secondary obligor obtains the rights and assumes the duties of a secured party if the secondary obligor receives an assignment of a secured obligation, agrees to assume the secured party's rights and duties upon a transfer to it of collateral, or becomes subrogated to the rights of the secured party with respect to the collateral. The assumption, transfer, or subrogation is not a disposition of collateral under Section 9-610, but it does relieve the former secured party of further duties. Former Section 9-504(5) did not address whether a secured party was relieved of its duties in this situation.

Transfer of record or legal title. Section 9-619 contains a new provision making clear that a transfer of record or legal title to a secured party is not of itself a disposition under Part 6. This rule applies regardless of the circumstances under which the transfer of title occurs.

Strict foreclosure. Section 9-620, unlike former Section 9-505, permits a secured party to accept collateral in partial satisfaction, as well as full satisfaction, of the obligations secured. This right of strict foreclosure extends to intangible as well as tangible property. Section 9-622 clarifies the effects of an acceptance of collateral on the rights of junior claimants. It rejects the approach taken by some courts-deeming a secured party to have constructively retained collateral in satisfaction of the secured obligations-in the case of a secured party's unreasonable delay in the disposition of collateral. Instead, unreasonable delay is relevant when determining whether a disposition under Section 9-610 is commercially reasonable.

Effect of noncompliance: "Rebuttable presumption" test. Section 9-626 adopts the "rebuttable presumption" test for the failure of a secured party to proceed in accordance with certain provisions of Part 6. (As discussed in Comment 4.j., the test does not necessarily apply to consumer transactions.) Under this approach, the deficiency claim of a noncomplying secured party is calculated by crediting the obligor with the greater of the actual net proceeds of a disposition and the amount of net proceeds that would have been realized if the disposition had been conducted in accordance with Part 6 (e.g., in a commercially reasonable manner). For non-consumer transactions, Section 9-626 rejects the "absolute bar" test that some courts have imposed; that approach bars a noncomplying secured party from recovering any deficiency, regardless of the loss (if any) the debtor suffered as a consequence of the noncompliance.

"Low-price" dispositions: Calculation of deficiency and surplus. Section 9-615(f) addresses the problem of procedurally regular

dispositions that fetch a low price. Subsection (f) provides a special method for calculating a deficiency if the proceeds of a disposition of collateral to a secured party, a person related to the secured party, or a secondary obligor are "significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought." ("Person related to" is defined in Section 9-102.) In these situations there is reason to suspect that there may be inadequate incentives to obtain a better price. Consequently, instead of calculating a deficiency (or surplus) based on the actual net proceeds, the deficiency (or surplus) would be calculated based on the proceeds that would have been received in a disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor.

j. Consumer Goods, Consumer-Goods Transactions, and Consumer Transactions. This Article (including the accompanying conforming revisions (see Appendix I)) includes several special rules for "consumer goods," "consumer transactions," and "consumer-goods transactions." Each term is defined in Section 9-102.

(i) Revised Sections 2-502 and 2-716 provide a buyer of consumer goods with enhanced rights to possession of the goods, thereby accelerating the opportunity to achieve "buyer in ordinary course of business" status under Section 1-201.

(ii) Section 9-103(e) (allocation of payments for determining extent of purchase-money status), (f) (purchase-money status not affected by cross-collateralization, refinancing, restructuring, or the like), and (g) (secured party has burden of establishing extent of purchase-money status) do not apply to consumer-goods transactions. Sections 9-103 also provides that the limitation of those provisions to transactions other than consumer-goods transactions leaves to the courts the proper rules for consumer-goods transactions and prohibits the courts from drawing inferences from that limitation.

(iii) Section 9-108 provides that in a consumer transaction a description of consumer goods, a security entitlement, securities account, or commodity account "only by [UCC-defined] type of collateral" is not a sufficient collateral description in a security agreement.

(iv) Sections 9-403 and 9-404 make effective the Federal Trade Commission's anti-holder-in-due-course rule (when applicable), 16 C.F.R. Part 433, even in the absence of the required legend.

(v) The 10-day safe-harbor for notification of a disposition provided by Section 9-612 does not apply in a consumer transaction.

(vi) Section 9-613 (contents and form of notice of disposition) does not apply to a consumer-goods transaction.

(vii) Section 9-614 contains special requirements for the contents of a notification of disposition and a safe-harbor, "plain English" form of notification, for consumer-goods transactions.

(viii) Section 9-616 requires a secured party in a consumer-goods transaction to provide a debtor with a notification of how it calculated a deficiency at the time it first undertakes to collect a deficiency.

(ix) Section 9-620 prohibits partial strict foreclosure with respect to consumer goods collateral and, unless the debtor agrees to waive the requirement in an authenticated record after default, in certain cases requires the secured party to dispose of consumer goods collateral which has been repossessed.

(x) Section 9-626 ("rebuttable presumption" rule) does not apply to a consumer transaction. Section 9-626 also provides that its limitation to transactions other than consumer transactions leaves to the courts the proper rules for consumer transactions and prohibits the courts from drawing inferences from that limitation.

k. Good Faith. Section 9-102 contains a new definition of "good faith" that includes not only "honesty in fact" but also "the observance of reasonable commercial standards of fair dealing." The definition is similar to the ones adopted in connection with other, recently completed revisions of the UCC.

l. Transition Provisions. Part 7 (Sections 9-701 through 9-707) contains transition provisions. Transition from former Article 9 to this Article will be particularly challenging in view of its expanded scope, its modification of choice-of-law rules for perfection and priority, and its expansion of the methods of perfection.

m. Conforming and Related Amendments to Other UCC Articles. Appendix I contains several proposed revisions to the provisions and Comments of other UCC articles. For the most part the revisions are explained in the Comments to the proposed revisions. Cross-references in other UCC articles to Sections of Article 9 also have been revised.

Article 1. Revised Section 1-201 contains revisions to the definitions of "buyer in ordinary course of business," "purchaser," and "security interest."

Articles 2 and 2A. Sections 2-210, 2-326, 2-502, 2-716, 2A-303, and 2A-307 have been revised to address the intersection between Articles 2 and 2A and Article 9.

Article 5. New Section 5-118 is patterned on Section 4-210. It provides for a security interest in documents presented under a letter of

credit in favor of the issuer and a nominated person on the letter of credit.

Article 8. Revisions to Section 8-106, which deals with "control" of securities and security entitlements, conform it to Section 8-302, which deals with "delivery." Revisions to Section 8-110, which deals with a "securities intermediary's jurisdiction," conform it to the revised treatment of a "commodity intermediary's jurisdiction" in Section 9-305. Sections 8-301 and 8-302 have been revised for clarification. Section 8-510 has been revised to conform it to the revised priority rules of Section 9-328. Several Comments in Article 8 also have been revised.

SOUTH CAROLINA REPORTER'S COMMENT

The South Carolina Reporters Notes to Article 9 do not attempt to explain the substantive provisions of the statute or the changes effected by adopting 1999 Official Text. The Official Comment perform those functions. Rather, the South Carolina Reporters Notes address the effect of the 1999 Official Text upon South Carolina case law interpreted under former Article 9 and upon statutes other than the Uniform Commercial Code. See, e.g. Section 36-9-109, Note 2 addressing agricultural liens. In addition, the South Carolina Reporters Notes address Article 9 provisions enacted in South Carolina that are not consistent with the 1999 Official Text. See, e.g., Sections 36-9-109 and 36-9-317 addressing landlords' liens.

Definitions

SECTION 2. Section 36-9-102 of the 1976 Code is amended to read:

"Section 36-9-102. (a) In this chapter:

(1) 'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) 'Account' except as used in 'account for', means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) 'Accounting', except as used in 'accounting for', means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) 'Agricultural lien' means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) 'As-extracted collateral' means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) 'Authenticate' means:

(A) to sign; or

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

(10) 'Certificate of title' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) 'Chattel paper' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this item, 'monetary obligation' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

The term does not include:

(A) charters or other contracts involving the use of hire of a vessel; or

(B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) 'Collateral' means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) 'Commercial tort claim' means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) 'Commodity customer' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) 'Commodity intermediary' means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) 'Communicate' means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) 'Consignee' means a merchant to which goods are delivered in a consignment.

(20) 'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) 'Consignor' means a person that delivers goods to a consignee in a consignment.

(22) 'Consumer debtor' means a debtor in a consumer transaction.

(23) 'Consumer goods' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) 'Consumer-goods transaction' means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) 'Consumer transaction' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) 'Continuation statement' means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) 'Debtor' means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) 'Deposit account' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) 'Document' means a document of title or a receipt of the type described in Section 36-7-201(2).

(31) 'Electronic chattel paper' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) 'Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) 'Equipment' means goods other than inventory, farm products, or consumer goods.

(34) 'Farm products' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) 'File number' means the number assigned to an initial financing statement pursuant to Section 36-9-519(a).

(37) 'Filing office' means an office designated in Section 36-9-501 as the place to file a financing statement.

(38) 'Filing-office rule' means a rule adopted pursuant to Section 36-9-526.

(39) 'Financing statement' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) 'Fixture filing' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 36-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) 'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) 'General intangible' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) 'Governmental unit' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) 'Health care insurance receivable' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

(47) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) 'Inventory' means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) 'Jurisdiction of organization', with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) 'Letter-of-credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) 'Lien creditor' means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) 'Manufactured home' means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or

without a permanent foundation when connected to the required utilities, and includes plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this item except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) 'Manufactured-home transaction' means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) 'New debtor' means a person that becomes bound as debtor under Section 36-9-203(d) by a security agreement previously entered into by another person.

(57) 'New value' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) 'Noncash proceeds' means proceeds other than cash proceeds.

(59) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) 'Original debtor', except at used in Section 36-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 36-9-203(d).

(61) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) 'Person related to', with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) 'Person related to', with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subitem (A);

(D) the spouse of an individual described in subitem (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subitem (A), (B), (C), or (D) and shares the same home with the individual.

(64) 'Proceeds', except as used in Section 36-9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 36-9-620, 36-9-621, and 36-9-622.

(67) 'Public-finance transaction' means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.

(68) 'Public organic record' means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State; or

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends or restates the name of the organization.

(69) 'Pursuant to commitment', with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) 'Record', except as used in 'for record', 'of record', 'record or legal title', and 'record owner', means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) 'Registered organization' means an organization formed or organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State.

(72) 'Secondary obligor' means an obligor to the extent that the:

(A) obligor's obligation is secondary; or

(B) obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) 'Secured party' means a:

(A) person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) person that holds an agricultural lien;

(C) consignor;

(D) person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) person that holds a security interest arising under Section 36-2-401, 36-2-505, 36-2-711(3), 36-2A-508(5), 36-4-210, or 36-5-118.

(74) 'Security agreement' means an agreement that creates or provides for a security interest.

(75) 'Send', in connection with a record or notification, means to:

(A) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) cause the record or notification to be received within the time that it would have been received if properly sent under subitem (A).

(76) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) 'Supporting obligation' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) 'Termination statement' means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) 'Transmitting utility' means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other chapters apply to this chapter:

'Beneficiary' Section 36-5-102.

'Broker' Section 36-8-102.

'Certificated security' Section 36-8-102.

'Check' Section 36-3-104.

'Clearing corporation' Section 36-8-102.

'Contract for sale' Section 36-2-106.

'Customer' Section 36-4-104.

'Entitlement holder' Section 36-8-102.

'Financial asset' Section 36-8-102.

'Holder in due course' Section 36-3-302.

'Issuer' (with respect to a letter of credit or letter-of-credit right) Section 36-5-103.

'Issuer' (with respect to a security) Section 36-8-201.

'Lease' Section 36-2A-103.

'Lease agreement' Section 36-2A-103.

'Lease contract' Section 36-2A-103.

'Leasehold interest' Section 36-2A-103.

'Lessee' Section 36-2A-103.

'Lessee in ordinary course of business' Section 36-2A-103.

'Lessor' Section 36-2A-103.

'Lessor's residual interest' Section 36-2A-103.

'Letter of credit' Section 36-5-103.

'Merchant' Section 36-2-104.

'Negotiable instrument' Section 36-3-104.
'Note' Section 36-3-104.
'Sale' Section 36-2-106.
'Securities account' Section 36-8-501.
'Securities intermediary' Section 36-8-102.
'Security' Section 36-8-102.
'Security certificate' Section 36-8-102.
'Security entitlement' Section 36-8-102.
'Uncertificated security' Section 36-8-102.

(c) In this chapter:

(1) 'Lease' means a transfer of the right to possession and use of goods for a period in return for consideration. The term includes a sublease unless the context clearly indicates otherwise. The term does include a sale, including a sale on approval or a sale or return, or retention or creation of a security interest.

(2) 'Lease agreement' means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(3) 'Lease contract' means the total legal obligation that results from the lease agreement and applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(4) 'Lessor interest' means the interest of the lessor or the lessee under a lease contract.

(5) 'Lessee' means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(6) 'Lessee in ordinary course of business' means a person that leases goods in good faith, without knowledge that the lease violates the rights of another person, and in the ordinary course from a person, other than a pawn broker, in the business of selling or leasing goods of that kind. A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor's own usual or customary practices. A lessee in the ordinary course of business may lease for cash, by exchange of other property, or on security or unsecured credit, and may acquire goods or documents of title under a preexisting contract. Only a lessee that takes possession of the goods or has a right to recover the goods from the lessor may be a lessee in the ordinary course of business. A person that acquires goods in a

transfer in bulk or has security for or in total or partial satisfaction of a money debt is not a lessee in the ordinary course of business.

(7) 'Lessor' means the person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes sublessor.

(8) 'Lessor's residual interest' means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(9) 'Applicant' means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(10) 'Nominated person' means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(11) 'Proceeds of a letter of credit' means the cash, check accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(12) 'Prove' with respect to a fact means to meet the burden of establishing the fact (Section 36-1-201(8)).

(d) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

OFFICIAL COMMENT

1. Source. All terms that are defined in Article 9 and used in more than one Section are consolidated in this Section. Note that the definition of "security interest" is found in Section 1-201, not in this Article, and has been revised. See Appendix I. Many of the definitions in this Section are new; many others derive from those in former Section 9-105. The following Comments also indicate other Sections of former Article 9 that defined (or explained) terms.

2. Parties to Secured Transactions.

a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this examination, this Article redefines "debtor" and adds new defined terms, "secondary obligor" and "obligor." In the context of Part 6 (default and enforcement), these definitions

distinguish among three classes of persons: (i) those persons who may have a stake in the proper enforcement of a security interest by virtue of their non-lien property interest (typically, an ownership interest) in the collateral, (ii) those persons who may have a stake in the proper enforcement of the security interest because of their obligation to pay the secured debt, and (iii) those persons who have an obligation to pay the secured debt but have no stake in the proper enforcement of the security interest. Persons in the first class are debtors. Persons in the second class are secondary obligors if any portion of the obligation is secondary or if the obligor has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. One must consult the law of suretyship to determine whether an obligation is secondary. The Restatement (3d), Suretyship and Guaranty ‘1 (1996), contains a useful explanation of the concept. Obligors in the third class are neither debtors nor secondary obligors. With one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties provided by Part 6 affect non-debtor obligors only if they are “secondary obligors.”

By including in the definition of “debtor” all persons with a property interest (other than a security interest in or other lien on collateral), the definition includes transferees of collateral, whether or not the secured party knows of the transfer or the transferee’s identity. Exculpatory provisions in Part 6 protect the secured party in that circumstance. See Sections 9-605 and 9-628. The definition renders unnecessary former Section 9-112, which governed situations in which collateral was not owned by the debtor. The definition also includes a “consignee,” as defined in this Section, as well as a seller of accounts, chattel paper, payment intangibles, or promissory notes.

Secured parties and other lienholders are excluded from the definition of “debtor” because the interests of those parties normally derive from and encumber a debtor’s interest. However, if in a separate secured transaction a secured party grants, as debtor, a security interest in its own interest (i.e., its security interest and any obligation that it secures), the secured party is a debtor in that transaction. This typically occurs when a secured party with a security interest in specific goods assigns chattel paper.

Consider the following examples:

Example 1: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Behnfeldt is a debtor and an obligor.

Example 2: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs a negotiable note as maker. As before, Behnfeldt is the debtor and an obligor. As an

accommodation party (see Section 3-419), Bruno is a secondary obligor. Bruno has this status even if the note states that her obligation is a primary obligation and that she waives all suretyship defenses.

Example 3: Behnfeldt borrows money on an unsecured basis. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. Inasmuch as Behnfeldt does not have a property interest in the Honda, Behnfeldt is not a debtor. Having granted the security interest, Bruno is the debtor. Because Behnfeldt is a principal obligor, she is not a secondary obligor. Whatever the outcome of enforcement of the security interest against the Honda or Bruno's secondary obligation, Bruno will look to Behnfeldt for her losses. The enforcement will not affect Behnfeldt's aggregate obligations.

When the principal obligor (borrower) and the secondary obligor (surety) each has granted a security interest in different collateral, the status of each is determined by the collateral involved.

Example 4: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. When the secured party enforces the security interest in Behnfeldt's Miata, Behnfeldt is the debtor, and Bruno is a secondary obligor. When the secured party enforces the security interest in the Honda, Bruno is the "debtor." As in Example 3, Behnfeldt is an obligor, but not a secondary obligor.

b. "Secured Party." The secured party is the person in whose favor the security interest has been created, as determined by reference to the security agreement. This definition controls, among other things, which person has the duties and potential liability that Part 6 imposes upon a secured party. The definition of "secured party" also includes a "consignee," a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold, and the holder of an agricultural lien.

The definition of "secured party" clarifies the status of various types of representatives. Consider, for example, a multi-bank facility under which Bank A, Bank B, and Bank C are lenders and Bank A serves as the collateral agent. If the security interest is granted to the banks, then they are the secured parties. If the security interest is granted to Bank A as collateral agent, then Bank A is the secured party.

c. Other Parties. A "consumer obligor" is defined as the obligor in a consumer transaction. Definitions of "new debtor" and "original debtor" are used in the special rules found in Sections 9-326 and 9-508.

3. Definitions Relating to Creation of a Security Interest.

a. "Collateral." As under former Section 9-105, "collateral" is the property subject to a security interest and includes accounts and chattel paper that have been sold. It has been expanded in this Article. The term now explicitly includes proceeds subject to a security interest. It also reflects the broadened scope of the Article. It includes property subject to an agricultural lien as well as payment intangibles and promissory notes that have been sold.

b. "Security Agreement." The definition of "security agreement" is substantially the same as under former Section 9-105-an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in former Article 9 to refer to the document or writing that contained a debtor's security agreement. This Article eliminates that usage, reserving the term for the more precise meaning specified in the definition.

Whether an agreement creates a security interest depends not on whether the parties intend that the law characterize the transaction as a security interest but rather on whether the transaction falls within the definition of "security interest" in Section 1-201. Thus, an agreement that the parties characterize as a "lease" of goods may be a "security agreement," notwithstanding the parties' stated intention that the law treat the transaction as a lease and not as a secured transaction.

4. Goods-Related Definitions.

a. "Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming Operation"; "Inventory." The definition of "goods" is substantially the same as the definition in former Section 9-105. This Article also retains the four mutually-exclusive "types" of collateral that consist of goods: "consumer goods," "equipment," "farm products," and "inventory." The revisions are primarily for clarification.

The classes of goods are mutually exclusive. For example, the same property cannot simultaneously be both equipment and inventory. In borderline cases-a physician's car or a farmer's truck that might be either consumer goods or equipment-the principal use to which the property is put is determinative. Goods can fall into different classes at different times. For example, a radio may be inventory in the hands of a dealer and consumer goods in the hands of a consumer. As under former Article 9, goods are "equipment" if they do not fall into another category.

The definition of "consumer goods" follows former Section 9-109. The classification turns on whether the debtor uses or bought the goods for use "primarily for personal, family, or household purposes."

Goods are inventory if they are leased by a lessor or held by a person for sale or lease. The revised definition of "inventory" makes clear that the term includes goods leased by the debtor to others as well as goods held for lease. (The same result should have obtained under the former definition.) Goods to be furnished or furnished under a service contract, raw materials, and work in process also are inventory. Implicit in the definition is the criterion that the sales or leases are or will be in the ordinary course of business. For example, machinery used in manufacturing is equipment, not inventory, even though it is the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory also includes goods that are consumed in a business (e.g., fuel used in operations). In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use, but are inventory, even though not held for sale or lease, if they are used up or consumed in a short period of time in producing a product or providing a service.

Goods are "farm products" if the debtor is engaged in farming operations with respect to the goods. Animals in a herd of livestock are covered whether the debtor acquires them by purchase or as a result of natural increase. Products of crops or livestock remain farm products as long as they have not been subjected to a manufacturing process. The terms "crops" and "livestock" are not defined. The new definition of "farming operations" is for clarification only.

Crops, livestock, and their products cease to be "farm products" when the debtor ceases to be engaged in farming operations with respect to them. If, for example, they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory. Products of crops or livestock, even though they remain in the possession of a person engaged in farming operations, lose their status as farm products if they are subjected to a manufacturing process. What is and what is not a manufacturing operation is not specified in this Article. At one end of the spectrum, some processes are so closely connected with farming-such as pasteurizing milk or boiling sap to produce maple syrup or sugar-that they would not constitute manufacturing. On the other hand an extensive canning operation would be manufacturing. Once farm products have been subjected to a manufacturing operation, they normally become inventory.

The revised definition of "farm products" clarifies the distinction between crops and standing timber and makes clear that aquatic goods produced in aquacultural operations may be either crops or livestock. Although aquatic goods that are vegetable in nature often would be

crops and those that are animal would be livestock, this Article leaves the courts free to classify the goods on a case-by-case basis. See Section 9-324, Comment 11.

b. "Accession"; "Manufactured Home"; "Manufactured-Home Transaction." Other specialized definitions of goods include "accession" (see the special priority and enforcement rules in Section 9-335), and "manufactured home" (see Section 9-515, permitting a financing statement in a "manufactured-home transaction" to be effective for 30 years). The definition of "manufactured home" borrows from the federal Manufactured Housing Act, 42 U.S.C. '5401 et seq., and is intended to have the same meaning.

c. "As-Extracted Collateral." Under this Article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this Article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this Article. See the definition of "goods," which excludes "oil, gas, and other minerals before extraction." To take account of financing practices reflecting the shift from real to personal property, this Article contains special rules for perfecting security interests in minerals which attach upon extraction and in accounts resulting from the sale of minerals at the wellhead or minehead. See, e.g., Sections 9-301(4) (law governing perfection and priority); 9-501 (place of filing), 9-502 (contents of financing statement), 9-519 (indexing of records). The new term, "as-extracted collateral," refers to the minerals and related accounts to which the special rules apply. The term "at the wellhead" encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the "Christmas tree" of a well, the far side of a gathering tank, or at some other point. The term "at. .. the minehead" is comparable.

The following examples explain the operation of these provisions.

Example 5: Debtor owns an interest in oil that is to be extracted. To secure Debtor's obligations to Lender, Debtor enters into an authenticated agreement granting Lender an interest in the oil. Although Lender may acquire an interest in the oil under real-property law, Lender does not acquire a security interest under this Article until the oil becomes personal property, i.e., until is extracted and becomes "goods" to which this Article applies. Because Debtor had an interest in the oil before extraction and Lender's security interest attached to the oil as extracted, the oil is "as-extracted collateral."

Example 6: Debtor owns an interest in oil that is to be extracted and contracts to sell the oil to Buyer at the wellhead. In an authenticated

agreement, Debtor agrees to sell to Lender the right to payment from Buyer. This right to payment is an account that constitutes "as-extracted collateral." If Lender then resells the account to Financer, Financer acquires a security interest. However, inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil before extraction, Financer's collateral (the account it owns) is not "as-extracted collateral."

Example 7: Under the facts of Example 6, before extraction, Buyer grants a security interest in the oil to Bank. Although Bank's security interest attaches when the oil is extracted, Bank's security interest is not in "as-extracted collateral," inasmuch as its debtor, Buyer, did not have an interest in the oil before extraction.

5. Receivables-related Definitions.

a. "Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral." The definition of "account" has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. As used in the definition of "account", a right to payment "arising out of the use of a credit or charge card or information contained on or for use with the card" is the right of a card issuer to payment from its cardholder. A credit-card or charge-card transaction may give rise to other rights to payments; however, those other rights do not "arise out of the use" of the card or information contained on or for use with the card. Among the types of property that are expressly excluded from the definition of account is "a right to payment for money or funds advanced or sold." As defined in Section 1-201, "money" is limited essentially to currency. As used in the exclusion from the definition of "account," however, "funds" is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

The definition of "health-care-insurance receivable" is new. It is a subset of the definition of "account." However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See Sections 9-404(e), 9-405(d), 9-406(i).

Note that certain accounts also are "as-extracted collateral." See Comment 4.c., Examples 6 and 7.

b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper." "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by "a record or records." The definition has been expanded from that found in former Article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods or a lease of specific goods and license of software used in the goods. The expanded definition covers transactions in which the debtor's or lessee's monetary obligation includes amounts owed with respect to software used in the goods. The monetary obligation with respect to the software need not be owed under a license from the secured party or lessor, and the secured party or lessor need not be a party to the license transaction itself. Among the types of monetary obligations that are included in "chattel paper" are amounts that have been advanced by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software used in the goods.

Charters of vessels are expressly excluded from the definition of chattel paper; they are accounts. The term "charter" as used in this Section includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for the use of vessels.

Under former Section 9-105, only if the evidence of an obligation consisted of "a writing or writings" could an obligation qualify as chattel paper. In this Article, traditional, written chattel paper is included in the definition of "tangible chattel paper." "Electronic chattel paper" is chattel paper that is stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electrical, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. Deleted paragraph here.

c. "Instrument"; "Promissory Note." The definition of "instrument" includes a negotiable instrument. As under former Section 9-105, it also includes any other right to payment of a monetary obligation that is evidenced by a writing of a type that in ordinary course of business is transferred by delivery (and, if necessary, an indorsement or assignment). Except in the case of chattel paper, the fact that an instrument is secured by a security interest or encumbrance on property does not change the character of the instrument as such or convert the combination of the instrument and collateral into a separate

classification of personal property. The definition makes clear that rights to payment arising out of credit-card transactions are not instruments. The definition of "promissory note" is new, necessitated by the inclusion of sales of promissory notes within the scope of Article 9. It explicitly excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises" to pay. See Section 3-104.

d. "General Intangible"; "Payment Intangible." "General intangible" is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not "account debtors" having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

"Payment intangible" is a subset of the definition of "general intangible." The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term "payment intangible," however, embraces only those general intangibles "under which the account debtor's *principal* obligation is a monetary obligation." (Emphasis added.) A debtor's right to payment from another person of amounts received by the other person on the debtor's behalf, including the right of a merchant in a credit-card, debit-card, prepaid card, or other payment-card transaction to payment of amounts received by its bank from the card system in settlement of the transaction, is a "payment intangible". (In contrast, the right of a credit-card issuer to payment arising out of the use of a credit card is an "account.")

In classifying intangible collateral, a court should begin by identifying the particular rights that have been assigned. The account debtor (promisor) under a particular contract may owe several types of monetary obligations as well as other, nonmonetary obligations. If the

promisee's right to payment of money is assigned separately, the right is an account or payment intangible, depending on how the account debtor's obligation arose. When all the promisee's rights are assigned together, an account, a payment intangible, and a general intangible all may be involved, depending on the nature of the rights.

A right to the payment of money is frequently buttressed by ancillary rights, such as rights arising from covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, rights arising from covenants to preserve the creditworthiness of the promisor, and the lessor's rights with respect to leased goods that arise upon the lessee's default (see Section 2A-523). This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Thus, an assignment of the lessor's right to payment under a lease also transfers the lessor's rights with respect to the leased goods under Section 2A-523. If, taken together, the lessor's rights to payment and with respect to the leased goods are evidenced by chattel paper, then, contrary to *In re Commercial Money Center, Inc.*, 350 B.R. 465 (Bankr. App. 9th Cir. 2006), an assignment of the lessor's right to payment constitutes an assignment of the chattel paper. Although an agreement excluding the lessor's rights with respect to the leased goods from an assignment of the lessor's right to payment may be effective between the parties, the agreement does not affect the characterization of the collateral to the prejudice of creditors of, and purchasers from the assignor.

Every "payment intangible" is also a "general intangible." Likewise, "software" is a "general intangible" for purposes of this Article. See Comment 25. Accordingly, except as otherwise provided, statutory provisions applicable to general intangibles apply to payment intangibles and software.

e. "Letter-of-Credit Right." The term "letter-of-credit right" embraces the rights to payment and performance under a letter of credit (defined in Section 5-102). However, it does not include a beneficiary's right to demand payment or performance. Transfer of those rights to a transferee beneficiary is governed by Article 5. See Sections 9-107, Comment 4, and 9-329, Comments 3 and 4.

f. "Supporting Obligation." This new term covers the most common types of credit enhancements-suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition. As explained in Comment 2.a.,

suretyship law determines whether an obligation is "secondary" for purposes of this definition. Section 9-109 generally excludes from this Article transfers of interests in insurance policies. However, the regulation of a secondary obligation as an insurance product does not necessarily mean that it is a "policy of insurance" for purposes of the exclusion in Section 9-109. Thus, this Article may cover a secondary obligation (as a supporting obligation), even if the obligation is issued by a regulated insurance company and the obligation is subject to regulation as an "insurance" product.

This Article contains rules explicitly governing attachment, perfection, and priority of security interests in supporting obligations. See Sections 9-203, 9-308, 9-310, and 9-322. These provisions reflect the principle that a supporting obligation is an incident of the collateral it supports.

Collections of or other distributions under a supporting obligation are "proceeds" of the supported collateral as well as "proceeds" of the supporting obligation itself. See Section 9-102 (defining "proceeds") and Comment 13.b. As such, the collections and distributions are subject to the priority rules applicable to proceeds generally. See Section 9-322. However, under the special rule governing security interests in a letter-of-credit right, a secured party's failure to obtain control (Section 9-107) of a letter-of-credit right supporting collateral may leave its security interest exposed to a priming interest of a party who does take control. See Section 9-329 (security interest in a letter-of-credit right perfected by control has priority over a conflicting security interest).

g. "Commercial Tort Claim." This term is new. A tort claim may serve as original collateral under this Article only if it is a "commercial tort claim." See Section 9-109(d). Although security interests in commercial tort claims are within its scope, this Article does not override other applicable law restricting the assignability of a tort claim. See Section 9-401. A security interest in a tort claim also may exist under this Article if the claim is proceeds of other collateral.

h. "Account Debtor." An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The account debtor's obligation often is a monetary obligation; however, this is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a general intangible) as collateral, then the franchisor is an "account debtor." As a general matter, Article 3, and not Article 9, governs obligations on negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of

this change from the definition in former Article 9 is that the rules in Sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

i. Receivables Under Government Entitlement Programs. This Article does not contain a defined term that encompasses specifically rights to payment or performance under the many and varied government entitlement programs. Depending on the nature of a right under a program, it could be an account, a payment intangible, a general intangible other than a payment intangible, or another type of collateral. The right also might be proceeds of collateral (e.g., crops).

6. Investment-Property-Related Definitions: "Commodity Account"; "Commodity Contract"; "Commodity Customer"; "Commodity Intermediary"; "Investment Property." These definitions are substantially the same as the corresponding definitions in former Section 9-115. "Investment property" includes securities, both certificated and uncertificated, securities accounts, security entitlements, commodity accounts, and commodity contracts. The term investment property includes a "securities account" in order to facilitate transactions in which a debtor wishes to create a security interest in all of the investment positions held through a particular account rather than in particular positions carried in the account. Former Section 9-115 was added in conjunction with Revised Article 8 and contained a variety of rules applicable to security interests in investment property. These rules have been relocated to the appropriate Sections of Article 9. See, e.g., Sections 9-203 (attachment), 9-314 (perfection by control), 9-328 (priority).

The terms "security," "security entitlement," and related terms are defined in Section 8-102, and the term "securities account" is defined in Section 8-501. The terms "commodity account," "commodity contract," "commodity customer," and "commodity intermediary" are defined in this Section. Commodity contracts are not "securities" or "financial assets" under Article 8. See Section 8-103(f). Thus, the relationship between commodity intermediaries and commodity customers is not governed by the indirect-holding-system rules of Part 5 of Article 8. For securities, Article 9 contains rules on security

interests, and Article 8 contains rules on the rights of transferees, including secured parties, on such matters as the rights of a transferee if the transfer was itself wrongful and gives rise to an adverse claim. For commodity contracts, Article 9 establishes rules on security interests, but questions of the sort dealt with in Article 8 for securities are left to other law.

The indirect-holding-system rules of Article 8 are sufficiently flexible to be applied to new developments in the securities and financial markets, where that is appropriate. Accordingly, the definition of "commodity contract" is narrowly drafted to ensure that it does not operate as an obstacle to the application of the Article 8 indirect-holding-system rules to new products. The term "commodity contract" covers those contracts that are traded on or subject to the rules of a designated contract market and foreign commodity contracts that are carried on the books of American commodity intermediaries. The effect of this definition is that the category of commodity contracts that are excluded from Article 8 but governed by Article 9 is essentially the same as the category of contracts that fall within the exclusive regulatory jurisdiction of the federal Commodity Futures Trading Commission.

Commodity contracts are different from securities or other financial assets. A person who enters into a commodity futures contract is not buying an asset having a certain value and holding it in anticipation of increase in value. Rather the person is entering into a contract to buy or sell a commodity at set price for delivery at a future time. That contract may become advantageous or disadvantageous as the price of the commodity fluctuates during the term of the contract. The rules of the commodity exchanges require that the contracts be marked to market on a daily basis; that is, the customer pays or receives any increment attributable to that day's price change. Because commodity customers may incur obligations on their contracts, they are required to provide collateral at the outset, known as "original margin," and may be required to provide additional amounts, known as "variation margin," during the term of the contract.

The most likely setting in which a person would want to take a security interest in a commodity contract is where a lender who is advancing funds to finance an inventory of a physical commodity requires the borrower to enter into a commodity contract as a hedge against the risk of decline in the value of the commodity. The lender will want to take a security interest in both the commodity itself and the hedging commodity contract. Typically, such arrangements are structured as security interests in the entire commodity account in

which the borrower carries the hedging contracts, rather than in individual contracts.

One important effect of including commodity contracts and commodity accounts in Article 9 is to provide a clearer legal structure for the analysis of the rights of commodity clearing organizations against their participants and futures commission merchants against their customers. The rules and agreements of commodity clearing organizations generally provide that the clearing organization has the right to liquidate any participant's positions in order to satisfy obligations of the participant to the clearing corporation. Similarly, agreements between futures commission merchants and their customers generally provide that the futures commission merchant has the right to liquidate a customer's positions in order to satisfy obligations of the customer to the futures commission merchant.

The main property that a commodity intermediary holds as collateral for the obligations that the commodity customer may incur under its commodity contracts is not other commodity contracts carried by the customer but the other property that the customer has posted as margin. Typically, this property will be securities. The commodity intermediary's security interest in such securities is governed by the rules of this Article on security interests in securities, not the rules on security interests in commodity contracts or commodity accounts.

Although there are significant analytic and regulatory differences between commodities and securities, the development of commodity contracts on financial products in the past few decades has resulted in a system in which the commodity markets and securities markets are closely linked. The rules on security interests in commodity contracts and commodity accounts provide a structure that may be essential in times of stress in the financial markets. Suppose, for example that a firm has a position in a securities market that is hedged by a position in a commodity market, so that payments that the firm is obligated to make with respect to the securities position will be covered by the receipt of funds from the commodity position. Depending upon the settlement cycles of the different markets, it is possible that the firm could find itself in a position where it is obligated to make the payment with respect to the securities position before it receives the matching funds from the commodity position. If cross-margining arrangements have not been developed between the two markets, the firm may need to borrow funds temporarily to make the earlier payment. The rules on security interests in investment property would facilitate the use of positions in one market as collateral for loans needed to cover obligations in the other market.

7. Consumer-Related Definitions: "Consumer Debtor"; "Consumer Goods"; "Consumer-goods transaction"; "Consumer Obligor"; "Consumer Transaction." The definition of "consumer goods" (discussed above) is substantially the same as the definition in former Section 9-109. The definitions of "consumer debtor," "consumer obligor," "consumer-goods transaction," and "consumer transaction" have been added in connection with various new (and old) consumer-related provisions and to designate certain provisions that are inapplicable in consumer transactions.

"Consumer-goods transaction" is a subset of "consumer transaction." Under each definition, both the obligation secured and the collateral must have a personal, family, or household purpose. However, "mixed" business and personal transactions also may be characterized as a consumer-goods transaction or consumer transaction. Subparagraph (A) of the definition of consumer-goods transactions and clause (i) of the definition of consumer transaction are primary purposes tests. Under these tests, it is necessary to determine the primary purpose of the obligation or obligations secured. Subparagraph (B) and clause (iii) of these definitions are satisfied if any of the collateral is consumer goods, in the case of a consumer-goods transaction, or "is held or acquired primarily for personal, family, or household purposes," in the case of a consumer transaction. The fact that some of the obligations secured or some of the collateral for the obligation does not satisfy the tests (e.g., some of the collateral is acquired for a business purpose) does not prevent a transaction from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See Section 9-515(b). The definitions relating to medium neutrality also are significant for the filing provisions. See Comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term

designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of Section 9-501 for a far-flung public- utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that includes all of these methods of storing or communicating information. Any "writing" is a record. A record may be authenticated. See Comment 9.b. A record may be created without the knowledge or intent of a particular person.

Like the terms "written" or "in writing," the term "record" does not establish the purposes, permitted uses, or legal effect that a record may have under any particular provision of law. Whatever is filed in the Article 9 filing system, including financing statements, continuation statements, and termination statements, whether transmitted in tangible or intangible form, would fall within the definition. However, in some instances, statutes or filing-office rules may require that a paper record be filed. In such cases, even if this Article permits the filing of an electronic record, compliance with those statutes or rules is necessary. Similarly, a filer must comply with a statute or rule that requires a particular type of encoding or formatting for an electronic record.

This Article sometimes uses the terms "for record," "of record," "record or legal title," and "record owner." Some of these are terms traditionally used in real-property law. The definition of "record" in this Article now explicitly excepts these usages from the defined term. Also, this Article refers to a record that is filed or recorded in real-property recording systems to record a mortgage as a "record of a mortgage." This usage recognizes that the defined term "mortgage" means an interest in real property; it does not mean the record that evidences, or is filed or recorded with respect to, the mortgage.

b. "Authenticate"; "Communicate"; "Send." The terms "authenticate" and "authenticated" generally replace "sign" and "signed." "Authenticated" replaces and broadens the definition of "signed," in Section 1-201, to encompass authentication of all records, not just writings. (to authentication of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms "communicate" and "send" also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records. The definition of "send" replaces, for purposes of this Article, the corresponding term in Section 1-201. The reference to "usual means of communication" in that definition contemplates an inquiry into the appropriateness of the method of transmission used in the particular circumstances involved.

10. Scope-Related Definitions.

a. Expanded Scope of Article: "Agricultural Lien"; "Consignment"; "Payment Intangible"; "Promissory Note." These new definitions reflect the expanded scope of Article 9, as provided in Section 9-109(a).

b. Reduced Scope of Exclusions: "Governmental Unit"; "Health-Care-Insurance Receivable"; "Commercial Tort Claims." These new definitions reflect the reduced scope of the exclusions, provided in Section 9-109(c) and (d), of transfers by governmental debtors and assignments of interests in insurance policies and commercial tort claims.

11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; 'Public Organic Record' "Registered Organization"; "State." These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1.

Statutes often require applicants for a certificate of title to identify all security interests on the application and require the issuing agency to indicate the identified security interests on the certificate. Some of

these statutes provide that priority over the rights of a lien creditor (i.e., perfection of a security interest) in goods covered by the certificate occurs upon indication of the security interest on the certificate; that is, they provide for the indication of the security interest on the certificate as a 'condition' of perfection. Other statutes contemplate that perfection is achieved upon the occurrence of another act, e.g., delivery of the application to the issuing agency, that "results" in the indication of the security interest on the certificate. A certificate governed by either type of statute can qualify as a 'certificate of title' under this Article. The statute providing for the indication of a security interest need not expressly state the connection between the indication and perfection. For example, a certificate issued pursuant to a statute that requires applicants to identify security interests, requires the issuing agency to indicate the identified security interests on the certificate, but is silent concerning the legal consequences of the indication would be a 'certificate of title' if, under a judicial interpretation of the statute, perfection of a security interest is a legal consequence of the indication. Likewise, a certificate would be a "certificate of title" if another statute provides, expressly or as interpreted, the requisite connection between the indication and perfection. The first sentence of the definition of "certificate of title" includes certificates consisting of tangible records, or electronic records, and of combinations of tangible and electronic records.

In many States, a certificate of title covering goods that are encumbered by a security interest is delivered to the secured party by the issuing authority. To eliminate the need for the issuance of a paper certificate under these circumstances, several States have revised their certificate-of-title statutes to permit or require a State agency to maintain an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. The second sentence of the definition provides that such a record is a certificate of title and even if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.

Not every organization that may provide information about itself in the public records is a "registered organization." For example, a general partnership is not a "registered organization," even if it files a statement of partnership authority under Section 303 of the Uniform Partnership Act (1994) or an assumed name ("dba") certificate. This is because such a partnership is not formed or organized by the filing of a record with, or the issuance of a record by, a State or the United States. In contrast, corporations, limited liability companies, and limited partnerships *ordinarily* are "registered organizations."

Not every record concerning a registered organization that is filed with, or issued by, a State or the United State is a "public organic record". For example, a certificate of good standing issued with respect to a corporation or a published index of domestic corporations would not be a "public organic record" because its issuance or publication does not form or organize the corporations named.

When collateral is held in a trust, one must look to non-UCC law to determine whether the trust is a 'registered organization.' Non-UCC law typically distinguishes between statutory trusts and common-law trusts. A statutory trust is formed by the filing of a record, commonly referred to as a certificate of trust, in a public office pursuant to a statute. See, e.g., Uniform Statutory Trust Entity Act § 201 (2009); Delaware Statutory Trust Act, De. Code Ann. tit. 12, § 3801 et seq. A statutory trust is a juridical entity, separate from its trustee and beneficial owners, that may sue and be sued, own property, and transact business in its own name. Inasmuch as a statutory trust is a "legal or commercial entity", it qualifies as a "person other than an individual", and therefore as an "organization", under Section 1-201. A statutory trust that is formed by the filing of a record in a public office is a "registered organization," and the filed record is a 'public organic record' of the statutory trust, if the filed record is available to the public for inspection. (The requirement that a record be "available to the public for inspection" is satisfied if a copy of the relevant record is available for public inspection.)

Unlike a statutory trust, a common-law trust-whether its purpose is donative or commercial-arises from private action without the filing of a record in a public office. See Uniform Trust Code § 401 (2000); Restatement (Third) of Trusts § 10 (2003). Moreover, under traditional law, a common-law trust is not itself a juridical entity and therefore must sue and be sued, own property, and transact business in the name of the trustee acting in the capacity of trustee. A common-law trust that is a "business trust", i.e., that has a business or commercial purpose, is an "organization" under Section 1-201. However, such a trust would not be a "registered organization" if, as is typically the case, the filing of a public record is not needed to form it.

In some states, however, the trustee of a common-law trust that has a commercial or business purpose is required by statute to file a record in a public office following the trust's formation. See, e.g., Mass. Gen. Laws Ch. 182, § 2; Fla. Stat. Ann. § 609.02. A business trust that is required to file its organic record in a public office is a "registered organization" under the second sentence of the definition if the filed record is available to the public for inspection. Any organic record

required to be filed, and filed, with respect to a common-law business trust after the trust is formed is a "public organic record" of the trust. Some statutes require a trust or other organization to file, after formation or organization, a record other than an organic record. See, e.g., N.Y. Gen. Assn's Law, § 18 (requiring associations doing business within New York to file a certificate designating the secretary of state as an agent upon process may be served). This requirement does not render the organization a "registered organization" under the second sentence of the definition, and the record is not a "public organic record".

12. Deposit-Account-Related Definitions: "Deposit Account"; "Bank." The revised definition of "deposit account" incorporates the definition of "bank," which is new. The definition derives from the definitions of "bank" in Sections 4-105(1) and 4A-105(a)(2), which focus on whether the organization is "engaged in the business of banking."

Deposit accounts evidenced by Article 9 "instruments" are excluded from the term "deposit account." In contrast, former Section 9-105 excluded from the former definition "an account evidenced by a certificate of deposit." The revised definition clarifies the proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the definition, an uncertificated certificate of deposit would be a deposit account (assuming there is no writing evidencing the bank's obligation to pay) whereas a nonnegotiable certificate of deposit would be a deposit account only if it is not an "instrument" as defined in this Section (a question that turns on whether the nonnegotiable certificate of deposit is "of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment.")

A deposit account evidenced by an instrument is subject to the rules applicable to instruments generally. As a consequence, a security interest in such an instrument cannot be perfected by "control" (see Section 9-104), and the special priority rules applicable to deposit accounts (see Sections 9-327 and 9-340) do not apply.

The term "deposit account" does not include "investment property," such as securities and security entitlements. Thus, the term also does not include shares in a money-market mutual fund, even if the shares are redeemable by check.

13. Proceeds-Related Definitions: "Cash Proceeds"; "Noncash Proceeds"; "Proceeds." The revised definition of "proceeds" expands the definition beyond that contained in former Section 9-306 and resolves ambiguities in the former Section.

a. Distributions on Account of Collateral. The phrase "whatever is collected on, or distributed on account of, collateral," in subparagraph (B), is broad enough to cover cash or stock dividends distributed on account of securities or other investment property that is original collateral. Compare former Section 9-306 ("Any payments or distributions made with respect to investment property collateral are proceeds."). This Section rejects the holding of Hastie v. FDIC, 2 F.3d 1042 (10th Cir. 1993) (postpetition cash dividends on stock subject to a prepetition pledge are not "proceeds" under Bankruptcy Code Section 552(b)), to the extent the holding relies on the Article 9 definition of "proceeds."

b. Distributions on Account of Supporting Obligations. Under subparagraph (B), collections on and distributions on account of collateral consisting of various credit-support arrangements ("supporting obligations," as defined in Section 9-102) also are proceeds. Consequently, they are afforded treatment identical to proceeds collected from or distributed by the obligor on the underlying (supported) right to payment or other collateral. Proceeds of supporting obligations also are proceeds of the underlying rights to payment or other collateral.

c. Proceeds of Proceeds. The definition of "proceeds" no longer provides that proceeds of proceeds are themselves proceeds. That idea is expressed in the revised definition of "collateral" in Section 9-102. No change in meaning is intended.

d. Proceeds Received by Person Who Did Not Create Security Interest. When collateral is sold subject to a security interest and the buyer then resells the collateral, a question arose under former Article 9 concerning whether the "debtor" had "received" what the buyer received on resale and, therefore, whether those receipts were "proceeds" under former Section 9-306(2). This Article contains no requirement that property be "received" by the debtor for the property to qualify as proceeds. It is necessary only that the property be traceable, directly or indirectly, to the original collateral.

e. Cash Proceeds and Noncash Proceeds. The definition of "cash proceeds" is substantially the same as the corresponding definition in former Section 9-306. The phrase "and the like" covers property that is functionally equivalent to "money, checks, or deposit accounts," such as some money-market accounts that are securities or part of securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

14. Consignment-Related Definitions: "Consignee"; "Consignment"; "Consignor." The definition of "consignment" excludes, in subparagraphs (B) and (C), transactions for which filing

would be inappropriate or of insufficient benefit to justify the costs. A consignment excluded from the application of this Article by one of those subparagraphs may still be a true consignment; however, it is governed by non-Article 9 law. The definition also excludes, in subparagraph (D), what have been called "consignments intended for security." These "consignments" are not bailments but secured transactions. Accordingly, all of Article 9 applies to them. See Sections 1-201(37), 9-109(a)(1). The "consignor" is the person who delivers goods to the "consignee" in a consignment.

The definition of "consignment" requires that the goods be delivered "to a merchant for the purpose of sale." If the goods are delivered for another purpose as well, such as milling or processing, the transaction is a consignment nonetheless because a purpose of the delivery is "sale." On the other hand, if a merchant-processor-bailee will not be selling the goods itself but will be delivering to buyers to which the owner-bailor agreed to sell the goods, the transaction would not be a consignment.

15. "Accounting." This definition describes the record and information that a debtor is entitled to request under Section 9-210.

16. "Document." The definition of "document" is unchanged in substance from the corresponding definitions in former Section 9-105. See Section 1-201(15) and Comment 15.

17. "Encumbrance"; "Mortgage." The definitions of "encumbrance" and "mortgage" are unchanged in substance from the corresponding definitions in former Section 9-105. They are used primarily in the special real-property-related priority and other provisions relating to crops, fixtures, and accessions.

18. "Fixtures." This definition is unchanged in substance from the corresponding definition in former Section 9-313. See Section 9-334 (priority of security interests in fixtures and crops).

19. "Good Faith." This Article expands the definition of "good faith" to include "the observance of reasonable commercial standards of fair dealing." The definition in this Section applies when the term is used in this Article, and the same concept applies in the context of this Article for purposes of the obligation of good faith imposed by Section 1-203. See subsection (c).

20. "Lien Creditor" This definition is unchanged in substance from the corresponding definition in former Section 9-301.

21. "New Value." This Article deletes former Section 9-108. Its broad formulation of new value, which embraced the taking of after-acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and ineffective for its original purpose of sheltering

after-acquired collateral from attack as a voidable preference in bankruptcy. The new definition derives from Bankruptcy Code Section 547(a). The term is used with respect to temporary perfection of security interests in instruments, certificated securities, or negotiable documents under Section 9-312(e) and with respect to chattel paper priority in Section 9-330.

22. "Person Related To." Section 9-615 provides a special method for calculating a deficiency or surplus when "the secured party, a person related to the secured party, or a secondary obligor" acquires the collateral at a foreclosure disposition. Separate definitions of the term are provided with respect to an individual secured party and with respect to a secured party that is an organization. The definitions are patterned on the corresponding definition in Section 1.301(32) of the Uniform Consumer Credit Code (1974).

23. "Proposal." This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620, 9-621, 9-622.

24. "Pursuant to Commitment." This definition is unchanged in substance from the corresponding definition in former Section 9-105. It is used in connection with special priority rules applicable to future advances. See Section 9-323.

25. "Software." The definition of "software" is used in connection with the priority rules applicable to purchase-money security interests. See Sections 9-103, 9-324. Software, like a payment intangible, is a type of general intangible for purposes of this Article.

26. Terminology: "Assignment" and "Transfer." In numerous provisions, this Article refers to the "assignment" or the "transfer" of property interests. These terms and their derivatives are not defined. This Article generally follows common usage by using the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term "transfer" to refer to other transfers of interests in property. Except when used in connection with a letter-of-credit transaction (see Section 9-107, Comment 4), no significance should be placed on the use of one term or the other. Depending on the context, each term may refer to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest.

SOUTH CAROLINA REPORTER'S COMMENTS

The 2013 amendments defined a new term, "public organic record" and revised the definition of "registered organization." These amendments revise and clarify the rules for determining both whether

an organization qualifies as a registered organization for purposes of Section 36-9-307(e) and (f) and the name of the registered organization under Section 36-9-503(a)(1). Note that under the amended definition of registered organization a business trust subject to Section 33-53-10 qualifies as a registered organization.

Control of electronic chattel paper

SECTION 3. Section 36-9-105 of the 1976 Code is amended to read:

"Section 36-9-105. (a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in items (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized."

OFFICIAL COMMENT

1. Source. New.

2. "Control" of Electronic Chattel Paper. This Article covers security interests in "electronic chattel paper," a new term defined in Section 9-102. This Section governs how "control" of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that, if satisfied, establishes control under the general test in subsection (a). A secured party's control of electronic chattel paper (i) may substitute

for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, nontemporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this Section provides that control of electronic chattel paper is the functional equivalent of possession of "tangible chattel paper" (a term also defined in Section 9-102).

3. Development of Control Systems. This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. As under UETA, a system must be shown to reliably establish that the secured party is the assignee of the chattel paper. Reliability is a high standard and encompasses the general principles of uniqueness, identifiability, and unalterability found in subsection (b) without setting forth specific guidelines as to how these principles must be achieved. However, these standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. For example, just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf. This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and a letter of credit rights (Section 9-107). The rules for control of those types of collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually legal and regulatory regimes, which may become analogous to those for, e.g., investment property.

4.”Authoritative Copy” of Electronic Chattel Paper. One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.” Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.

SOUTH CAROLINA REPORTER’S COMMENT

Section 36-9-105 sets forth the requirements for control of electronic chattel paper. Section 36-9-102(a)(31) defines electronic chattel paper as chattel paper evidenced by a record or records consisting of information stored in an electronic medium. Under Section 36-9-314(a) a secured party can perfect a security interest in electronic chattel paper by obtaining control.

Definitional Cross:

“Chattel paper”	Section 36-9-102(a)(11)
“Communicate”	Section 36-9-102(a)(18)
“Electronic chattel paper”	Section 36-9-102(a)(31)
“Record”	Section 36-9-102(a)(70)

Cross --

1. Control satisfies the evidentiary requirement for the creation of a security interest in electronic chattel paper. Section 36-9-203(b)(3)(D).

2. Control as a method of perfecting a security interest in electronic paper. Section 36-9-314(a).

3. Filing as a method of perfecting a security interest in electronic chattel paper. Section 36-9-312(a).

4. Priority of purchasers of chattel paper. Section 36-9-330.

Location of debtor

SECTION 4. Section 36-9-307 of the 1976 Code is amended to read:

“Section 36-9-307. (a) In this section, ‘place of business’ means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a State is located in that State.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located in:

(1) the State that the law of the United States designates, if the law designates a State of location;

(2) the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location, including by designating its main office, home office, or other compatible office; or

(3) the District of Columbia, if neither item (1) nor item (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding the:

(1) suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the

branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part."

OFFICIAL COMMENT

1. Source. Former Section 9-103(3)(d), substantially revised.

2. General Rules. As a general matter, the location of the debtor determines the jurisdiction whose law governs perfection of a security interest. See Sections 9-301(1), 9-305(c). It also governs priority of a security interest in certain types of intangible collateral, such as accounts, electronic chattel paper, and general intangibles. This Section determines the location of the debtor for choice-of-law purposes, but not for other purposes. See subsection (k).

Subsection (b) states the general rules: An individual debtor is deemed to be located at the individual's principal residence with respect to both personal and business assets. Any other debtor is deemed to be located at its place of business if it has only one, or at its chief executive office if it has more than one place of business.

As used in this Section, a "place of business" means a place where the debtor conducts its affairs. See subsection (a). Thus, every organization, even eleemosynary institutions and other organizations that do not conduct "for profit" business activities, has a "place of business." Under subsection (d), a person who ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction determined by subsection (b).

The term "chief executive office" is not defined in this Section or elsewhere in the Uniform Commercial Code. "Chief executive office" means the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing. With respect to most multi-state debtors, it will be simple to determine which of the debtor's offices is the "chief executive office." Even when a doubt arises, it would be rare that there could be more than two possibilities. A secured party in such a case may protect itself by perfecting under the law of each possible jurisdiction.

Similarly, the term "principal residence" is not defined. If the security interest in question is a purchase-money security interest in consumer goods which is perfected upon attachment, see Section

9-309(1), the choice of law may make no difference. In other cases, when a doubt arises, prudence may dictate perfecting under the law of each jurisdiction that might be the debtor's "principal residence."

Questions sometimes arise about the location of the debtor with respect to collateral held in a common-law trust. A typical common-law trust is not itself a juridical entity capable of owning property and so would not be a 'debtor' as defined in Section 9-102. Rather, the debtor with respect to property held in a common-law trust typically is the trustee of the trust acting in the capacity of trustee. (The beneficiary would be a 'debtor' with respect to its beneficial interest in the trust, but not with respect to the property held in the trust). If a common-law trust has multiple trustees located in different jurisdictions, a secured party who perfects by filing would be well advised to file a financing statement in each jurisdiction in which a trustee is located, as determined under Section 9-307. Filing in all relevant jurisdictions would insure perfection and minimize any priority complications that otherwise might arise.

The general rules are subject to several exceptions, each of which is discussed below.

3. Non-U.S. Debtors. Under the general rules of this Section, a non-U.S. debtor normally would be located in a foreign jurisdiction and, as a consequence, foreign law would govern perfection. When foreign law affords no public notice of security interests, the general rule yields unacceptable results.

Accordingly, subsection (c) provides that the normal rules for determining the location of a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is "a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral." The phrase "generally requires" is meant to include legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, but which permit perfection by another method (e.g., control, automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or registration system, and none of the special rules in subsections (e), (f), (i), and (j) applies, the debtor is located in the District of Columbia.

Example 1: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in its accounts. Under subsection (b)(3), Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection, the effect of perfection, and priority are governed by the law of the jurisdiction of the debtor's location-here, England or the District of Columbia (depending on the content of English law).

Example 2: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in equipment located in London. Under subsection (b)(3) Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection is governed by the law of the jurisdiction of the debtor's location, whereas, under Section 9-301(3), the law of the jurisdiction in which the collateral is located-here, England-governs priority.

The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State's entire UCC, including the choice-of-law provisions in Article 9 (Sections 9-301 through 9-307), will not apply. See Section 9-109, Comment 9.

4. Registered Organizations Organized Under Law of a State. Under subsection (e), a registered organization (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts) organized under the law of a "State" (defined in Section 9-102) is located in its State of organization. The term "registered organization" includes a business trust described in the second sentence of the term's definition. See Section 9-102. The trust's public organic record, typically the trust agreement, usually will indicate the jurisdiction under whose law the trust is organized. Subsection (g) makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e). However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This Section does not determine

whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor's location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization-debtor's name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist-as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States. Subsection (f) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor's location. Thus, if the law of the United States designates a particular State as the debtor's location, that State is the debtor's location for purposes of this Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article's choice-of-law rules. In other cases, the debtor is located in the District of Columbia.

Subsection (f) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State. See subsection (i).

6. United States. To the extent that Article 9 governs (see Sections 1-105, 9-109(c)), the United States is located in the District of Columbia for purposes of this Article's choice-of-law rules. See subsection (h).

7. Foreign Air Carriers. Subsection (j) follows former Section 9-103(3)(d). To the extent that it is applicable, the Convention on the International Recognition of Rights in Aircraft (Geneva Convention) supersedes state legislation on this subject, as set forth in Section 9-311(b), but some nations are not parties to that Convention.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-307 sets forth the rules for determining the location of the debtor. These rules are critical under current law because in most cases the debtor's location will determine the jurisdiction in which a secured party must file to perfect a nonpossessory security interest. See Section 36-9-301(1). Perhaps the most significant location of the debtor rule is set forth in Section 36-9-307(e). Under that provision a registered organization, which includes corporations, limited partnerships, and limited liability companies see Section 36-9-102(a)(71) and Official Comment 11, is located in the State under the law of which the entity was organized. For example, a corporation incorporated under the law of South Carolina, but with its chief executive office and all of its equipment in North Carolina, is located in South Carolina. As a result, the law of South Carolina controls the perfection of a nonpossessory security interest upon the equipment and a secured party would be required to file its financing statement in South Carolina.

Definitional Cross:

"Chief executive office"	See Section 36-9-307, Official Comment 2
"Debtor"	Section 36-9-102(a)(28)
"Registered Organization"	Section 36-9-102(a)(71)

Cross --

Law applicable to perfection of nonpossessory security interest determined by location of the debtor. Section 36-9-301(1) and (3)(c).

Perfection of security interests in property subject to certain statutes, regulations, and treaties

SECTION 5. Section 36-9-311 of the 1976 Code is amended to read:

"Section 36-9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 36-9-310(a);

(2) Chapter 19, Title 56, Protection of title to and interests in motor vehicles, and Chapter 23, Title 50, Filing of watercraft and outboard motors, but during any period in which collateral is inventory

held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter, Part 5, apply to a security interest in that collateral created by him as debtor; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d) and Sections 36-9-313 and 36-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and Section 36-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person."

OFFICIAL COMMENT

1. Source. Former Section 9-302(3), (4).

2. Federal Statutes, Regulations, and Treaties. Subsection (a)(1) exempts from the filing provisions of this Article transactions as to which a system of filing-state or federal-has been established under federal law. Subsection (b) makes clear that when such a system exists, perfection of a relevant security interest can be achieved only through compliance with that system (i.e., filing under this Article is not a permissible alternative).

An example of the type of federal statute referred to in subsection (a)(1) is 49 U.S.C. 44107-11, for civil aircraft of the United States. The Assignment of Claims Act of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds

but does not establish a national filing system and therefore is not within the scope of subsection (a)(1). An assignee of a claim against the United States may benefit from compliance with the Assignment of Claims Act. But regardless of whether the assignee complies with that Act, the assignee must file under this Article in order to perfect its security interest against creditors and transferees of its assignor.

Subsection (a)(1) provides explicitly that the filing requirement of this Article defers only to federal statutes, regulations, or treaties whose requirements for a security interest's obtaining priority over the rights of a lien creditor preempt Section 9-310(a). The provision eschews reference to the term "perfection," inasmuch as Section 9-308 specifies the meaning of that term and a preemptive rule may use other terminology.

3. State Statutes. Subsections (a)(2) and (3) exempt from the filing requirements of this Article transactions covered by State certificate-of-title statutes covering motor vehicles and the like. The description of certificate-of-title statutes in subsections (a)(2) and (a)(3) tracks the language of the definition of "certificate of title" in Section 9-102. For a discussion of the operation of state certificate-of- title statutes in interstate contexts, see the Comments to Section 9-303.

Some states have enacted central filing statutes with respect to secured transactions in kinds of property that are of special importance in the local economy. Subsection (a)(2) defers to these statutes with respect to filing for that property.

4. Inventory Covered by Certificate of Title. Under subsection (d), perfection of a security interest in the inventory of a dealer is governed by the normal perfection rules, even if the inventory is covered by a certificate of title. Under former Section 9-302(3), a secured party who financed a dealer may have needed to perfect by filing for goods held for sale and by compliance with a certificate-of-title statute for goods held for lease. In some cases, this may have required notation on thousands of certificates. The problem would have been compounded by the fact that dealers, particularly of automobiles, often do not know whether a particular item of inventory will be sold or leased. Under subsection (d), notation is both unnecessary and ineffective.

The filing and other perfection provisions of this Article apply to goods covered by a certificate of title only "during any period in which collateral is inventory held for sale or lease or leased." If the debtor takes goods of this kind out of inventory and uses them, say, as equipment, a filed financing statement would not remain effective to perfect a security interest.

5. Compliance with Perfection Requirements of Other Statute. Subsection (b) makes clear that compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor), but not other requirements, of a statute, regulation, or treaty described in subsection (a) is sufficient for perfection under this Article. Perfection of a security interest under such a statute, regulation, or treaty has all the consequences of perfection under this Article.

The interplay of this Section with certain certificate-of-title statutes may create confusion and uncertainty. For example, statutes under which perfection does not occur until a certificate of title is issued will create a gap between the time that the goods are covered by the certificate under Section 9-303 and the time of perfection. If the gap is long enough, it may result in turning some unobjectionable transactions into avoidable preferences under Bankruptcy Code Section 547. (The preference risk arises if more than thirty days passes between the time a security interest attaches (or the debtor receives possession of the collateral, in the case of a purchase-money security interest) and the time it is perfected.) Accordingly, the Legislative Note to this Section instructs the legislature to amend the applicable certificate-of-title statute to provide that perfection occurs upon receipt by the appropriate State official of a properly tendered application for a certificate of title on which the security interest is to be indicated.

Under some certificate-of-title statutes, including the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, perfection generally occurs upon delivery of specified documents to a state official but may, under certain circumstances, relate back to the time of attachment. This relation- back feature can create great difficulties for the application of the rules in Sections 9-303 and 9-311(b). Accordingly, the Legislative Note also recommends to legislatures that they remove any relation-back provisions from certificate-of-title statutes affecting security interests.

6. Compliance with Perfection Requirements of Other Statute as Equivalent to Filing. Under Subsection (b), compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor) of a statute, regulation, or treaty described in subsection (a) "is equivalent to the filing of a financing statement."

The quoted phrase appeared in former Section 9-302(3). Its meaning was unclear, and many questions arose concerning the extent to which and manner in which Article 9 rules referring to "filing" were applicable to perfection by compliance with a certificate-of-title statute. This Article takes a variety of approaches for applying Article 9's

filing rules to compliance with other statutes and treaties. First, as discussed above in Comment 5, it leaves the determination of some rules, such as the rule establishing time of perfection (Section 9-516(a)), to the other statutes themselves. Second, this Article explicitly applies some Article 9 filing rules to perfection under other statutes or treaties. See, e.g., Section 9-505. Third, this Article makes other Article 9 rules applicable to security interests perfected by compliance with another statute through the "equivalent to. .. filing" provision in the first sentence of Section 9-311(b). The third approach is reflected for the most part in occasional Comments explaining how particular rules apply when perfection is accomplished under Section 9-311(b). See, e.g., Section 9-310, Comment 4; Section 9-315, Comment 6; Section 9-317, Comment 8. The absence of a Comment indicating that a particular filing provision applies to perfection pursuant to Section 9-311(b) does not mean the provision is inapplicable.

7. Perfection by Possession of Goods Covered by Certificate-of-Title Statute. A secured party who holds a security interest perfected under the law of State A in goods that subsequently are covered by a State B certificate of title may face a predicament. Ordinarily, the secured party will have four months under State B's Section 9-316(c) and (d) in which to (re)perfect as against a purchaser of the goods by having its security interest noted on a State B certificate. This procedure is likely to require the cooperation of the debtor and any competing secured party whose security interest has been noted on the certificate. Comment 4(e) to former Section 9-103 observed that "that cooperation is not likely to be forthcoming from an owner who wrongfully procured the issuance of a new certificate not showing the out-of-state security interest, or from a local secured party finding himself in a priority contest with the out-of-state secured party." According to that Comment, "[t]he only solution for the out-of-state secured party under present certificate of title statutes seems to be to reperfect by possession, i.e., by repossessing the goods." But the "solution" may not have worked: Former Section 9-302(4) provided that a security interest in property subject to a certificate-of-title statute "can be perfected only by compliance therewith."

Sections 9-316(d) and (e), 9-311(c), and 9-313(b) of this Article resolve the conflict by providing that a security interest that remains perfected solely by virtue of Section 9-316(e) can be (re)perfected by the secured party's taking possession of the collateral. These Sections contemplate only that taking possession of goods covered by a certificate of title will work as a method of perfection. None of these

Sections creates a right to take possession. Section 9-609 and the agreement of the parties define the secured party's right to take possession.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-311(a)(1) provides that statutes, regulations, or treaties of the United States which impose requirements for the priority of a security interest over a lien creditor preempt the perfection rules of Article 9. In addition, this sections 36-9-311(a)(2) and (3) provide that state certificate of title statutes govern the perfection of security interests in covered goods. With two exceptions, Section 36-9-311(b) provides that a security interest subject to a statute, regulation, or treaty described in subsection (a) can be perfected only by complying with the requirements of the statute, regulation, or treaty. The first exception to this rule applies when goods covered by a certificate of title statute entered this state subject to a security interest perfected under the law of another state. Section 36-9-311(b), 36-9-313(b), and 36-9-316(d) and (e) provide that the secured party can perfect in this state by taking possession of the goods. The second exception applies when goods covered by a certificate of title statute are inventory held for sale or lease by a person in the business of selling or leasing goods of that kind. Section 36-9-311(d)

South Carolina has two certificate of title statutes that control the perfection of security interests. Sections 56-19-610-720, S.C. Code Ann. (2006 Revised, as amended) govern the perfection of security interests in motor vehicles. Section 50-23-140, S.C. Code Ann., as amended, governs the perfection of security interests on watercraft and outboard motors.

Article 9 envisions that a state certificate of title statute that provides that perfection occurs when the appropriate state authority receives an application for a certificate of title which discloses the security interest, rather than when the authority issues the certificate. See Section 36-9-311, Official Comment 5. The South Carolina certificate of title statutes conform to this exception. See Sections 56-19-230 and 50-23-140(c) S.C. Code Ann. (1976 and Supp. 1999).

Article 9 further envisions that when certificate of title legislation perfection will not relate back to a point in time earlier than the date upon which the State officials received the application. See Section 36-9-311, Official Comment 5. The current South Carolina certificate of title statutes do not conform to this expectation. Under section 56-19-630 S. C. Code Ann. (1976) the perfection of a security interest in a motor vehicle relates back to the date on which the security interest

was created if delivery of the application to the Department of Highways and Public Transportation is completed within ten days after the creation of the security interest. Under section 50-23-140(c) S.C. Code Ann. (Supp. 1999) the perfection of a security interest in a watercraft or an outboard motor relates back to the date the security interest was created if delivery of the application is completed within twenty days after the creation of the security interest. The relation-back for the perfection of non-purchase-money security interests and a twenty day relation back period measured from the date on which the debtor receives delivery of the collateral for purchase-money security interests. See Section 36-9-317(e)

Definitional Cross:

"Certificate of title"	Section 36-9-102(a)(10)
"Financing statement"	Section 36-9-102(a)(39)
"Inventory"	Section 36-9-102(a)(48)
"Lien creditor"	Section 36-9-102(a)(52)
"Security interest"	Section 36-1-201(37)

Cross --

1. Provisions of certificate-of-title statute relating to the perfection of security interests in motor vehicles. Sections 56-19-630 and 650. S.C. Code Ann. (1976 and Supp. 1999).

2. Provisions of certificate-of-title statute relating to the perfection of security interests in watercraft and outboard motors. Section 50-23-140 S. C. Code Ann. (Supp. 1999).

3. Perfection by possession of a security interest on goods subject to a certificate-of-title statute when the goods enter South Carolina subject to a security interest perfected under the law of another jurisdiction. Sections 36-9-313(b), 36-9-316(d) and (e).

Continued perfection of security interest following change in governing law

SECTION 6. Section 36-9-316 of the 1976 Code is amended to read:

"Section 36-9-316. (a) A security interest perfected pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) remains perfected until the earliest of the:

(1) time perfection would have ceased under the law of that jurisdiction;

(2) expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 36-9-311(b) or 36-9-313 are not satisfied before the earlier of the:

(1) time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of the:

(1) time the security interest would have become unperfected under the law of that jurisdiction; or

(2) expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under item (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 36-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section

36-9-301(1) or 36-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

OFFICIAL COMMENT

1. Source. Former Section 9-103(1)(d), (2)(b), (3)(e), as modified.

2. Continued Perfection. Subsections a-g deal with continued perfection of security interests that have been perfected under the law of another jurisdiction. The fact that the law of a particular jurisdiction ceases to govern perfection under Sections 9-301 through 9-307 does not necessarily mean that a security interest perfected under that law automatically becomes unperfected. To the contrary: This Section generally provides that a security interest perfected under the law of one jurisdiction remains perfected for a fixed period of time (four months or one year, depending on the circumstances), even though the jurisdiction whose law governs perfection changes. However, cessation of perfection under the law of the original jurisdiction cuts short the fixed period. The four-month and one-year periods are long enough for a secured party to discover in most cases that the law of a different jurisdiction governs perfection and to reperfect (typically by filing) under the law of that jurisdiction. If a secured party properly reperfects a security interest before it becomes unperfected under subsection (a), then the security interest remains perfected continuously thereafter. See subsection (b).

Example 1: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2005, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected for four months after the move. See subsection (a)(2).

Example 2: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2007, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected only through May 14, 2007, when the effectiveness of the filed financing statement lapses. See subsection (a)(1). Although, under these facts, Lender would have only a short period of time to discover that Debtor had relocated and to reperfect under New Jersey

law, Lender could have protected itself by filing a continuation statement in Pennsylvania before Debtor relocated. By doing so, Lender would have prevented lapse and allowed itself the full four months to discover Debtor's new location and refile there or, if Debtor is in default, to perfect by taking possession of the equipment.

Example 3: Under the facts of Example 2, Lender files a financing statement in New Jersey before the effectiveness of the Pennsylvania financing statement lapses. Under subsection (b), Lender's security interest is continuously perfected beyond May 14, 2007, for a period determined by New Jersey's Article 9.

Subsection (a)(3) allows a one-year period in which to reperfect. The longer period is necessary, because, even with the exercise of due diligence, the secured party may be unable to discover that the collateral has been transferred to a person located in another jurisdiction. In any event, the period is cut short if the financing statement becomes ineffective under the law of the jurisdiction in which it is filed.

Example 4: Debtor is a Pennsylvania corporation. On January 1, Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. On March 1, they form a Delaware corporation (Newcorp) into which they merge Debtor. The merger effectuates a transfer of the collateral from Debtor to Newcorp, which thereby becomes a debtor and is located in another jurisdiction. Under subsection (a)(3), the security interest remains perfected for one year after the merger. If a financing statement is filed in Delaware against Newcorp within the year following the merger, then the security interest remains perfected thereafter for a period determined by Delaware's Article 9.

Note that although Newcorp is a "new debtor" as defined in Section 9-102, the application of subsection (a)(3) is not limited to transferees who are new debtors. Note also that, under Section 9-507, the financing statement naming Debtor remains effective even though Newcorp has become the debtor.

Subsection (a) addresses security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location. Subsection (h) applies to security interests that have not attached before the location changes. See Comment 7.

3. Retroactive Unperfection. Subsection (b) sets forth the consequences of the failure to reperfect before perfection ceases under subsection (a): the security interest becomes unperfected prospectively and, as against purchasers for value, including buyers and secured

parties, but not as against donees or lien creditors, retroactively. The rule applies to agricultural liens, as well. See also Section 9-515 (taking the same approach with respect to lapse). Although this approach creates the potential for circular priorities, the alternative-retroactive unperfection against lien creditors-would create substantial and unjustifiable preference risks.

Example 5: Under the facts of Example 4, six months after the merger, Buyer bought from Newcorp some equipment formerly owned by Debtor. At the time of the purchase, Buyer took subject to Lender's perfected security interest, of which Buyer was unaware. See Section 9-315(a)(1). However, subsection (b) provides that if Lender fails to reperfect in Delaware within a year after the merger, its security interest becomes unperfected and is deemed never to have been perfected against Buyer. Having given value and received delivery of the equipment without knowledge of the security interest and before it was perfected, Buyer would take free of the security interest. See Section 9-317(b).

Example 6: Under the facts of Example 4, one month before the merger, Debtor created a security interest in certain equipment in favor of Financer, who perfected by filing in Pennsylvania. At that time, Financer's security interest is subordinate to Lender's. See Section 9-322(a)(1). Financer reperfects by filing in Delaware within a year after the merger, but Lender fails to do so. Under subsection (b), Lender's security interest is deemed never to have been perfected against Financer, a purchaser for value. Consequently, under Section 9-322(a)(2), Financer's security interest is now senior.

Of course, the expiration of the time period specified in subsection (a) does not of itself prevent the secured party from later reperfecting under the law of the new jurisdiction. If the secured party does so, however, there will be a gap in perfection, and the secured party may lose priority as a result. Thus, in Example 7, if Lender perfects by filing in Delaware more than one year under the merger, it will have a new date of filing and perfection for purposes of Section 9-322(a)(1). Financer's security interest, whose perfection dates back to the filing in Pennsylvania under subsection (b), will remain senior.

4. Possessory Security Interests. Subsection (c) deals with continued perfection of possessory security interests. It applies not only to security interests perfected solely by the secured party's having taken possession of the collateral. It also applies to security interests perfected by a method that includes as an element of perfection the secured party's having taken possession, such as perfection by taking delivery of a certificated security in registered form, see Section

9-313(a), and perfection by obtaining control over a certificated security. See Section 9-314(a).

5. Goods Covered by Certificate of Title. Subsections (d) and (e) address continued perfection of a security interest in goods covered by a certificate of title. The following examples explain the operation of those subsections.

Example 7: Debtor's automobile is covered by a certificate of title issued by Illinois. Lender perfects a security interest in the automobile by complying with Illinois' certificate-of-title statute. Thereafter, Debtor applies for a certificate of title in Indiana. Six months thereafter, Creditor acquires a judicial lien on the automobile. Under Section 9-303(b), Illinois law ceases to govern perfection; rather, once Debtor delivers the application and applicable fee to the appropriate Indiana authority, Indiana law governs. Nevertheless, under Indiana's Section 9-316(d), Lender's security interest remains perfected until it would become unperfected under Illinois law had no certificate of title been issued by Indiana. (For example, Illinois' certificate-of-title statute may provide that the surrender of an Illinois certificate of title in connection with the issuance of a certificate of title by another jurisdiction causes a security interest noted thereon to become unperfected.) If Lender's security interest remains perfected, it is senior to Creditor's judicial lien.

Example 8: Under the facts in Example 7, five months after Debtor applies for an Indiana certificate of title, Debtor sells the automobile to Buyer. Under subsection (e)(2), because Lender did not reperfect within the four months after the goods became covered by the Indiana certificate of title, Lender's security interest is deemed never to have been perfected against Buyer. Under Section 9-317(b), Buyer is likely to take free of the security interest. Lender could have protected itself by perfecting its security interest either under Indiana's certificate-of-title statute, see Section 9-311, or, if it had a right to do so under an agreement or Section 9-610, by taking possession of the automobile. See Section 9-313(b).

The results in Examples 7 and 8 do not depend on the fact that the original perfection was achieved by notation on a certificate of title. Subsection (d) applies regardless of the method by which a security interest is perfected under the law of another jurisdiction when the goods became covered by a certificate of title from this State.

Section 9-337 affords protection to a limited class of persons buying or acquiring a security interest in the goods while a security interest is perfected under the law of another jurisdiction but after this State has issued a clean certificate of title.

6. Deposit Accounts, Letter-of-Credit Rights, and Investment Property. Subsections (f) and (g) address changes in the jurisdiction of a bank, issuer of an uncertificated security, issuer of or nominated person under a letter of credit, securities intermediary, and commodity intermediary. The provisions are analogous to those of subsections (a) and (b).

7. Security Interests that Attach after Debtor Changes Location. In contrast to subsections (a) and (b), which address security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location, subsection (h) addresses security interests that attach four months after the debtor changes its location. Under subsection (h), a filed financing statement that would have been effective to perfect a security interest in the collateral if the debtor had not changed its location is effective to perfect a security interest in collateral acquired within four months after the relocation.

Example 9: Debtor, an individual whose principal residence is in Pennsylvania, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor's principal residence is relocated to New Jersey. Upon the relocation, New Jersey law governs perfection of a security interest in Debtor's inventory. See Sections 9-301, 9-307. Under New Jersey's Section 9-316(a), Lender's security interest in Debtor's inventory on hand at the time of the relocation remains perfected for four months thereafter. Had Debtor not relocated, the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in inventory acquired by the Debtor after March 31, 2014. Accordingly, under subsection (h), the financing statement is effective to perfect Lender's security interest in inventory that Debtor acquires within the four months after Debtor's location changed. In Example 9, Lender's security interest in the inventory acquired within the four months after Debtor's relocation will be perfected when it attaches. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under the law of New Jersey. Otherwise, the security interest will become unperfected at the end of the four-month period and will be considered never to have been perfected as against a purchaser for value. See subsection (h)(2).

8. Collateral Acquired by New Debtor. Subsection (i) is similar to subsection (h). Whereas subsection (h) addresses security interests that attach within four months after a debtor changes its location,

subsection (i) addresses security interests that attach within four months after a new debtor becomes bound as debtor by a security agreement entered into by another person. Subsection (i) also addresses collateral acquired by the new debtor before it becomes bound.

Example 10: Debtor, a Pennsylvania corporation, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor merges into Survivor, a Delaware corporation. Because Survivor is located in Delaware, Delaware law governs perfection of a security interest in Survivor's inventory. See Sections 9-301, 9-307. Under Delaware's Section 9-316(a), Lender's security interest in the inventory that Survivor acquired from Debtor remains perfected for one year after the transfer. See Comment 2. By virtue of the merger, Survivor becomes bound as debtor by Debtor's security agreement. See Section 9-203(d). As a consequence, Lender's security interest attaches to all of Survivor's inventory under Section 9-203, and Lender's collateral now includes inventory in which Debtor never had an interest. The financing statement filed in Pennsylvania against Debtor is effective under Delaware's Section 9-316(i) to perfect Lender's security interest in inventory that Survivor acquired before, and within the four months after, becoming bound as debtor by Debtor's security agreement. This is because the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in this collateral had Debtor, rather than Survivor, acquired it. If the financing statement is effective, Lender's security interest in the collateral that Survivor acquired before, and within four months after, Survivor became bound as debtor will be perfected upon attachment. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under Delaware law. Otherwise, the security interest will become unperfected at the end of the four-month period and will be considered never to have been perfected as against a purchaser for value.

9. Agricultural Liens. This Section does not apply to agricultural liens.

Example 11: Supplier holds an agricultural lien on corn. The lien arises under an Iowa statute. Supplier perfects by filing a financing statement in Iowa, where the corn is located. See Section 9-302. Debtor stores the corn in Missouri. Assume the Iowa agricultural lien survives or an agricultural lien arises under Missouri law (matters that this Article does not govern). Once the corn is located in Missouri,

Missouri becomes the jurisdiction whose law governs perfection. See Section 9-302. Thus, the agricultural lien will not be perfected unless Supplier files a financing statement in Missouri.

SOUTH CAROLINA REPORTER'S COMMENT

Subpart 1 of Part 3, Section 36-9-301 to 36-9-307, provides the choice of law rules for the perfection of security interests. Under Section 36-9-301(1) the law of the jurisdiction in which the debtor is located typically controls the perfection of security interests by filing. Under Section 36-9-301(2) the law of the jurisdiction in which the collateral is located controls the perfection of possessory security interests. Section 36-9-316 determines whether a security interest properly perfected in one jurisdiction continues perfected when there has been a change in the location of the debtor or of the collateral. When there has been a change in the debtor's location, subsections 36-9-316(a)(1) and (2) provide that filing in the initial location is effective to perfect the security interest until the earlier of the time it lapsed in the new jurisdiction or four months. Under Subsection 36-9-316(a)(3) if the collateral is transferred to a "new debtor" located in another jurisdiction, a filing in the debtor's jurisdiction remains effective for one year. Subsection 36-9-312(6) provides for the continuous perfection of possessory security interests when the collateral is relocated to another jurisdiction.

The 2013 amendments add two subsections to Section 33-9-316. Section 36-9-316(h) addresses the effect of a filed financing statement upon collateral acquired by a debtor within four months after the debtor changes its location to another jurisdiction. Section 36-9-316(i) addresses the effect of a financing statement filed in one jurisdiction against an original debtor upon collateral acquired by a new debtor located in a different jurisdiction. See Sections 36-9-203(d) and (2), 36-9-508, and 36-9-326.

Definitional Cross:

"As-extracted collateral"	Section 36-9-102(a)(6)
"Bank's jurisdiction"	Section 36-9-304(b)
"Certificate of title"	Section 36-9-102(a)(10)
"Collateral"	Section 36-9-102(a)(12)
"Commodity intermediary's jurisdiction"	Section 36-9-305(b)
"Debtor"	Section 36-9-102(a)(28)
"Debtor's location"	Section 36-9-307
"Deposit account"	Section 36-9-102(a)(29)
"Goods"	Section 36-9-102(a)(44)

"Investment property"	Section 36-9-102(a)(49)
"Issuer's jurisdiction"	See Section 36-9-306(b), [Section 36-5-116 1995 Revision]
"Letter-of-credit rights"	Section 36-9-102(a)(51)
"New debtor"	Section 36-9-102(a)(56)
"Nominated person's jurisdiction"	See Section 36-9-306(b), [Section 36-5-116 1995 Revision]
"Purchaser"	Section 36-1-201(33)
"Securities intermediary's jurisdiction"	Section 36-8-110(e)
"Security interest"	Section 36-1-201(37)
"Value"	Section 36-1-201(44)

Cross --

1. Choice of law rules for perfection of security interests by filing. Sections 36-9-301(1), (3), and (4).

2. Choice of rules for perfection of security interests by possession. Section 36-9-301(2).

3. Choice of law rules for perfection of security interests on goods covered by a certificate of title. Section 36-9-303.

4. Choice of law rules for perfection of security interests in deposit accounts. Section 36-9-304.

5. Choice of law rules for perfection of security interests in investment property. Section 36-9-305.

6. Choice of law rules for perfection of security interests in letter-of-credit rights. Section 36-9-306.

7. Location of the debtor. Section 36-9-307.

8. When a person becomes bound as a "new debtor" Section 36-9-203(d).

9. The effect of being bound as a "new debtor" Section 36-9-203(e).

10. The effectiveness of a financing statement naming the original debtor to perfect a security interest in collateral acquired by the "new debtor" Section 36-9-508.

11. Priority of security interest in collateral of a "new debtor" perfected by a filing effective solely under Section 36-9-508. Section 36-9-326.

Interests that take priority over or take free of security interest or agricultural lien

SECTION 7. Section 36-9-317 of the 1976 Code is amended to read:

"Section 36-9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 36-9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 36-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 36-9-320 and 36-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing."

OFFICIAL COMMENT

1. Source. Former Sections 9-301, 2A-307(2).

2. Scope of This Section. As did former Section 9-301, this Section lists the classes of persons who take priority over, or take free of, an unperfected security interest. Section 9-308 explains when a security interest or agricultural lien is "perfected." A security interest that has attached (see Section 9-203) but as to which a required perfection step has not been taken is "unperfected." Certain provisions have been moved from former Section 9-301. The definition of "lien creditor" now appears in Section 9-102, and the rules governing priority in future advances are found in Section 9-323.

3. Competing Security Interests. Section 9-322 states general rules for determining priority among conflicting security interests and refers to other Sections that state special rules of priority in a variety of

situations. The security interests given priority under Section 9-322 and the other Sections to which it refers take priority in general even over a perfected security interest. A fortiori they take priority over an unperfected security interest.

4. Filed but Unattached Security Interest vs. Lien Creditor. Under former Section 9-301(1)(b), a lien creditor's rights had priority over an unperfected security interest. Perfection required attachment (former Section 9-303) and attachment required the giving of value (former Section 9-203). It followed that, if a secured party had filed a financing statement but had not yet given value, an intervening lien creditor whose lien arose after filing but before attachment of the security interest acquired rights that are senior to those of the secured party who later gives value. This result comported with the nemo dat concept: When the security interest attached, the collateral was already subject to the judicial lien.

On the other hand, this result treated the first secured advance differently from all other advances. The special rule for future advances in former Section 9-301(4) (substantially reproduced in Section 9-323(b)) afforded priority to a discretionary advance made by a secured party within 45 days after the lien creditor's rights arose as long as the secured party was "perfected" when the lien creditor's lien arose-i.e., as long as the advance was not the first one and an earlier advance had been made.

Subsection (a)(2) revises former Section 9-301(1)(b) and treats the first advance the same as subsequent advances. That is, a judicial lien that arises after a financing statement is filed and before the security interest attaches and becomes perfected is subordinate to all advances secured by the security interest, even the first advance, except as otherwise provided in Section 9-323(b). However, if the security interest becomes unperfected (e.g., because the effectiveness of the filed financing statement lapses) before the judicial lien arises, the security interest is subordinate. If a financing statement is filed but a security interest does not attach, then no priority contest arises. The lien creditor has the only claim to the property.

5. Security Interest of Consignor or Receivables Buyer vs. Lien Creditor. Section 1-201 defines "security interest" to include the interest of most true consignors of goods and the interest of most buyers of certain receivables (accounts, chattel paper, payment intangibles, and promissory notes). A consignee of goods or a seller of accounts or chattel paper each is deemed to have rights in the collateral which a lien creditor may reach, as long as the competing security interest of the consignor or buyer is unperfected. This is so even

though, as between the consignor and the debtor-consignee, the latter has only limited rights, and, as between the buyer and debtor-seller, the latter does not have any rights in the collateral. See Sections 9-318 (seller), 9-319 (consignee). Security interests arising from sales of payment intangibles and promissory notes are automatically perfected. See Section 9-309. Accordingly, a subsequent judicial lien always would be subordinate to the rights of a buyer of those types of receivables.

6. Purchasers Other Than Secured Parties. Subsections (b), (c), and (d) afford priority over an unperfected security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of subordination in this context is that the purchaser takes free of the security interest. To avoid any possible misinterpretation, subsections (b) and (d) of this Section use the phrase "takes free."

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

Normally, there will be no question when a buyer of chattel paper, documents, instruments, or security certificates "receives delivery" of the property. See Section 1-201 (defining " delivery"). However, sometimes a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent to a potential lender to the seller or lessor that another person might have an interest in the goods.

The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of

paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (including accounts, electronic chattel paper, general intangibles, and investment property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if perfected. See Section 9-321.

Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts, chattel paper, payment intangibles, or promissory notes is a " secured party" (defined in Section 9-102), and subsections (b) and (d) do not determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing security interests apply. See Section 9-322.

7. Agricultural Liens. Subsections (a), (b), and (c) subordinate unperfected agricultural liens in the same manner in which they subordinate unperfected security interests.

8. Purchase-Money Security Interests. Subsection (e) derives from former Section 9-301(2). It provides that, if a purchase-money security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of buyers, lessees, or lien creditors which arise between the time the security interest attaches and the time of filing. Subsection (e) differs from former Section 9-301(2) in two significant respects. First, subsection (e) protects a purchase-money security interest against all buyers and lessees, not just against transferees in bulk. Second, subsection (e) conditions this protection on filing within 20, as opposed to ten, days after delivery.

Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described in Section 9-311(a) "is equivalent to the filing of a financing statement." It follows that a person who perfects a security interest in goods covered by a certificate of title by complying with the perfection requirements of an applicable certificate-of-title statute "files a financing statement" within the meaning of subsection(e).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-317 provides the priority rules applicable to unperfected security interests. South Carolina has adopted an inconsistent amendment to the Official Text of Section 9-317.

Section 9-317(a)(2) of the 1999 Official Text provides that an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the earlier of (1) the time a security interest is perfected or (2) a financing statement is filed covering the collateral and the parties have satisfied the evidentiary requirement for attachment of a security interest under Section 9-203(b)(3)(D). South Carolina has revised Section 9-317(a)(2) to provide that an unperfected security interest is subordinate to both the holder of an unperfected security interest and a landlord who obtains a lien for distraint before the earlier of the time the secured party perfects or files a financing statement covering the collateral. See also Section 36-9-109(d)(1) (priority conflict between a landlord's lien and a security interest is governed by Section 36-9-317). A landlord does not acquire a lien for distraint until there is actual levy of a distress warrant. Burnett v. Bourkedes, 240 S.C. 144, 125 S.C. 2d 10, 15 (1962). Therefore under Section 36-9-317(a)(2) a secured party will be entitled to priority over a landlord seeking to collect rent through distraint if the secured party files a financing statement covering the collateral or perfects its security interest before the actual levy of the distress warrant. The revision in Section 36-9-317(a)(2) was adopted to reaffirm the holding in In Re J.M. Smith Corp., 341 S.C. 442, 535 S.E. 2d 131 (2000).

Definitional Cross:

"Account"	Section 36-9-102(a)(2)
"Agricultural lien"	Section 36-9-102(a)(5)
"Certificated security"	Section 36-9-102(a)(4)
"Collateral"	Section 36-9-102(a)(12)
"Delivery"	Section 36-1-201(14)
"Document"	Sections 36-9-102(a)(30), 36-7-102(1)(e), 36-1-201(15)
"Electronic chattel paper"	Section 36-9-102(a)(31)
"Financing statement"	Section 36-9-102(a)(39)
"General intangible"	Section 36-9-102(a)(42)
"Goods"	Section 36-9-102(a)(44)
"Instrument"	Section 36-9-102(a)(47)
"Investment property"	Section 36-9-102(a)(49)
"Knowledge"	Section 36-1-201(25)
"Lessee"	Section 36-2A-103(1)(n)
"Licensee"	See Section 36-9-321(a)
"Lien creditor"	Section 36-9-102(a)(52)

"Purchase-money security interest"	Section 36-9-103
"Security interest"	Section 36-1-201(37)
"Tangible chattel paper"	Section 36-9-102(a)(79)

Cross --

1. A perfected security interest or agricultural lien has priority over an unperfected security interest or agricultural lien. Section 36-9-322(a)(2).

2. When a security interest is perfected. Section 36-9-308(a).

3. When a agricultural lien is perfected. Section 36-9-308(b).

4. Priority of perfected security interest over a lien creditor with respect to future advances. Section 36-9-323(b).

5. Priority of buyers of goods over perfected security interests. Section 36-9-320.

6. Priority of licensees in the ordinary course over perfected security interests. Section 36-9-321(b).

7. Priority of lessees in the ordinary course over perfected security interests. Section 36-9-321(c).

Priority of security interests created by new debtor

SECTION 8. Section 36-9-326 of the 1976 Code is amended to read:

"Section 36-9-326. (a) Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 36-9-316(i)(1) or Section 36-9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound."

OFFICIAL COMMENT

1. Source. New.

2. Subordination of Security Interests Created by New Debtor. This Section addresses the priority contests that may arise when a new

debtor becomes bound by the security agreement of an original debtor and each debtor has a secured creditor.

Subsection (a) subordinates the original debtor's secured party's security interest perfected against the new debtor by a filed financing statement that would be ineffective to perfect the security interest but for Section 9-508 or, if the original debtor and new debtor are located in different jurisdictions, Section 9-316(i)(1). The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. This section does not subordinate a security interest perfected by a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it subordinate a security interest perfected by a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

Example 1: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-possession security interest in an item of Z Corp's inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement (e.g., Z Corp buys X Corp's assets and assumes its security agreement). See Section 9-203(d). But for Section 9-508, SP-X's financing statement would be ineffective to perfect a security interest in the item of inventory in which Z Corp has rights. However, subsection (a) provides that SP-X's perfected security interest is subordinate to SP-Z's, regardless of whether SP-X's financing statement was filed before SP-Z perfected its security interest.

Example 2: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z Corp's existing and after-acquired inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement. Immediately thereafter, and before the effectiveness of SP-X's financing statement lapses, Z Corp acquires a new item of inventory. But for Section 9-508, SP-X's financing statement would be ineffective to perfect a security interest in the new item of inventory in which Z Corp has rights. However, because SP-Z's security interest was perfected by a filing whose

effectiveness does not depend on Section 9-316(i)(1) or 9-508, subsection (a) subordinates SP-X's perfected security interest to SP-Z's. This would be the case even if SP-Z filed after Z Corp became bound by X Corp's security agreement, and regardless of which financing statement was filed first. The same result would obtain if X Corp and Z Corp were located in different locations. SP-X's security interest would be perfected by a financing statement that would be ineffective but for Section 9-316(i)(1), whereas the effectiveness of SP-Z's filing does not depend on Section 9-316(i)(1) or 9-508.

3. Other Priority Rules. Subsection (b) addresses the priority among security interests created by the original debtor (X Corp). By invoking the other priority rules of this subpart, as applicable, subsection (b) preserves the relative priority of security interests created by the original debtor.

Example 3: Under the facts of Example 2, SP-Y also holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory. SP-Y filed after SP-X. Inasmuch as both SP-X's and SP-Y's security interests in inventory acquired by Z Corp after it became bound would be unperfected but for the application of Section 9-508, the normal priority rules determine their relative priorities. Under the "first-to-file-or-perfect" rule of Section 9-322(a)(1), SP-X has priority over SP-Y.

Example 4: Under the facts of Example 3, after Z Corp became bound by X Corp's security agreement, SP-Y promptly filed a new initial financing statement against Z Corp. SP-X's security interest remains perfected only by virtue of its original filing against X Corp which "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-Y's security interest is perfected by the filing of a financing statement whose effectiveness does not depend on Section 9-508 or Section 9-316(i)(1), subsection (a) subordinates SP-X's security interest to SP-Y's. If both SP-X and SP-Y file a new initial financing statement against Z Corp, then the "first-to-file-or-perfect" rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z.

The second sentence of subsection (b) effectively limits the applicability of the first sentence to situations in which a new debtor has become bound by more than one security agreement entered into by the same original debtor. When the new debtor has become bound by security agreements entered into by different original debtors, the second sentence provides that priority is based on priority in time of the new debtor's becoming bound.

Example 5: Under the facts of Example 2, SP-W holds a perfected-by-filing security interest in W Corp's existing and after-acquired inventory. After Z Corp became bound by X Corp's security agreement in favor of SP-X, Z Corp became bound by W Corp's security agreement. Under subsection (b), SP-W's security interest in inventory acquired by Z Corp is subordinate to that of SP-X, because Z Corp became bound under SP-X's security agreement before it became bound under SP-W's security agreement. This is the result regardless of which financing statement (SP-X's or SP-W's) was filed first.

The second sentence of subsection (b) reflects the generally accepted view that priority based on the first-to-file rule is inappropriate for resolving priority disputes when the filings were made against different debtors. Like subsection (a) and the first sentence of subsection (b), however, the second sentence of subsection (b) relates only to priority conflicts among security interests that would be unperfected but for the application of Section 9-316(i)(1) or Section 9-508.

Example 6: Under the facts of Example 5, after Z Corp became bound by W Corp's security agreement, SP-W promptly filed a new initial financing statement against Z Corp. At that time, SP-X's security interest was perfected only pursuant to its original filing against X Corp which "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-W's security interest is perfected by the filing of a financing statement whose effectiveness does not depend on Section 9-316(i)(1) or Section 9-508, subsection (a) subordinates SP-X's security interest to SP-w'S. If both SP-X and SP-W file a new initial financing statement against Z Corp, then the "first-to-file-or-perfect" rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-326 resolves priority conflicts that arise when a person becomes bound by a security agreement entered into by another person. To illustrate, assume that on February 1, A Corporation entered into a security agreement with SP-1 that granted SP-1 a security interest upon SP-1's current and after acquired inventory. On February 1, SP-1 properly filed a financing statement covering A Corporation's inventory. Effective April 1 A Corporation was merged with B Corporation with B Corporation surviving the merger. Under applicable corporate law B Corporation became generally obligated for A Corporation's obligations including the debt owed to SP-1. Under applicable corporate law B Corporation also acquired all of A

Corporation's assets. On May 1 B Corporation entered into a security agreement with SP-2 granting SP-2 a security interest upon B Corporation's current and after acquired inventory. On May 1, SP-2 properly filed a financing statement covering B Corporation's inventory. On July 1, following defaults upon both the security agreement with SP-1 and SP-2 a priority dispute arose over inventory acquired by B Corporation after the effective date of the merger.

Under Section 36-9-203(d)(2) B Corporation qualified as a "new debtor" and was bound by the security agreement entered into by A Corporation and SP-1. As a result, under Section 36-9-203(e) the security agreement entered into by A Corporation was effective to give SP-1 a security interest in the post-merger inventory acquired by B Corporation. Under Section 36-9-508 SP-1's filed financing statement was effective to perfect SP-1's security interest in inventory acquired by B Corporation for four months following the merger.

Although SP-1 holds a perfected security interest in B Corporation's post-merger inventory and SP-1 filed before SP-2, SP-1's financing statement is effective solely under section 9-508. As a result, Section 36-9-325(a) subordinates SP-1's security interest to the security interest B Corporation granted SP-2.

The 2013 amendments revised Section 36-9-326 to incorporate the amendment to Section 36-9-316(i) and clarifies when a security interest created by a new debtor is subordinated.

Definitional Cross:

"Collateral"	Section 36-9-102(a)(12)
"Debtor"	Section 36-9-102(a)(28)
"Financing Statement"	Section 36-9-102(a)(39)
"New debtor"	Section 36-9-102(a)(56)
"Original debtor"	Section 36-9-102(a)(60)
"Security interest"	Section 36-1-201(37)

Cross --

1. Requirements for becoming bound as a new debtor to a security agreement entered into by an original debtor. Section 36-9-203(d).

2. The effect of becoming bound as a new debtor. Section 36-9-203(e).

3. Effectiveness of a financing statement filed under the name of the original debtor to perfect a security interest in collateral acquired by the new debtor. Section 36-9-508.

4. When a financing statement filed under the name of the original debtor becomes seriously misleading. Section 36-9-506.

5. Effectiveness of financing statement with respect to collateral sold or otherwise disposed of. Section 36-9-325.

6. Priority of perfected security interest in collateral sold or otherwise disposed of. Section 36-9-325.

Discharge of account debtor, notification, identification, and proof of assignment, restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective

SECTION 9. Section 36-9-406 of the 1976 Code is amended to read:

"Section 36-9-406. (a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and Sections 36-2A-303 and 36-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale under a disposition pursuant to Section 36-9-610 or an acceptance of collateral pursuant to Section 36-9-620.

(f) Except as otherwise provided in Sections 36-2A-303 and 36-9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable.

(j) Subsection (d) does not apply to the assignment, transfer, or creation of a security interest in a:

(1) claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or

(2) claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended."

OFFICIAL COMMENT

1. Source. Former Section 9-318(3), (4).

2. Account Debtor's Right to Pay Assignor Until Notification. Subsection (a) provides the general rule concerning an account debtor's right to pay the assignor until the account debtor receives appropriate notification. The revision makes clear that once the account debtor receives the notification, the account debtor cannot discharge its obligation by paying the assignor. It also makes explicit that payment to the assignor before notification, or payment to the assignee after notification, discharges the obligation. No change in meaning from former Section 9-318 is intended. Nothing in this Section conditions the effectiveness of a notification on the identity of the person who gives it. An account debtor that doubts whether the right to payment has been assigned may avail itself of the procedures in subsection (c). See Comment 4.

An effective notification under subsection (a) must be authenticated. This requirement normally could be satisfied by sending notification on the notifying person's letterhead or on a form on which the notifying person's name appears. In each case the printed name would be a symbol adopted by the notifying person for the purpose of identifying the person and adopting the notification. See Section 9-102 (defining "authenticate").

Subsection (a) applies only to account debtors on accounts, chattel paper, and payment intangibles. (Section 9-102 defines the term "account debtor" more broadly, to include those obligated on all general intangibles.) Although subsection (a) is more precise than its predecessor, it probably does not change the rule that applied under former Article 9. Former Section 9-318(3) referred to the account debtor's obligation to "pay," indicating that the subsection was limited to account debtors on accounts, chattel paper, and other payment obligations.

3. Limitations on Effectiveness of Notification. Subsection (b) contains some special rules concerning the effectiveness of a notification under subsection (a).

Subsection (b)(1) tracks former Section 9-318(3) by making ineffective a notification that does not reasonably identify the rights assigned. A reasonable identification need not identify the right to payment with specificity, but what is reasonable also is not left to the arbitrary decision of the account debtor. If an account debtor has doubt

as to the adequacy of a notification, it may not be safe in disregarding the notification unless it notifies the assignee with reasonable promptness as to the respects in which the account debtor considers the notification defective.

Subsection (b)(2), which is new, applies only to sales of payment intangibles. It makes a notification ineffective to the extent that other law gives effect to an agreement between an account debtor and a seller of a payment intangible that limits the account debtor's duty to pay a person other than the seller. Payment intangibles are substantially less fungible than accounts and chattel paper. In some (e.g., commercial bank loans), account debtors customarily and legitimately expect that they will not be required to pay any person other than the financial institution that has advanced funds.

It has become common in financing transactions to assign interests in a single obligation to more than one assignee. Requiring an account debtor that owes a single obligation to make multiple payments to multiple assignees would be unnecessarily burdensome. Thus, under subsection (b)(3), an account debtor that is notified to pay an assignee less than the full amount of any installment or other periodic payment has the option to treat the notification as ineffective, ignore the notice, and discharge the assigned obligation by paying the assignor. Some account debtors may not realize that the law affords them the right to ignore certain notices of assignment with impunity. By making the notification ineffective at the account debtor's option, subsection (b)(3) permits an account debtor to pay the assignee in accordance with the notice and thereby to satisfy its obligation pro tanto. Under subsection (g), the rights and duties created by subsection (b)(3) cannot be waived or varied.

4. Proof of Assignment. Subsection (c) links payment with discharge, as in subsection (a). It follows former Section 9-318(3) in referring to the right of the account debtor to pay the assignor if the requested proof of assignment is not seasonably forthcoming. Even if the proof is not forthcoming, the notification of assignment would remain effective, so that, in the absence of reasonable proof of the assignment, the account debtor could discharge the obligation by paying either the assignee or the assignor. Of course, if the assignee did not in fact receive an assignment, the account debtor cannot discharge its obligation by paying a putative assignee who is a stranger. The observations in Comment 3 concerning the reasonableness of an identification of a right to payment also apply here. An account debtor that questions the adequacy of proof submitted by an assignee would be well advised to promptly inform the assignee of the defects.

An account debtor may face another problem if its obligation becomes due while the account debtor is awaiting reasonable proof of the assignment that it has requested from the assignee. This Section does not excuse the account debtor from timely compliance with its obligations. Consequently, an account debtor that has received a notification of assignment and who has requested reasonable proof of the assignment may discharge its obligation by paying the assignor at the time (or even earlier if reasonably necessary to avoid risk of default) when a payment is due, even if the account debtor has not yet received a response to its request for proof. On the other hand, after requesting reasonable proof of the assignment, an account debtor may not discharge its obligation by paying the assignor substantially in advance of the time that the payment is due unless the assignee has failed to provide the proof seasonably.

5. Contractual Restrictions on Assignment. Former Section 9-318(4) rendered ineffective an agreement between an account debtor and an assignor which prohibited assignment of an account (whether outright or to secure an obligation) or prohibited a security assignment of a general intangible for the payment of money due or to become due. Subsection (d) essentially follows former Section 9-318(4), but expands the rule of free assignability to chattel paper (subject to Sections 2A-303 and 9-407) and promissory notes and explicitly overrides both restrictions and prohibitions of assignment. The policies underlying the ineffectiveness of contractual restrictions under this Section build on common-law developments that essentially have eliminated legal restrictions on assignments of rights to payment as security and other assignments of rights to payment such as accounts and chattel paper. Any that might linger for accounts and chattel paper are addressed by new subsection (f). See Comment 6.

Former Section 9-318(4) did not apply to a sale of a payment intangible (as described in the former provision, "a general intangible for money due or to become due") but did apply to an assignment of a payment intangible for security. Subsection (e) continues this approach and also makes subsection (d) inapplicable to sales of promissory notes. Section 9-408 addresses anti-assignment clauses with respect to sales of payment intangibles and promissory notes.

Like former Section 9-318(4), subsection (d) provides that anti-assignment clauses are "ineffective." The quoted term means that the clause is of no effect whatsoever; the clause does not prevent the assignment from taking effect between the parties and the prohibited assignment does not constitute a default under the agreement between the account debtor and assignor. However, subsection (d) does not

override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. Properly read, however, subsection (d) reaches only covenants that prohibit, restrict, or require consents to assignments; it does not override all terms that might "impair" an assignment in fact.

Example: Buyer enters into an agreement with Seller to buy equipment that Seller is to manufacture according to Buyer's specifications. Buyer agrees to make a series of prepayments during the construction process. In return, Seller agrees to set aside the prepaid funds in a special account and to use the funds solely for the manufacture of the designated equipment. Seller also agrees that it will not assign any of its rights under the sale agreement with Buyer. Nevertheless, Seller grants to Secured Party a security interest in its accounts. Seller's antiassignment agreement is ineffective under subsection (d); its agreement concerning the use of prepaid funds, which is not a restriction or prohibition on assignment, is not. However, if Secured Party notifies Buyer to make all future payments directly to Secured Party, Buyer will be obliged to do so under subsection (a) if it wishes the payments to discharge its obligation. Unless Secured Party releases the funds to Seller so that Seller can comply with its use-of- funds covenant, Seller will be in breach of that covenant.

In the example, there appears to be a plausible business purpose for the use-of-funds covenant. However, a court may conclude that a covenant with no business purpose other than imposing an impediment to an assignment actually is a direct restriction that is rendered ineffective by subsection (d).

6. Legal Restrictions on Assignment. Former Section 9-318(4), like subsection (d) of this Section, addressed only contractual restrictions on assignment. The former Section was grounded on the reality that legal, as opposed to contractual, restrictions on assignments of rights to payment had largely disappeared. New subsection (f) codifies this principle of free assignability for accounts and chattel paper. For the most part the discussion of contractual restrictions in Comment 5 applies as well to legal restrictions rendered ineffective under subsection (f).

7. Multiple Assignments. This Section, like former Section 9-318, is not a complete codification of the law of assignments of rights to payment. In particular, it is silent concerning many of the ramifications for an account debtor in cases of multiple assignments of the same right. For example, an assignor might assign the same

receivable to multiple assignees (which assignments could be either inadvertent or wrongful). Or, the assignor could assign the receivable to assignee-1, which then might re-assign it to assignee-2, and so forth. The rights and duties of an account debtor in the face of multiple assignments and in other circumstances not resolved in the statutory text are left to the common-law rules. See, e.g., Restatement (2d), Contracts 338(3), 339. The failure of former Article 9 to codify these rules does not appear to have caused problems.

8. Consumer Account Debtors. Subsection (h) is new. It makes clear that the rules of this Section are subject to other law establishing special rules for consumer account debtors.

9. Account Debtors on Health-Care-Insurance Receivables. Subsection (i) also is new. The obligation of an insurer with respect to a health-care-insurance receivable is governed by other law. Section 9-408 addresses contractual and legal restrictions on the assignment of a health-care-insurance receivable.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-406 addresses two issues. The first issue is to whom an account debtor must make payment in order to discharge its obligation. The second issue is the extent to which certain restrictions upon the assignment of an interest in accounts, chattel paper, payment intangibles, and promissory notes are ineffective.

Subsection (a) provides that an account debtor can discharge its obligation by paying the assignor until the account debtor receives an authenticated notification from the assignor or assignee that the right payment has been assigned. As a general rule, after receipt of the notification of assignment subsection (a) provides that an account debtor can discharge its obligation only by paying the assignee. Under subsection (c), however, the account debtor can request reasonable proof of the assignment from the assignee and until it receives the proof, the account debtor can discharge its obligation by paying the assignor. Subsection (b) sets forth the requirements for an effective notification of assignment.

Subsection (d) and (f) set forth the rules for determining whether restrictions upon certain assignments are ineffective. Subsection (d) addresses contractual restrictions and subsection (f) addresses restrictions imposed by a rule of law, statute, or regulation.

Under subsection (d)(1) terms in an agreement between an account debtor and assignor or in a promissory note are ineffective to the extent they prohibit, restrict, or require the account debtor or person obligated on a note to consent to an assignment transfer, or creation, perfection,

or enforcement of a security interest in accounts, chattel paper, payment intangibles, or promissory notes. Subsection (d)(2) renders ineffective a contractual provision under which an assignment or transfer or creation, perfection, or enforcement of security interest in accounts,, chattel paper, payment intangibles, or promissory notes a breach or event of default. The scope of subsection (d), however, is limited by subsections (e) and (i). Subsection (e) provides that subsection (d) does not apply to sales of payment intangibles and promissory notes. Moreover, subsection (i) provides that subsection (d) does not apply to assignments of accounts that constitute health-care-insurance receivables.

Subsection (f) renders ineffective a rule of law, statute, or regulation that prohibits, restricts, or requires a government official or the account debtor to consent to the assignment or transfer of, or creation of a security interest in an account or chattel paper. Under subsection (f)(1) such restrictions are ineffective to prevent the assignment or transfer of, or the creation, perfection, or enforcement of a security interest in an account or chattel paper. Under subsection (f)(2) such restrictions are ineffective to establish a default, breach, right to terminate, or provide remedy under the account or chattel paper. Subsection (i) limits the scope of subsection (f) by rendering it inapplicable to assignments of health-care- insurance receivables. An example of a statutory restriction on assignments may be ineffective under subsection (f) is prohibition upon the assignment of a right to benefits under the Employment Security Law. Section 41-3920, S.C. Code Ann. (1976). One could argue, however, that such assignments are excluded from Article 9 under Section 36-9-109(d)(3) and that Subsection 36-9-406(f) does not apply to render the restriction ineffective.

Definitional Cross:

“Account”	Section 36-9-102(a)(2)
“Account debtor”	Section 36-9-102(a)(3)
“Agreement”	Section 36-1-201(3)
“Authenticate”	Section 36-9-102(a)(7)
“Chattel paper”	Section 36-9-102(a)(11)
“Health-care-insurance receivable”	Section 36-9-102(a)(46)
“Notification”	Section 36-1-201(26)
“Payment intangible”	Section 36-9-102(a)(61)
“Promissory note”	Section 36-9-102(a)(65)

Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective

SECTION 10. Section 36-9-408 of the 1976 Code is amended to read:

"Section 36-9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale under a disposition pursuant to Section 36-9-610 or an acceptance of collateral pursuant to Section 36-9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right

of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this chapter but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

(e) Subsections (a) and (c) do not apply to the assignment, transfer, or creation of a security interest in a:

(1) claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or

(2) claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended."

OFFICIAL COMMENT

1. Source. New.

2. Free Assignability. This Section makes ineffective any attempt to restrict the assignment of a general intangible, health-care-insurance receivable, or promissory note, whether the restriction appears in the terms of a promissory note or the agreement between an account debtor

and a debtor (subsection (a)) or in a rule of law, including a statute or governmental rule or regulation (subsection (c)). This result allows the creation, attachment, and perfection of a security interest in a general intangible, such as an agreement for the nonexclusive license of software, as well as sales of certain receivables, such as a health-care-insurance receivable (which is an "account"), payment intangible, or promissory note, without giving rise to a default or breach by the assignor or from triggering a remedy of the account debtor or person obligated on a promissory note. This enhances the ability of certain debtors to obtain credit. On the other hand, subsection (d) protects the other party-the "account debtor" on a general intangible or the person obligated on a promissory note-from adverse effects arising from the security interest. It leaves the account debtor's or obligated person's rights and obligations unaffected in all material respects if a restriction rendered ineffective by subsection (a) or (c) would be effective under law other than Article 9.

Example 1: A term of an agreement for the nonexclusive license of computer software prohibits the licensee from assigning any of its rights as licensee with respect to the software. The agreement also provides that an attempt to assign rights in violation of the restriction is a default entitling the licensor to terminate the license agreement. The licensee, as debtor, grants to a secured party a security interest in its rights under the license and in the computers in which it is installed. Under this Section, the term prohibiting assignment and providing for a default upon an attempted assignment is ineffective to prevent the creation, attachment, or perfection of the security interest or entitle the licensor to terminate the license agreement. However, under subsection (d), the secured party (absent the licensor's agreement) is not entitled to enforce the license or to use, assign, or otherwise enjoy the benefits of the licensed software, and the licensor need not recognize (or pay any attention to) the secured party. Even if the secured party takes possession of the computers on the debtor's default, the debtor would remain free to remove the software from the computer, load it on another computer, and continue to use it, if the license so permits. If the debtor does not remove the software, other law may require the secured party to remove it before disposing of the computer. Disposition of the software with the computer could violate an effective prohibition on enforcement of the security interest. See subsection (d).

3. Nature of Debtor's Interest. Neither this Section nor any other provision of this Article determines whether a debtor has a property interest. The definition of the term "security interest" provides that it is

an "interest in personal property." See Section 1-201(37). Ordinarily, a debtor can create a security interest in collateral only if it has "rights in the collateral." See Section 9-203(b). Other law determines whether a debtor has a property interest ("rights in the collateral") and the nature of that interest. For example, the nonexclusive license addressed in Example 1 may not create any property interest whatsoever in the intellectual property (e.g., copyright) that underlies the license and that effectively enables the licensor to grant the license. The debtor's property interest may be confined solely to its interest in the promises made by the licensor in the license agreement (e.g., a promise not to sue the debtor for its use of the software).

4. Scope: Sales of Payment Intangibles and Other General Intangibles; Assignments Unaffected by this Section. Subsections (a) and (c) render ineffective restrictions on assignments only "to the extent" that the assignments restrict the "creation, attachment, or perfection of a security interest," including sales of payment intangibles and promissory notes. This Section does not render ineffective a restriction on an assignment that does not create a security interest. For example, if the debtor in Comment 2, Example 1 purported to assign the license to another entity that would use the computer software itself, other law would govern the effectiveness of the anti-assignment provisions.

Subsection (a) applies to a security interest in payment intangibles only if the security interest arises out of sale of the payment intangibles. Contractual restrictions directed to security interests in payment intangibles which secure an obligation are subject to Section 9-406(d). Subsection (a) also deals with sales of promissory notes which also create security interests. See Section 9-109(a). Subsection (c) deals with all security interests in payment intangibles or promissory notes, whether or not arising out of a sale.

Subsection (a) does not render ineffective any term, and subsection (c) does not render ineffective any law, statute or regulation, that restricts outright sales of general intangibles other than payment intangibles. They deal only with restrictions on security interests. The only sales of general intangibles that create security interests are sales of payment intangibles.

5.Terminology: "Account Debtor"; "Person Obligated on a Promissory Note." This Section uses the term "account debtor" as it is defined in Section 9-102. The term refers to the party, other than the debtor, to a general intangible, including a permit, license, franchise, or the like, and the person obligated on a health-care-insurance receivable, which is a type of account. The definition of "account debtor" does not

limit the term to persons who are obligated to pay under a general intangible. Rather, the term includes all persons who are obligated on a general intangible, including those who are obligated to render performance in exchange for payment. In some cases, e.g., the creation of a security interest in a franchisee's rights under a franchise agreement, the principal payment obligation may be owed by the debtor (franchisee) to the account debtor (franchisor). This Section also refers to a "person obligated on a promissory note," inasmuch as those persons do not fall within the definition of " account debtor."

Example 2: A licensor and licensee enter into an agreement for the nonexclusive license of computer software. The licensee's interest in the license agreement is a general intangible. If the licensee grants to a secured party a security interest in its rights under the license agreement, the licensee is the debtor and the licensor is the account debtor. On the other hand, if the licensor grants to a secured party a security interest in its right to payment (an account) under the license agreement, the licensor is the debtor and the licensee is the account debtor. (This Section applies to the security interest in the general intangible but not to the security interest in the account, which is not a health-care-insurance receivable.)

6. Effects on Account Debtors and Persons Obligated on Promissory Notes. Subsections (a) and (c) affect two classes of persons. These subsections affect account debtors on general intangibles and health-care-insurance receivables and persons obligated on promissory notes. Subsection (c) also affects governmental entities that enact or determine rules of law. However, subsection (d) ensures that these affected persons are not affected adversely. That provision removes any burdens or adverse effects on these persons for which any rational basis could exist to restrict the effectiveness of an assignment or to exercise any remedies. For this reason, the effects of subsections (a) and (c) are immaterial insofar as those persons are concerned.

Subsection (a) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. Properly read, however, this Section, like Section 9-406(d), reaches only covenants that prohibit, restrict, or require consents to assignments; it does not override all terms that might "impair" an assignment in fact.

Example 3: A licensor and licensee enter into an agreement for the nonexclusive license of valuable business software. The license agreement includes terms (i) prohibiting the licensee from assigning its rights under the license, (ii) prohibiting the licensee from disclosing to

anyone certain information relating to the software and the licensor, and (iii) deeming prohibited assignments and prohibited disclosures to be defaults. The licensee wishes to obtain financing and, in exchange, is willing to grant a security interest in its rights under the license agreement. The secured party, reasonably, refuses to extend credit unless the licensee discloses the information that it is prohibited from disclosing under the license agreement. The secured party cannot determine the value of the proposed collateral in the absence of this information. Under this Section, the terms of the license prohibiting the assignment (grant of the security interest) and making the assignment a default are ineffective. However, the nondisclosure covenant is not a term that prohibits the assignment or creation of a security interest in the license. Consequently, the nondisclosure term is enforceable even though the practical effect is to restrict the licensee's ability to use its rights under the license agreement as collateral.

The nondisclosure term also would be effective in the factual setting of Comment 2, Example 1. If the secured party's possession of the computers loaded with software would put it in a position to discover confidential information that the debtor was prohibited from disclosing, the licensor should be entitled to enforce its rights against the secured party. Moreover, the licensor could have required the debtor to obtain the secured party's agreement that (i) it would immediately return all copies of software loaded on the computers and that (ii) it would not examine or otherwise acquire any information contained in the software. This Section does not prevent an account debtor from protecting by agreement its independent interests that are unrelated to the "creation, attachment, or perfection" of a security interest. In Example 1, moreover, the secured party is not in possession of copies of software by virtue of its security interest or in connection with enforcing its security interest in the debtor's license of the software. Its possession is incidental to its possession of the computers, in which it has a security interest. Enforcing against the secured party a restriction relating to the software in no way interferes with its security interest in the computers.

7. Effect in Assignor's Bankruptcy. This Section could have a substantial effect if the assignor enters bankruptcy. Roughly speaking, Bankruptcy Code Section 552 invalidates security interests in property acquired after a bankruptcy petition is filed, except to the extent that the postpetition property constitutes proceeds of prepetition collateral.

Example 4: A debtor is the owner of a cable television franchise that, under applicable law, cannot be assigned without the consent of the municipal franchisor. A lender wishes to extend credit to the debtor,

provided that the credit is secured by the debtor's "going business" value. To secure the loan, the debtor grants a security interest in all its existing and after-acquired property. The franchise represents the principal value of the business. The municipality refuses to consent to any assignment for collateral purposes. If other law were given effect, the security interest in the franchise would not attach; and if the debtor were to enter bankruptcy and sell the business, the secured party would receive but a fraction of the business's value. Under this Section, however, the security interest would attach to the franchise. As a result, the security interest would attach to the proceeds of any sale of the franchise while a bankruptcy is pending. However, this Section would protect the interests of the municipality by preventing the secured party from enforcing its security interest to the detriment of the municipality.

8. Effect Outside of Bankruptcy. The principal effects of this Section will take place outside of bankruptcy. Compared to the relatively few debtors that enter bankruptcy, there are many more that do not. By making available previously unavailable property as collateral, this Section should enable debtors to obtain additional credit. For purposes of determining whether to extend credit, under some circumstances a secured party may ascribe value to the collateral to which its security interest has attached, even if this Section precludes the secured party from enforcing the security interest without the agreement of the account debtor or person obligated on the promissory note. This may be the case where the secured party sees a likelihood of obtaining that agreement in the future. This may also be the case where the secured party anticipates that the collateral will give rise to a type of proceeds as to which this Section would not apply.

Example 5: Under the facts of Example 4, the debtor does not enter bankruptcy. Perhaps in exchange for a fee, the municipality agrees that the debtor may transfer the franchise to a buyer. As consideration for the transfer, the debtor receives from the buyer its check for part of the purchase price and its promissory note for the balance. The security interest attaches to the check and promissory note as proceeds. See Section 9-315(a)(2). This Section does not apply to the security interest in the check, which is not a promissory note, health-care-insurance receivable, or general intangible. Nor does it apply to the security interest in the promissory note, inasmuch as it was not sold to the secured party.

9. Contrary Federal Law. This Section does not override federal law to the contrary. However, it does reflect an important policy judgment that should provide a template for future federal law reforms.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-408 renders certain restrictions upon the assignment of promissory notes, health-care-insurance receivables, and general intangibles ineffective for limited purposes. Under Section 36-9-408 covered restrictions are ineffective to prevent the creation or perfection of a security interest, but remain effective to prevent the enforcement of the security interest. In this regard, Section 36-9-408 contrasts sharply with Section 36-9-406.

Subsection (a) addresses contractual restrictions upon alienation. It apples to terms that prohibit, restrict, or require consent to assign or transfer, or create or perfect a security interest in a promissory note, health-care-insurance receivable or general intangible. Subsection (b), however, limits the scope of subsection (a) by providing that subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arose from a sale of the payment intangible or note. Under subsection (a)(1) such restrictions are ineffective to give rise to a default or breach.

Subsection (c) address restraints on alienation that arise from a rule of law, statute, or regulation. Subsection (c) applies to legal restraints that prohibit, restrict, or require the consent of a government official or account debtor to assign or transfer, or create a security interest in a promissory note, health-care-insurance receivable, or general intangible. Under subsection (c)(1) such restraints are ineffective to the extent they impair the creation, attachment, or perfection of a security interest. Under subsection (c)(2) the restraints are ineffective to give rise to a default or breach under the promissory note, health-care-insurance receivable, or general intangible. An example of a statutory restriction that is ineffective under subsection (c) is the prohibition against transferring a license to operate a cemetery company set forth in Section 39-55-205, S.C. Code Ann. (1976).

Subsection (d) makes clear the limited effect of finding a restraint ineffective under subsection (a) or (c). The intent of subsection (d) is to insure account debtors and persons obligated on promissory notes are not adversely affected. For example, although subsection (c)(1) renders Section 39-55-205 ineffective to prevent a secured party from taking a security interest in a debtor's cemetery license, subsection (d)(6) precludes the secured party from enforcing the security interest.

Definitional Cross:

"Account debtor"	Section 36-9-102(a)(3)
"Agreement"	Section 36-1-201(3)
"General intangible"	Section 36-9-102(a)(42)

"Health-care-insurance receivable"	Section 36-9-102(a)(46)
"Promissory note"	Section 36-9-102(a)(65)
"Security interest"	Section 36-1-201(37)

Cross --

Contractual and legal restrictions upon alienation of interests in accounts, chattel paper, payment intangibles, and promissory notes. Section 36-9-406(d)--(j).

Contents of financing statement, record of mortgage as financing statement, time of filing financing statement

SECTION 11. Section 36-9-502 of the 1976 Code is amended to read:

"Section 36-9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 36-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if the:

(1) record indicates the goods or accounts that it covers;

(2) goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) record satisfies the requirements for a financing statement in this section, but the:

(A) record need not indicate that it is to be filed in the real property records; and

(B) record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 36-9-503(a)(6) applies; and

(4) record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

OFFICIAL COMMENT

1. Source. Former Section 9-402(1), (5), (6).

2. "Notice Filing." This Section adopts the system of "notice filing." What is required to be filed is not, as under pre-UCC chattel mortgage and conditional sales acts, the security agreement itself, but only a simple record providing a limited amount of information (financing statement). The financing statement may be filed before the security interest attaches or thereafter. See subsection (d). See also Section 9-308(a) (contemplating situations in which a financing statement is filed before a security interest attaches).

The notice itself indicates merely that a person may have a security interest in the collateral indicated. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs. Section 9-210 provides a statutory procedure under which the secured party, at the debtor's request, may be required to make disclosure. However, in many cases, information may be forthcoming without the need to resort to the formalities of that Section.

Notice filing has proved to be of great use in financing transactions involving inventory, accounts, and chattel paper, because it obviates the necessity of refiling on each of a series of transactions in a continuing arrangement under which the collateral changes from day to day. However, even in the case of filings that do not necessarily involve a series of transactions (e.g., a loan secured by a single item of equipment), a financing statement is effective to encompass transactions under a security agreement not in existence and not contemplated at the time the notice was filed, if the indication of collateral in the financing statement is sufficient to cover the collateral concerned. Similarly, a financing statement is effective to cover after-acquired property of the type indicated and to perfect with respect to future advances under security agreements, regardless of whether

after-acquired property or future advances are mentioned in the financing statement and even if not in the contemplation of the parties at the time the financing statement was authorized to be filed.

3. Debtor's Signature; Required Authorization. Subsection (a) sets forth the simple formal requirements for an effective financing statement. These requirements are: (1) the debtor's name; (2) the name of a secured party or representative of the secured party; and (3) an indication of the collateral.

Whereas former Section 9-402(1) required the debtor's signature to appear on a financing statement, this Article contains no signature requirement. The elimination of the signature requirement facilitates paperless filing. (However, as PEB Commentary No. 15 indicates, a paperless financing statement was sufficient under former Article 9.) Elimination of the signature requirement also makes the exceptions provided by former Section 9-402(2) unnecessary.

The fact that this Article does not require that an authenticating symbol be contained in the public record does not mean that all filings are authorized. Rather, Section 9-509(a) entitles a person to file an initial financing statement, an amendment that adds collateral, or an amendment that adds a debtor only if the debtor authorizes the filing, and Section 9-509(d) entitles a person other than the debtor to file a termination statement only if the secured party of record authorizes the filing. Of course, a filing has legal effect only to the extent it is authorized. See Section 9-510.

Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this Article. See Section 1-103. However, under Section 9-509(b), the debtor's authentication of (or becoming bound by) a security agreement ipso facto constitutes the debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement. The secured party need not obtain a separate authorization.

Section 9-625 provides a remedy for unauthorized filings. Making an unauthorized filing also may give rise to civil or criminal liability under other law. In addition, this Article contains provisions that assist in the discovery of unauthorized filings and the amelioration of their practical effect. For example, Section 9-518 provides a procedure whereby a person may add to the public record a statement to the effect that a financing statement indexed under the person's name was wrongfully filed, and Section 9-509(d) entitles any person to file a termination statement if the secured party of record fails to comply with its obligation to file or send one to the debtor, the debtor

authorizes the filing, and the termination statement so indicates. However, the filing office is neither obligated nor permitted to inquire into issues of authorization. See Section 9-520(a).

4. Certain Other Requirements. Subsection (a) deletes other provisions of former Section 9-402(1) because they seems unwise (real-property description for financing statements covering crops), unnecessary (adequacy of copies of financing statements), or both (copy of security agreement as financing statement). In addition, the filing office must reject a financing statement lacking certain other information formerly required as a condition of perfection (e.g., an address for the debtor or secured party). See Sections 9-516(b), 9-520(a). However, if the filing office accepts the record, it is effective nevertheless. See Section 9-520(c).

5. Real-Property-Related Filings. Subsection (b) contains the requirements for financing statements filed as fixture filings and financing statements covering timber to be cut or minerals and minerals-related accounts constituting as-extracted collateral. A description of the related real property must be sufficient to reasonably identify it. See Section 9-108. This formulation rejects the view that the real property description must be by metes and bounds, or otherwise conforming to traditional real-property practice in conveyancing, but, of course, the incorporation of such a description by reference to the recording data of a deed, mortgage or other instrument containing the description should suffice under the most stringent standards. The proper test is that a description of real property must be sufficient so that the financing statement will fit into the real-property search system and be found by a real-property searcher. Under the optional language in subsection (b)(3), the test of adequacy of the description is whether it would be adequate in a record of a mortgage of the real property. As suggested in the Legislative Note, more detail may be required if there is a tract indexing system or a land registration system.

If the debtor does not have an interest of record in the real property, a real-property-related financing statement must show the name of a record owner, and Section 9-519(d) requires the financing statement to be indexed in the name of that owner. This requirement also enables financing statements covering as-extracted collateral or timber to be cut and financing statements filed as fixture filings to fit into the real-property search system.

6. Record of Mortgage Effective as Financing Statement. Subsection (c) explains when a record of a mortgage is effective as a financing statement filed as a fixture filing or to cover timber to be cut or

as-extracted collateral. Use of the term "record of a mortgage" recognizes that in some systems the record actually filed is not the record pursuant to which a mortgage is created. Moreover, "mortgage" is defined in Section 9-102 as an "interest in real property," not as the record that creates or evidences the mortgage or the record that is filed in the public recording systems. A record creating a mortgage may also create a security interest with respect to fixtures (or other goods) in conformity with this Article. A single agreement creating a mortgage on real property and a security interest in chattels is common and useful for certain purposes. Under subsection (c), the recording of the record evidencing a mortgage (if it satisfies the requirements for a financing statement) constitutes the filing of a financing statement as to the fixtures (but not, of course, as to other goods). Section 9-515(g) makes the usual five-year maximum life for financing statements inapplicable to mortgages that operate as fixture filings under Section 9-502(c). Such mortgages are effective for the duration of the real-property recording.

Of course, if a combined mortgage covers chattels that are not fixtures, a regular financing statement filing is necessary with respect to the chattels, and subsection (c) is inapplicable. Likewise, a financing statement filed as a "fixture filing" is not effective to perfect a security interest in personal property other than fixtures.

In some cases it may be difficult to determine whether goods are or will become fixtures. Nothing in this Part prohibits the filing of a "precautionary" fixture filing, which would provide protection in the event goods are determined to be fixtures. The fact of filing should not be a factor in the determining whether goods are fixtures. Cf. Section 9-505(b).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-502 sets forth the requirements for a sufficient financing statement. Subsection (a) states the requirements all financing statements must meet. Subsection (b) sets forth additional requirements for fixture filings and financing statements covering as-extracted collateral and timber to be cut.

Subsection (a) provides that a financing statement is sufficient only if it provides the name of the debtor, provides the name of the secured party or representative of the secured party, and indicates the collateral covered. Note that in contrast to former Section 36-9-402(1), current law does not condition the effectiveness of a financing statement upon its being signed by the debtor. Subsection (a), however, must be read in conjunction with Section 36-9-516(b) and Section 36-9-520(a).

Under Section 36-9-520(a) a filing office is required to refuse to accept a financing statement for filing if the financing statement fails to meet the requirements of Section 36-9-516(b). Therefore, a filing office must refuse to accept a financing statement that meets the requirements of Section 36-9-502(a) but fails to meet the requirements of Section 36-9-516(b). If the filing office refuses to accept such a financing statement for filing, the financing statement will not be effective to perfect a security interest. Nevertheless, if the filing office accepts such a financing statement for filing, under Section 36-9-520(c) the financing statement is effective. The priority of a security interest perfected by a filed financing statement that does not meet the requirements of Section 36-9-516(b) may be subordinated under Section 36-9-338.

The 2013 amendments amended the provisions of Section 36-9-502(c) that define the requirements that a mortgage recorded in the office of the register of deeds must meet in order to be effective as a financing statement filed as a fixture filing or covering as extracted collateral. Under revised Section 36-9-502(c)(3)(B), if the debtor is an individual, a mortgage sufficiently provides the name of the debtor if it provides that individual name of the debtor or the debtor's surname and first personal name, even if the debtor is an individual subject to the "drivers license" rule of Section 36-9-504(a)(4).

Definitional Cross:

"Account"	Section 36-9-102(a)(2)
"As-extracted collateral"	Section 36-9-102(a)(6)
"Collateral"	Section 36-9-102(a)(12)
"Debtor"	Section 36-9-102(a)(28)
"Financing statement"	Section 36-9-102(a)(39)
"Fixture filing"	Section 36-9-102(a)(40)
"Fixtures"	Section 36-9-102(a)(41)
"Goods"	Section 36-9-102(a)(44)
"Mortgage"	Section 36-9-102(a)(55)
"Secured party"	Section 36-9-102(a)(73)
"Security agreement"	Section 36-9-102(a)(74)

Cross --

1. Sufficiency of the name of the debtor. Section 36-9-503(a)--(c).

2. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement. Section 36-9-503(d).

3. Sufficiency of indication of type of collateral covered. Section 36-9-504.

4. Effect of errors and omissions upon the sufficiency of a financing statement. Section 36-9-505.

5. Duration of the effectiveness of a financing statement. Section 36-9-515.

6. Grounds upon which a filing office is required to refuse to accept a financing statement for filing. Sections 36-9-516(b) and 36-9-520(a).

7. Priority of security interests perfected by filing a financing statement which was effective under Section 36-9-502, but failed to meet the requirements of Section 36-9-516(b). Section 36-9-338.

8. Form of a financing statement. Section 36-9-521.

Name of debtor and secured party

SECTION 12. Section 36-9-503 of the 1976 Code is amended to read:

"Section 36-9-503. (a) A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in item (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor, if:

(i) the organic record of the trust specifies a name for the trust, the name specified; or

(ii) the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement if:

(i) the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) the name is provided in accordance with subitem (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a driver's license or identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver's license or identification card;

(5) if the debtor is an individual to whom item (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if the financing statement provides the organization's name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the 'name of the decedent' under subsection (a)(2).

(g) If this State has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the 'name of the settlor or testator' means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record."

OFFICIAL COMMENT

1. Source. Subsections (a)(6)(A), (b), and (c) derive from former Section 9-402(7); otherwise, new.

2. Debtor's Name. The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name. Subsection (a) explains what the debtor's name is for purposes of a financing statement.

a. Registered Organizations. As a general matters, if the debtor is a "registered organization" (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts), then the debtor's name is the name shown on the "public organic record" of the debtor's "jurisdiction of organization" (both also defined in Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent's estates and common-law trusts. (Subsection (a)(1) applies to business trusts that are registered organizations.) Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's last name (e.g., if it is not clear whether the debtor's name is Perry Mason or Mason Perry). See Section 9-516(b)(3)(C).

b. Collateral Held in a Trust. When a financing statement covers collateral that is held in a trust that is a registered organization, subsection (a)(1) governs the name of the debtor. If, however, the collateral is held in a trust that is not a registered organization, subsection (a)(3) applies. (As used in this Article, collateral "held in a trust" includes collateral as to which the trust is the debtor as well as collateral as to which the trustee is the debtor.) This subsection adopts a convention that generally results in the name of the trust or the name of the trust's settlor being provided as the name of the debtor on the financing statement, even if, as typically is the case with common-law trusts, the "debtor" (defined in Section 9-102) is a trustee acting with respect to the collateral. This convention provides more accurate

information and eases the burden for searchers, who otherwise would have difficulty with respect to debtor trustees that are large financial institutions. More specifically, if a trust's organic record specifies a name for the trust, subsection (a)(3) requires the financing statement to provide, as the name of the debtor, the name for the trust specified in the organic record. In addition, the financing statement must indicate, in a separate part of the financing statement, that the collateral is held in a trust. If the organic record of the trust does not specify a name for the trust, the name required for the financing statement is the name of the settlor or, in the case of a testamentary trust, the testator, in each case as determined under subsection (h). In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. In many cases, an indication of the date on which the trust was settled will satisfy this requirement. If neither the name nor the additional information indicates that the collateral is held in a trust, the financing statement must indicate that fact, but not as part of the debtor's name. Neither the indication that the collateral held in a trust nor the additional information that distinguishes the trust from other trusts having one or more of the same settlors or the same testator is part of the debtor's name. Nevertheless, a financing statement that fails to provide, in a separate part of the financing statement, any required indication or additional information does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(3), does not "substantially satisfy the requirements" of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

d. Individuals. This Article provides alternative approaches towards the requirement for providing the name of a debtor who is an individual.

Alternative A. Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor's principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver's license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the "individual name" of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor's surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B. Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The "individual name" of the debtor is sufficient, as is the debtor's surname and first personal name. If the individual holds an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State of the debtor's principal residence), the name indicated on the driver's license also is sufficient.
Name indicated on the driver's license. A financing statement does not "provide the name of the individual which is indicated" on the debtor's driver's license unless the name it provides is the same as the name indicated on the license. This is the case even if the name indicated on the debtor's driver's license contains an error.

Example 1: Debtor, an individual whose principal residence is in Illinois, grants a security interest to SP in certain business equipment. SP files a financing statement with the Illinois filing office. The financing statement provides the name appearing on Debtor's Illinois driver's license, "Joseph Allan Jones." Regardless of which Alternative is in effect in Illinois, this filing would be sufficient under Illinois' Section 9-503(a),even if Debtor's correct middle name is Alan, not Allan. A filing against "Joseph A. Jones" or "Joseph Jones" would not "provide the name of the individual which is indicated" on the debtor's driver's license. However, these filings might be sufficient if Alternative A is in effect in Illinois and Jones has no current (i.e., unexpired) Illinois driver's license, or if Illinois has enacted Alternative B.

Determining the name that should be provided on the financing statement must not be done mechanically. The order in which the components of an individual's name appear on a driver's license differs among the States. Had the debtor in Example 1 obtained a driver's license from a different State, the license might have indicated the name as "Jones Joseph Allan." Regardless of the order on the driver's license, the debtor's surname must be provided in the part of the financing statement designated for the surname.

Alternatives A and B both refer to a license issued by "this State." Perfection of a security interest by filing ordinarily is determined by the law of the jurisdiction in which the debtor is located. Sec Section 9-301(1). (Exceptions to the general rule are found in Section 9-301(3) and (4), concerning fixture filings, timber to be cut, and as-extracted collateral.) A debtor who is an individual ordinarily is located at the individual's principal residence. See Section 9-307(b). (An exception appears in Section 9-307(c).) Thus, a given State's Section 9-503 ordinarily will apply during any period when the debtor's principal

residence is located in that State, even if during that time the debtor holds or acquires a driver's license from another State.

When a debtor's principal residence changes, the location of the debtor under Section 9-307 also changes and perfection by filing ordinarily will be governed by the law of the debtor's new location. As a consequence of the application of that jurisdiction's Section 9-316, a security interest that is perfected by filing under the law of the debtor's former location will remain perfected for four months after the relocation, and thereafter if the secured party perfects under the law of the debtor's new location. Likewise, a financing statement filed in the former location may be effective to perfect a security interest that attaches after the debtor relocates. See Section 9-316(h).

Individual name of the debtor. Article 9 does not determine the "individual name" of a debtor. Nor does it determine which element or elements in a debtor's name constitute the surname. In some cases, determining the "individual name" of a debtor may be difficult, as may determining the debtor's surname. This is because in the case of individuals, unlike registered organizations, there is no public organic record to which reference can be made and from which the name and its components can be definitively determined. Names can take many forms in the United States. For example, whereas a surname is often colloquially referred to as a "last name," the sequence in which the elements of a name are presented is not determinative. In some cultures, the surname appears first, while in others it may appear in a location that is neither first nor last. In addition, some surnames are composed of multiple elements that, taken together, constitute a single surname. These elements may or may not be separated by a space or connected by a hyphen, "i," or "y." In other instances, some or all of the same elements may not be part of the surname. In some cases, a debtor's entire name might be composed of only a single clement, which should be provided in the part of the financing statement designated for the surname.

In disputes as to whether a financing statement sufficiently provides the "individual name" of a debtor, a court should refer to any non-UCC law concerning names. However, case law about names may have developed in contexts that implicate policies different from those of Article 9. A court considering an individual's name for purposes of determining the sufficiency of a financing statement is not necessarily bound by cases that were decided in other contexts and for other purposes. Individuals are asked to provide their names on official documents such as tax returns and bankruptcy petitions. An individual may provide a particular name on an official document in response to

instructions relating to the document rather than because the name is actually the individual's name. Accordingly, a court should not assume that the name an individual provides on an official document necessarily constitutes the "individual name" for purposes of the sufficiency of the debtor's name on a financing statement. Likewise, a court should not assume that the name as presented on an individual's birth certificate is necessarily the individual's current name.

In applying non-UCC law for purposes of determining the sufficiency of a debtor's name on a financing statement, a court should give effect to the instruction in Section l-103(a)(l) that the UCC "must be liberally construed and applied to promote its underlying purposes and policies," which include simplifying and clarifying the law governing commercial transactions. Thus, determination of a debtor's name in the context of the Article 9 filing system must take into account the needs of both filers and searchers. Filers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they can determine a name that will be sufficient so as to permit their financing statements to be effective. Likewise, searchers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they will discover all financing statements pertaining to the debtor in question. The court also should take into account the purpose of the UCC to make the law uniform among the various jurisdictions. See Section l-103(a)(3). Of course, once an individual debtor's name has been determined to be sufficient for purposes of Section 9-503, a financing statement that provides a variation of that name, such as a "nickname" that does not constitute the debtor's name, does not sufficiently provide the name of the debtor under this section. Cf. Section 9-503(c) (a financing statement providing only a debtor's trade name is not sufficient). If there is any doubt about an individual debtor's name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor and a searcher may similarly choose to search under a number of possible names. Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's surname (e.g., if it is not clear whether the debtor's surname is Perry or Mason). See Section 9-516(b)(3)(C).

3. Secured Party's Name. New subsection (d) makes clear that when the secured party is a representative, a financing statement is sufficient if it names the secured party, whether or not it indicates any representative capacity. Similarly, a financing statement that names a

representative of the secured party is sufficient, even if it does not indicate the representative capacity.

Example 2: Debtor creates a security interest in favor of Bank X, Bank Y, and Bank Z, but not to their representative, the collateral agent (Bank A). The collateral agent is not itself a secured party. See Section 9-102. Under Sections 9-502(a) and 9-503(d), however, a financing statement is effective if it names as secured party Bank A and not the actual secured parties, even if it omits Bank A's representative capacity.

Each person whose name is provided in an initial financing statement as the name of the secured party or representative of the secured party is a secured party of record. See Section 9-511.

4. Multiple Names. Subsection (e) makes explicit what is implicit under former Article 9: a financing statement may provide the name of more than one debtor and secured party. See Section 1-102(5)(a) (words in the singular include the plural). With respect to records relating to more than one debtor, see Section 9-520(d). With respect to financing statements providing the name of more than one secured party, see Sections 9-509(e) and 9-510(b).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-503 sets forth the standards for determining whether a financing statement sufficiently provides the name of the debtor. Subsection (a)(1) provides that if a debtor is a registered corporation, such as a corporation, limited partnership, or limited liability company, the financing statement is sufficient only if it provides the name of the debtor indicated on the public record which establishes that debtor was organized. Subsection (c) clarifies former law by expressly providing that a financing statement that provides only the debtor's trade name is not sufficient.

The 2013 amendments substantially revised the requirements in Section 36-9-503 that a financing statement must meet to sufficiently provide the name of the debtor. The amendments utilize Alternative A from the Uniform Code Commissioners for determining the requirements for providing the name of a debtor who is an individual.

Definitional Cross:

"Debtor"	Section 36-9-102(a)(28)
"Financing statement"	Section 36-9-102(a)(39)
"Organization"	Section 36-1-201(28)
"Registered organization"	Section 36-9-102(a)(71)
"Secured party"	Section 36-9-102(a)(73)

Effect of certain events on effectiveness of financing statement

SECTION 13. Section 36-9-507 of the 1976 Code is amended to read:

"Section 36-9-507. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 36-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 36-9-506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor pursuant to Section 36-9-503(a) so that the financing statement becomes seriously misleading pursuant to Section 36-9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading."

OFFICIAL COMMENT

1. Source. Former Section 9-402(7).

2. Scope of Section. This Section deals with situations in which the information in a proper financing statement becomes inaccurate after the financing statement is filed. Compare Section 9-338, which deals with situations in which a financing statement contains a particular kind of information concerning the debtor (i.e., the information described in Section 9-516(b)(5)) that is incorrect at the time it is filed.

3. Post-Filing Disposition of Collateral. Under subsection (a), a financing statement remains effective even if the collateral is sold or otherwise disposed of. This subsection clarifies the third sentence of former Section 9-402(7) by providing that a financing statement remains effective following the disposition of collateral only when the

security interest or agricultural lien continues in that collateral. This result is consistent with the conclusion of PEB Commentary No. 3. Normally, a security interest does continue after disposition of the collateral. See Section 9-315(a). Law other than this Article determines whether an agricultural lien survives disposition of the collateral.

As a consequence of the disposition, the collateral may be owned by a person other than the debtor against whom the financing statement was filed. Under subsection (a), the secured party remains perfected even if it does not correct the public record. For this reason, any person seeking to determine whether a debtor owns collateral free of security interests must inquire as to the debtor's source of title and, if circumstances seem to require it, search in the name of a former owner. Subsection (a) addresses only the sufficiency of the information contained in the financing statement. A disposition of collateral may result in loss of perfection for other reasons. See Section 9-316.

Example: Dee Corp. is an Illinois corporation. It creates a security interest in its equipment in favor of Secured Party. Secured Party files a proper financing statement in Illinois. Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania corporation, subject to the security interest. The security interest continues, see Section 9-315(a), and remains perfected, see Section 9-507(a), notwithstanding that the financing statement is filed under "D" (for Dee Corp.) and not under "B." However, because Bee Corp. is located in Pennsylvania and not Illinois, see Section 9-307, unless Secured Party perfects under Pennsylvania law within one year after the transfer, its security interest will become unperfected and will be deemed to have been unperfected against purchasers of the collateral. See Section 9-316.

4. Other Post-Filing Changes. Subsection (b) provides that, as a general matter, post-filing changes that render a financing statement seriously misleading have no effect on a financing statement. The financing statement remains effective. It is subject to two exceptions: Section 9-508 and Section 9-507(c). Section 9-508 addresses the effectiveness of a financing statement filed against an original debtor when a new debtor becomes bound by the original debtor's security agreement. It is discussed in the Comments to that Section. Section 9-507(c) addresses cases in which a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503(a) with respect to the named debtor but, at a later time, no longer does so.

Example 1: Debtor, an individual whose principal residence is in California, grants a security interest to SP in certain business

equipment. SP files a financing statement with the California filing office. Alternative A is in effect in California. The financing statement provides the name appearing on Debtor's California driver's license, "James McGinty," Debtor obtains a court order changing his name to "Roger McGuinn" but does not change his driver's license. Even after the court order issues, the name provided for the debtor in the financing statement is sufficient under Section 9-503(a). Accordingly, Section 9-507(c) does not apply.

The same result would follow if Alternative B is in effect in California.

Under Section 9-503(a)(6) (Alternative A), if the debtor holds a current (i.e., unexpired) driver's license issued by the State where the financing statement is filed, the name required for the financing statement is the name indicated on the license that was issued most recently by that State. If the debtor does not have a current driver's license issued by that State, then the debtor's name is determined under subsection (a)(5). It follows that a debtor's name may change, and a financing statement providing the name on the debtor's then-current driver's license may become seriously misleading, if the license expires and the debtor's name under subsection (a)(5) is different. The same consequences may follow if a debtor's driver's license is renewed and the names on the licenses differ.

Example 2: The facts are as in Example I. Debtor's driver's license expires one year after the entry of the court order changing Debtor's name. Debtor does not renew the license. Upon expiration of the license, the name required for sufficiency by Section 9-503(a) is the individual name of the debtor or the debtor's surname and first personal name. The name "James McGinty'' has become insufficient.

Example 3: The facts are as in Example I. Before the license expires, Debtor renews the license. The name indicated on the new license is "Roger McGuinn." Upon issuance of the new license, "James McGinty" becomes insufficient as the debtor's name under Section 9-503(a).

The same results would follow if Alternative B is in effect in California (assuming that, following the issuance of the court order, "James McGinty" is neither the individual name of the debtor nor the debtor's surname and first personal name).

Even if the name provided as the name of the debtor becomes insufficient under Section 9-503(a), the filed financing statement does not become seriously misleading, and Section 9-507(c) does not apply, if the financing statement can be found by searching under the debtor's "correct" name, using the filing office's standard search logic. See

Section 9-506. Any name that satisfies Section 9-503(a) at the time of the search is a "correct name" for these purposes. Thus, assuming that a search of the records of the California filing office under "Roger McGuinn," using the filing office's standard search logic, would not disclose a financing statement naming "James McGinty," the financing statement in Examples 2 and 3 has become seriously misleading and Section 9-507(c) applies.

If a filed financing statement becomes seriously misleading because the name it provides for a debtor becomes insufficient, the financing statement, unless amended to provide a sufficient name for the debtor, is effective only to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change. If an amendment that provides a sufficient name is filed within four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change. If an amendment that provides a sufficient name is filed more than four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change, but only from the time of the filing of the amendment.

If a name change renders a filed financing statement seriously misleading, the financing statement is not effective as to collateral acquired more than four months after the change, unless before the expiration of the four months an amendment is filed that specifies the debtor's new correct name (or provides an incorrect name that renders the financing statement not seriously misleading under Section 9-506). As under former Section 9-402(7), the original financing statement would continue to be effective with respect to collateral acquired before the name change as well as collateral acquired within the four-month period.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-507 addresses the effect that certain post-filing events have upon the continued effectiveness of a filed financing statement. Subsection (a) provides that a financing statement remains effective to perfect a security interest that continues in collateral that a debtor has sold or otherwise disposed of. With two exceptions, subsection (b) provides that a filed financing statement is not rendered ineffective because after the filing the information provided in the financing statement became seriously misleading. The first exception arises when a debtor so changes its name that it filed financing statement becomes seriously misleading under Section 36-9-506. In that situation

the filed financing statement is not effective to perfect a security interest in collateral acquired more than four months after the name change. The second exception can arise when a new debtor becomes bound by a security agreement entered into by the original debtor and the secured party has filed under the name of the original debtor. Section 36-9-508(b) provides that if the difference between the names of original debtor and the new debtor causes the filed financing statement to be seriously misleading, that financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after it became bound as a new debtor.

Definitional Cross:

"Agricultural lien"	Section 36-9-102(a)(5)
"Collateral"	Section 36-9-102(a)(12)
"Debtor"	Section 36-9-102(a)(28)
"Financing statement"	Section 36-9-102(a)(39)
"New debtor"	Section 36-9-102(a)(56)
"Original debtor"	Section 36-9-102(a)(60)
"Security interest"	Section 36-1-201(37)

Cross --

1. A security interest or agricultural lien continues in collateral notwithstanding a sale or other disposition unless the secured party has authorized the disposition free of the security interest or agricultural lien. Section 36-9-315(a).

2. If the collateral is transferred to a person located in another jurisdiction a secured party who filed against the transferor in the jurisdiction where the transferor was located must file against the transferee in the jurisdiction where the transferee is located within one year of the transfer in order to retain a perfected security interest in the transferred collateral. Section 36-9-316(a)(3). Note that a transferee who takes subject to a security interest under Section 36-9-315(a)(1) becomes a debtor. See Section 36-9-315(a)(1) Section 36-9-102, Official Comment 2.a. As a debtor, the transferee authorized the secured party to file an initial financing statement against the transferee. Section 36-9-509(c).

3. Buyer in ordinary course of business takes free of a perfected security interest created by the buyer's seller. Section 36-9-320(a).

4. A licensee in ordinary course of business takes its rights in a nonexclusive license free of a security interest created by the licensor. Section 36-9-321(b).

5. A lessee in ordinary course of business takes free of a perfected security interest created by the lessor. Section 36-9-321(c).

6. Priority of security interests in transferred collateral. Section 36-9-325.

7. Rules for determining whether a change in the debtor's name renders a filed financing statement seriously misleading. Section 36-9-506(b) and (c).

8. When a new debtor becomes bound by a security agreement entered into by an original debtor. Section 36-9-203(d) and (e).

9. When a filing against an original debtor perfects a security interest in collateral acquired by a new debtor. Section 36-9-508.

10. Priority of security interests created by a new debtor. Section 36-9-326.

Duration and effectiveness of financing statement, effect of lapsed financing statement

SECTION 14. Section 36-9-515 of the 1976 Code is amended to read:

"Section 36-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 36-9-510, upon timely filing of a continuation statement, the effectiveness of the initial

financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 36-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property."

OFFICIAL COMMENT

1. Source. Former Section 9-403(2), (3), (6).

2. Period of Financing Statement's Effectiveness. Subsection (a) states the general rule: a financing statement is effective for a five-year period unless its effectiveness is continued under this Section or terminated under Section 9-513. Subsection (b) provides that if the financing statement relates to a public-finance transaction or a manufactured-home transaction and so indicates, the financing statement is effective for 30 years. These financings typically extend well beyond the standard, five-year period. Under subsection (f), a financing statement filed against a transmitting utility remains effective indefinitely, until a termination statement is filed. Likewise, under subsection (g), a mortgage effective as a fixture filing remains effective until its effectiveness terminates under real-property law.

3. Lapse. When the period of effectiveness under subsection (a) or (b) expires, the effectiveness of the financing statement lapses. The last sentence of subsection (c) addresses the effect of lapse. The deemed retroactive unperfection applies only with respect to purchasers for value; unlike former Section 9-403(2), it does not apply with respect to lien creditors.

Example 1: SP-1 and SP-2 both hold security interests in the same collateral. Both security interests are perfected by filing. SP-1 filed first and has priority under Section 9-322(a)(1). The effectiveness of SP-1's filing lapses. As long as SP-2's security interest remains perfected thereafter, SP-2 is entitled to priority over SP-1's security

interest, which is deemed never to have been perfected as against a purchaser for value (SP-2). See Section 9-322(a)(2).

Example 2: SP holds a security interest perfected by filing. On July 1, LC acquires a judicial lien on the collateral. Two weeks later, the effectiveness of the financing statement lapses. Although the security interest becomes unperfected upon lapse, it was perfected when LC acquired its lien. Accordingly, notwithstanding the lapse, the perfected security interest has priority over the rights of LC, who is not a purchaser. See Section 9-317(a)(2).

4. Effect of Debtor's Bankruptcy. Under former Section 9-403(2), lapse was tolled if the debtor entered bankruptcy or another insolvency proceeding. Nevertheless, being unaware that insolvency proceedings had been commenced, filing offices routinely removed records from the files as if lapse had not been tolled. Subsection (c) deletes the former tolling provision and thereby imposes a new burden on the secured party: to be sure that a financing statement does not lapse during the debtor's bankruptcy. The secured party can prevent lapse by filing a continuation statement, even without first obtaining relief from the automatic stay. See Bankruptcy Code Section 362(b)(3). Of course, if the debtor enters bankruptcy before lapse, the provisions of this Article with respect to lapse would be of no effect to the extent that federal bankruptcy law dictates a contrary result (e.g., to the extent that the Bankruptcy Code determines rights as of the date of the filing of the bankruptcy petition).

5. Continuation Statements. Subsection (d) explains when a continuation statement may be filed. A continuation statement filed at a time other than that prescribed by subsection (d) is ineffective, see Section 9-510(c), and the filing office may not accept it. See Sections 9-520(a), 9-516(b). Subsection (e) specifies the effect of a continuation statement and provides for successive continuation statements.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-515 addresses issues concerning the duration of the effectiveness of a filed financing statement. As a general rule, subsection (a) provides that a financing statement remains effective for five years from the date of filing. This rule, however, is subject to a number of exceptions. Under subsection (b) an initial financing statement filed in a public-financing transactions or a manufactured-home transaction is effective for 30 years. Moreover, in a manufactured-home transaction a secured party would typically perfect under the certificate of title statute in which case that statute rather than Article 9 would control the duration of the perfected status

of the security interest. See Section 36-9-311(c). Under subsection (f) if a debtor is a transmitting utility, a filed financing statement remains effective until a termination statement is filed. Under subsection (g) a mortgage recorded in lieu of a fixture filing remains effective until the mortgage is released or satisfied of record.

Subsection (c) provides that the effectiveness of a filed financing statement lapses upon the expiration of its period of effectiveness unless a continuation statement is properly filed. Upon the lapse of its financing statement a secured party's security interest or agricultural lien becomes unperfected. Moreover, a security interest or agricultural lien that becomes unperfected upon lapse, is deemed to have never been perfected against a purchaser of the collateral for value.

Under subsections (d) and (e) a secured party can avoid lapse by filing a continuation statement. The continuation statement must be filed within the final six months of the effective period of the financing statement. The continuation statement will extend the effectiveness of the financing statement for five years. Succeeding continuation statements may be filed.

Section 36-9-515 does not include a provision comparable to former Section 36-9-403(2) that tolled the lapse of a financing statement when a debtor entered a bankruptcy or insolvency proceeding.

Definitional Cross:

"Agricultural lien"	Section 36-9-102(a)(5)
"Collateral"	Section 36-9-102(a)(12)
"Continuation statement"	Section 36-9-102(a)(27)
"Financing statement"	Section 36-9-102(a)(39)
"Fixture filing"	Section 36-9-102(a)(40)
"Manufactured-home transaction"	Sections 36-9-102(a)(54)
"Mortgage"	Section 36-9-102(a)(55)
"Public-finance transaction"	Section 36-9-102(a)(67)
"Purchaser"	Section 36-1-201(33)
"Termination statement"	Section 36-9-102(a)(80)
"Transmitting utility"	Section 36-9-102(a)(81)
"Value"	Section 36-1-201(44)

Cross --

1. A continuation statement not filed within the six-month period proscribed by Section 36-9-515(d) is ineffective. Section 36-9-510(c).

2. A "manufactured home" as defined in Section 36-9-102(a)(53) would qualify as either a "house trailer" under Section 56-19-10(10), S.C. Code Ann. (Supp. 1999) or as a "mobile home" under Section 56-19-10(30), S.C. Code Ann. (Supp. 1999). In either case, a security interest would be perfected under the Certificate of Title Statute. See

Section 56-19-620, S.C. Code Ann. (1976). As a result, under Section 36-9-311(c) the Certificate of Title Statute rather than Section 36-9-515(b) would control the duration of the perfection of a security interest in a manufactured home. The Certificate of Title Statute does not limit the duration of a perfected security interest.

What constitutes filing, effectiveness of filing

SECTION 15. Section 36-9-516 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

"Section 36-9-516. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by Section 36-9-512 or 36-9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 36-9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed or recorded in the filing office described in Section 36-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in

the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) in the case of an assignment reflected in an initial financing statement under Section 36-9-514(a) or an amendment filed under Section 36-9-514(b), the record does not provide a name and mailing address for the assignee;

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 36-9-515(d);

(8) in the case of a record presented for filing at the Office of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this chapter or is otherwise intended for an improper purpose, such as to defraud, hinder, harass, or otherwise wrongfully interfere with a person; or

(9) in the case of a record presented for filing at the Office of the Secretary of State, the same person or entity is listed as both debtor and secured party, the collateral described is not within the scope of this chapter, or that the record is being filed for a purpose other than a transaction that is within the scope of this chapter.

(c) For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 36-9-512, 36-9-514, or 36-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files."

OFFICIAL COMMENT

1. Source. Subsection (a): former Section 9-403(1); the remainder is new.

2. What Constitutes Filing. Subsection (a) deals generically with what constitutes filing of a record, including an initial financing statement and amendments of all kinds (e.g., assignments, termination statements, and continuation statements). It follows former Section 9-403(1), under which either acceptance of a record by the filing office

or presentation of the record and tender of the filing fee constitutes filing.

3. Effectiveness of Rejected Record. Subsection (b) provides an exclusive list of grounds upon which the filing office may reject a record. See Section 9-520(a). Although some of these grounds would also be grounds for rendering a filed record ineffective (e.g., an initial financing statement does not provide a name for the debtor), many others would not be (e.g., an initial financing statement does not provide a mailing address for the debtor or secured party of record). Neither this Section nor Section 9-520 requires or authorizes the filing office to determine, or even consider, the accuracy of information provided in a record.

A financing statement or other record that is communicated to the filing office but which the filing office refuses to accept provides no public notice, regardless of the reason for the rejection. However, this Section distinguishes between records that the filing office rightfully rejects and those that it wrongfully rejects. A filer is able to prevent a rightful rejection by complying with the requirements of subsection (b). No purpose is served by giving effect to records that justifiably never find their way into the system, and subsection (b) so provides.

Subsection (d) deals with the filing office's unjustified refusal to accept a record. Here, the filer is in no position to prevent the rejection and as a general matter should not be prejudiced by it. Although wrongfully rejected records generally are effective, subsection (d) contains a special rule to protect a third-party purchaser of the collateral (e.g., a buyer or competing secured party) who gives value in reliance upon the apparent absence of the record from the files. As against a person who searches the public record and reasonably relies on what the public record shows, subsection (d) imposes upon the filer the risk that a record failed to make its way into the filing system because of the filing office's wrongful rejection of it. (Compare Section 9-517, under which a misindexed financing statement is fully effective.) This risk is likely to be small, particularly when a record is presented electronically, and the filer can guard against this risk by conducting a postfiling search of the records. Moreover, Section 9-520(b) requires the filing office to give prompt notice of its refusal to accept a record for filing.

4. Method or Medium of Communication. Rejection pursuant to subsection (b)(1) for failure to communicate a record properly should be understood to mean noncompliance with procedures relating to security, authentication, or other communication-related requirements that the filing office may impose. Subsection (b)(1) does not authorize

a filing office to impose additional substantive requirements. See Section 9-520, Comment 2.

5. Address for Secured Party of Record. Under subsection (b)(4) and Section 9-520(a), the lack of a mailing address for the secured party of record requires the filing office to reject an initial financing statement. The failure to include an address for the secured party of record no longer renders a financing statement ineffective. See Section 9-502(a). The function of the address is not to identify the secured party of record but rather to provide an address to which others can send required notifications, e.g., of a purchase-money security interest in inventory or of the disposition of collateral. Inasmuch as the address shown on a filed financing statement is an "address that is reasonable under the circumstances," a person required to send a notification to the secured party may satisfy the requirement by sending a notification to that address, even if the address is or becomes incorrect. See Section 9-102 (definition of "send"). Similarly, because the address is "held out by [the secured party] as the place for receipt of such communications [i.e., communications relating to security interests]," the secured party is deemed to have received a notification delivered to that address. See Section 1-201(26).

6. Uncertainty Concerning Individual Debtor's Surname. Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor's surname (e.g., it is unclear whether the debtor's name is Elton or John).

7. Inability of Filing Office to Read or Decipher Information. Under subsection (c)(1), if the filing office cannot read or decipher information, the information is not provided by a record for purposes of subsection (b).

8. Classification of Records. For purposes of subsection (b), a record that does not indicate it is an amendment or identify an initial financing statement to which it relates is deemed to be an initial financing statement. See subsection (c)(2).

9. Effectiveness of Rejectable But Unrejected Record. Section 9-520(a) requires the filing office to refuse to accept an initial financing statement for a reason set forth in subsection (b). However, if the filing office accepts such a financing statement nevertheless, the financing statement generally is effective if it complies with the requirements of Section 9-502(a) and (b). See Section 9-520(c). Similarly, an otherwise effective financing statement generally remains so even though the information in the financing statement becomes incorrect. See Section 9-507(b). (Note that if the information required

by subsection (b)(5) is incorrect when the financing statement is filed, Section 9-338 applies.)

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-516(b) sets forth the requirements an initial financing statement or other record must meet in order to be accepted for filing. Section 36-9-520 (a) provides that a filing office must refuse to accept for filing a record that fails to meet those requirements. Section 36-9-520(a) further provides that the filing office can refuse to accept a record for filing only for the reasons listed in Section 36-9-516(b).

The requirements of Section 36-9-516(b) are more demanding than the requirements for a sufficient financing statement under Section 36-9-502(a). If a filing office accepts and files a financing statement which is sufficient under Section 36-9-502(a) but fails to meet the requirements of Section 36-9-516(b), Section 36-9-520(c) provides that the filing is effective.

Section 36-9-516(d) applies when a filing office wrongfully refuses to accept a sufficient financing statement or other record for filing for a reason other than one listed in subsection (b). Under subsection (d) the financing statement or other record is effective as a filed record except against a purchaser which gave value in reasonable reliance upon the absence of a filed record.

Definitional Cross:

"Collateral"	Section 36-9-102(a)(12)
"Continuation statement"	Section 36-9-102(a)(27)
"Debtor"	Section 36-9-102(a)(28)
"Filing office"	Section 36-9-102(a)(37)
"Financing statement"	Section 36-9-102(a)(39)
"Jurisdiction of organization"	Section 36-9-102(a)(50)
"Organization"	Section 36-1-201(28)
"Purchaser"	Section 36-1-201(33)
"Record"	Section 36-9-102(a)(70)
"Secured party of record"	Section 36-9-511
"Value"	Section 36-9-201(44)

Cross --

1. Requirements for a sufficient financing statement. Section 36-9-502(a) and (b).

2. A filing office is required to refuse to file a record that fails to meet the requirements of Section 36-9-516(b). Section 36-9-520(a).

3. A filing office is required to accept for filing a sufficient record which meets the requirements of Section 36-9-516(b). Section 36-9-520(a).

4. Limitations on priority afforded to a security interest perfected by a financing statement which failed to meet the requirements of Section 36-9-516(b) but was accepted for filing. Sections 36-9-520(c) and 36-9-338.

Claim concerning inaccurate or wrongfully filed record

SECTION 16. Section 36-9-518 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

"Section 36-9-518. (a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 36-9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in Section 36-9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 36-9-509(d). The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(d) An information statement under subsection (c) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 36-9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in Section 36-9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so pursuant to Section 36-9-509(d).

(e) In the case of an information statement alleging that a previously filed record was filed wrongfully and that it should have been rejected pursuant to Section 36-9-516(b)(8) or (9), the Secretary of State, without undue delay, shall determine if the contested record was filed wrongfully and should have been rejected. To determine if the record was filed wrongfully, the Secretary of State may require the person filing the information statement and the secured party to provide additional relevant information requested by the Secretary of State including an original or a copy of a security agreement that is related to the record. If the Secretary of State finds that the record was filed wrongfully and should have been rejected pursuant to Section 36-9-516(b)(8) or (9), the Secretary of State shall cancel the record and it is void and of no effect."

OFFICIAL COMMENT

1. Source. New.

2. Information Statements. Former Article 9 did not afford a nonjudicial means for a debtor to indicate that a financing statement or other record was inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file an information statement. Among other requirements, the information statement must provide the basis for the debtor's belief that the public record should be corrected. See subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. '1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed information statement becomes part of the "financing statement," as defined in Section 9-102, the filing does not affect the effectiveness of the initial financing statement or any other filed record. See subsection (e). Sometimes a person files a termination statement or other record relating to a filed financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the person that filed the record was not entitled to do so. See subsection (c). An information statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of a filed record is disputed. If

the person that filed the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information statement. Likewise, if the person that filed the record was entitled to do so, the filed record is effective, even if the secured party of record - even one who is aware of the unauthorized filing of a record - has no duty to file one. Just as searchers bear the burden of determining whether the filing of initial financing statement was authorized, searchers bear the burden of determining whether the filing of every subsequent record was authorized. Inasmuch as the filing of an information statement has no legal effect, this section does not provide a mechanism by which a secured party can correct an error that it discovers in its own financing statement.

This Section does not displace other provisions of this Article that impose liability for making unauthorized filings or failing to file or send a termination statement (see Section 9-625(e)), nor does it displace any available judicial remedies.

3. Resort to Other Law. This Article cannot provide a satisfactory or complete solution to problems caused by misuse of the public records. The problem of "bogus" filings is not limited to the UCC filing system but extends to the real-property records, as well. A summary judicial procedure for correcting the public record and criminal penalties for those who misuse the filing and recording systems are likely to be more effective and put less strain on the filing system than provisions authorizing or requiring action by filing and recording offices.

SOUTH CAROLINA REPORTER'S COMMENT

Under Section 36-9-518 a person who believes that a record indexed under the person's name is inaccurate or was wrongfully filed can file a correction statement. A correction statement sets forth the basis for the person's belief that the filed record is inaccurate or improperly filed. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

The 2013 amendments provide for the filing of "information statements" instead of "correction statements." Under revised Section 36-9-518, both debtors and secured parties of record may file information statements.

Definitional Cross:

"Correction statement"	Section 36-9-518(b)
"File number"	Section 36-9-102(a)(36)
"Filing office"	Section 36-9-102(a)(37)
"Financing statement"	Section 36-9-102(a)(39)
"Person"	Section 36-1-201(3)

"Record" Section 36-9-102(a)(70)

Cross --

Grounds on which filing office is required to refuse to accept a record for filing. Section 36-9-516(b).

Debtor's right to recover damages for an unauthorized filing or the refusal to send or file a termination statement. Section 36-9-625(b), (c)(3), and (4).

Uniform form of written financing statement and amendment

SECTION 17. Section 36-9-521 of the 1976 Code is amended to read:

"Section 36-9-521. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 36-9-516(b):

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
_____
B. EMAIL CONTACT AT FILER (optional)
_____
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here [ ] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)
1a. ORGANIZATION'S NAME
_____
1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME
_____ _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____

1c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here [ ] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

_____

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____

2c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

_____

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____

_____

3c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

4. COLLATERAL: This financing statement covers the following collateral:

_____

5. Check only if applicable and check only one box:
Collateral is [ ] held in a Trust (see UCC1Ad, Item 17 and Instructions)
[ ] being administered by a Decedent's Personal Representative
6a. Check only if applicable and check only one box:
[ ] Public-Finance Transaction [ ] Manufactured-Home Transaction
[ ] A Debtor is a Transmitting Utility
6b. Check only if applicable and check only one box:
[ ] Agricultural Lien [ ] Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): [ ] Lessee/Lessor
[ ] Consignee/Consignor [ ] Seller/Buyer [ ] Bailee/Bailor
[ ] Licensee/Licensor
8. OPTIONAL FILER REFERENCE DATA:

_____

[UCC FINANCING STATEMENT (Form UCC1)]
UCC FINANCING STATEMENT ADDENDUM
FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as item 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here [ ]
9a. ORGANIZATION'S NAME

_____

OR
9b. INDIVIDUAL'S SURNAME

_____

FIRST PERSONAL NAME

_____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1)(use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

_____

OR

10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____

10c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

11. [ ] ADDITIONAL SECURED PARTY'S NAME or
[ ] ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

_____

OR

11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

11c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

_____

13. [ ] This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
[ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

_____

16. DESCRIPTION OF REAL ESTATE

_____

17. MISCELLANEOUS

_____

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 36-9-516(b):

UCC FINANCING STATEMENT AMENDMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

_____

B. EMAIL CONTACT AT FILER (optional)

_____

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

_____

_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

_____

1b. [ ] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
2. [ ] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3. [ ] ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4. [ ] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law
5. [ ] PARTY INFORMATION CHANGE:
Check one of these two boxes:
This Change affects [ ] Debtor or [ ] Secured Party of record
AND

Check one of these three boxes to:
[ ] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
[ ] ADD name: Complete item 7a or 7b, and item 7c
[ ] DELETE name: Give record name to be deleted in item 6a or 6b
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)
6a. ORGANIZATION'S NAME

_____
OR
6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)
7a. ORGANIZATION'S NAME

_____
OR
7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____
7c. MAILING ADDRESS

_____
CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____
8. [ ] COLLATERAL CHANGE:
Also check one of these four boxes:
[ ] ADD collateral [ ] DELETE collateral [ ] RESTATE covered collateral
[ ] ASSIGN collateral
Indicate collateral:
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here [ ] and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

_____

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

10. OPTIONAL FILER REFERENCE DATA

_____

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]
UCC FINANCING STATEMENT AMENDMENT ADDENDUM
FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

_____

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form
12a. ORGANIZATION'S NAME

_____

OR

12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit
13a. ORGANIZATION'S NAME

_____

OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

_____

15. This FINANCING STATEMENT AMENDMENT: [ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing
16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

_____

17. DESCRIPTION OF REAL ESTATE

_____

18. MISCELLANEOUS

_____

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

UCC FINANCING STATEMENT AMENDMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

_____

B. EMAIL CONTACT AT FILER (optional)

_____

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

_____

1b. [ ] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
2. [ ] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3. [ ] ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4. [ ] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party

authorizing this Continuation Statement is continued for the additional period provided by applicable law
5. [ ] PARTY INFORMATION CHANGE:
Check one of these two boxes:
This Change affects [ ] Debtor or [ ] Secured Party of record
AND
Check one of these three boxes to:
[ ] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
[ ] ADD name: Complete item 7a or 7b, and item 7c
[ ] DELETE name: Give record name to be deleted in item 6a or 6b
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)
6a. ORGANIZATION'S NAME

_____
OR
6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)
7a. ORGANIZATION'S NAME

_____
OR
7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____
7c. MAILING ADDRESS

_____
CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____
8. [ ] COLLATERAL CHANGE:
Also check one of these four boxes:
[ ] ADD collateral [ ] DELETE collateral [ ] RESTATE covered collateral
[ ] ASSIGN collateral
Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here [ ] and provide name of authorizing Debtor
9a. ORGANIZATION'S NAME

_____
OR
9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
10. OPTIONAL FILER REFERENCE DATA

_____
[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]
UCC FINANCING STATEMENT AMENDMENT ADDENDUM
FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

_____
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form
12a. ORGANIZATION'S NAME

_____
OR
12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit
13a. ORGANIZATION'S NAME

_____
OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

_____

15. This FINANCING STATEMENT AMENDMENT: [ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

_____

17. DESCRIPTION OF REAL ESTATE

_____

18. MISCELLANEOUS

_____

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]"

OFFICIAL COMMENT

1. Source. New.

2. "Safe Harbor" Written Forms. Although Section 9-520 limits the bases upon which the filing office can refuse to accept records, this Section provides sample written forms that must be accepted in every filing office in the country, as long as the filing office's rules permit it to accept written communications. By completing one of the forms in this Section, a secured party can be certain that the filing office is obligated to accept it.

The forms in this Section are based upon national financing statement forms that were in use under former Article 9. Those forms were developed over an extended period and reflect the comments and suggestions of filing officers, secured parties and their counsel, and service companies. The formatting of those forms and of the ones in this Section has been designed to reduce error by both filers and filing offices.

A filing office that accepts written communications may not reject, on grounds of form or format, a filing using these forms. Although filers are not required to use the forms, they are encouraged and can be expected to do so, inasmuch as the forms are well designed and avoid the risk of rejection on the basis of form or format. As their use expands, the forms will rapidly become familiar to both filers and

filing-office personnel. Filing offices may and should encourage the use of these forms by declaring them to be the "standard" (but not exclusive) forms for each jurisdiction, albeit without in any way suggesting that alternative forms are unacceptable.

The multi-purpose form in subsection (b) covers changes with respect to the debtor, the secured party, the collateral, and the status of the financing statement (termination and continuation). A single form may be used for several different types of amendments at once (e.g., both to change a debtor's name and continue the effectiveness of the financing statement).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-521 sets forth forms that a filing office is required to accept provided that the office accepts written records and the forms include the information required under Section 36-9-516(b).

Collection and enforcement by secured party

SECTION 18. Section 36-9-607 of the 1976 Code is amended to read:

"Section 36-9-607. (a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 36-9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Section 36-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under Section 36-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party."

OFFICIAL COMMENT

1. Source. Former Section 9-502; subsections (b), (d), and (e) are new.

2. Collections: In General. Collateral consisting of rights to payment is not only the most liquid asset of a typical debtor's business but also is property that may be collected without any interruption of the debtor's business This situation is far different from that in which collateral is inventory or equipment, whose removal may bring the business to a halt. Furthermore, problems of valuation and identification, present with collateral that is tangible personal property, frequently are not as serious in the case of rights to payment and other intangible collateral. Consequently, this Section, like former Section 9-502, recognizes that financing through assignments of intangibles lacks many of the complexities that arise after default in other types of financing. This Section allows the assignee to liquidate collateral by collecting whatever may become due on the collateral, whether or not

the method of collection contemplated by the security arrangement before default was direct (i.e., payment by the account debtor to the assignee, "notification" financing) or indirect (i.e., payment by the account debtor to the assignor, " nonnotification" financing).

3. Scope. The scope of this Section is broader than that of former Section 9-502. It applies not only to collections from account debtors and obligors on instruments but also to enforcement more generally against all persons obligated on collateral. It explicitly provides for the secured party's enforcement of the debtor's rights in respect of the account debtor' s (and other third parties') obligations and for the secured party's enforcement of supporting obligations with respect to those obligations. (Supporting obligations are components of the collateral under Section 9-203(f) .) The rights of a secured party under subsection (a) include the right to enforce claims that the debtor may enjoy against others. For example, the claims might include a breach-of-warranty claim arising out of a defect in equipment that is collateral or a secured party's action for an injunction against infringement of a patent that is collateral. Those claims typically would be proceeds of original collateral under Section 9-315.

4. Collection and Enforcement Before Default. Like Part 6 generally, this Section deals with the rights and duties of secured parties following default. However, as did former Section 9-502 with respect to collection rights, this Section also applies to the collection and enforcement rights of secured parties even if a default has not occurred, as long as the debtor has so agreed. It is not unusual for debtors to agree that secured parties are entitled to collect and enforce rights against account debtors prior to default.

5. Collections by Junior Secured Party. A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this Section, even if the security interest is subordinate to a conflicting security interest in the same right to payment. Whether the junior secured party has priority in the collected proceeds depends on whether the junior secured party qualifies for priority as a purchaser of an instrument (e.g., the account debtor's check) under Section 9-330(d), as a holder in due course of an instrument under Sections 3-305 and 9-331(a), or as a transferee of money under Section 9-332(a). See Sections 9-330, Comment 7; 9-331, Comment 5; and 9-332.

6. Relationship to Rights and Duties of Persons Obligated on Collateral. This Section permits a secured party to collect and enforce obligations included in collateral in its capacity as a secured party. It is not necessary for a secured party first to become the owner of the

collateral pursuant to a disposition or acceptance. However, the secured party's rights, as between it and the debtor, to collect from and enforce collateral against account debtors and others obligated on collateral under subsection (a) are subject to Section 9-341, Part 4, and other applicable law. Neither this Section nor former Section 9-502 should be understood to regulate the duties of an account debtor or other person obligated on collateral. Subsection (e) makes this explicit. For example, the secured party may be unable to exercise the debtor's rights under an instrument if the debtor is in possession of the instrument, or under a non-transferable letter of credit if the debtor is the beneficiary. Unless a secured party has control over a letter-of-credit right and is entitled to receive payment or performance from the issuer or a nominated person under Article 5, its remedies with respect to the letter-of-credit right may be limited to the recovery of any identifiable proceeds from the debtor. This Section establishes only the baseline rights of the secured party vis-a-vis the debtor-the secured party is entitled to enforce and collect after default or earlier if so agreed.

7. Deposit Account Collateral. Subsections (a)(4) and (5) set forth the self-help remedy for a secured party whose collateral is a deposit account. Subsection (a)(4) addresses the rights of a secured party that is the bank with which the deposit account is maintained. That secured party automatically has control of the deposit account under Section 9-104(a)(1). After default, and otherwise if so agreed, the bank/secured party may apply the funds on deposit to the secured obligation.

If a security interest of a third party is perfected by control (Section 9-104(a)(2) or (a)(3)), then after default, and otherwise if so agreed, the secured party may instruct the bank to pay out the funds in the account. If the third party has control under Section 9-104(a)(3), the depositary institution is obliged to obey the instruction because the secured party is its customer. See Section 4-401. If the third party has control under Section 9-104(a)(2), the control agreement determines the depositary institution's obligation to obey.

If a security interest in a deposit account is unperfected, or is perfected by filing by virtue of the proceeds rules of Section 9-315, the depositary institution ordinarily owes no obligation to obey the secured party's instructions. See Section 9-341. To reach the funds without the debtor's cooperation, the secured party must use an available judicial procedure.

8. Rights Against Mortgagor of Real Property. Subsection (b) addresses the situation in which the collateral consists of a mortgage

note (or other obligation secured by a mortgage on real property). After the debtor's (mortgagee's) default, the secured party (assignee) may wish to proceed with a nonjudicial foreclosure of the mortgage securing the note but may be unable to do so because it has not become the assignee of record. The assignee/ secured party may not have taken a recordable assignment at the commencement of the transaction (perhaps the mortgage note in question was one of hundreds assigned to the secured party as collateral). Having defaulted, the mortgagee may be unwilling to sign a recordable assignment. This Section enables the secured party (assignee) to become the assignee of record by recording in the applicable real-property records the security agreement and an affidavit certifying default. Of course, the secured party's rights derive from those of its debtor. Subsection (b) would not entitle the secured party to proceed with a foreclosure unless the mortgagor also were in default or the debtor (mortgagee) otherwise enjoyed the right to foreclose.

9. Commercial Reasonableness. Subsection (c) provides that the secured party's collection and enforcement rights under subsection (a) must be exercised in a commercially reasonable manner. These rights include the right to settle and compromise claims against the account debtor. The secured party's failure to observe the standard of commercial reasonableness could render it liable to an aggrieved person under Section 9-625, and the secured party's recovery of a deficiency would be subject to Section 9-626. Subsection (c) does not apply if, as is characteristic of most sales of accounts, chattel paper, payment intangibles, and promissory notes, the secured party (buyer) has no right of recourse against the debtor (seller) or a secondary obligor. However, if the secured party does have a right of recourse, the commercial-reasonableness standard applies to collection and enforcement even though the assignment to the secured party was a "true" sale. The obligation to proceed in a commercially reasonable manner arises because the collection process affects the extent of the seller's recourse liability, not because the seller retains an interest in the sold collateral (the seller does not).

10. Attorney's Fees and Legal Expenses. The phrase "reasonable attorney's fees and legal expenses," which appears in subsection (d), includes only those fees and expenses incurred in proceeding against account debtors or other third parties. The secured party's right to recover these expenses from the collections arises automatically under this Section. The secured party also may incur other attorney's fees and legal expenses in proceeding against the debtor or obligor. Whether the secured party has a right to recover those fees and

expenses depends on whether the debtor or obligor has agreed to pay them, as is the case with respect to attorney's fees and legal expenses under Sections 9-608(a)(1)(A) and 9-615(a)(1). The parties also may agree to allocate a portion of the secured party's overhead to collection and enforcement under subsection (d) or Section 9-608(a).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-607 addresses a secured party's rights on default when the collateral consists of accounts, payment intangibles, promissory notes, and deposit accounts and when the secured party has a security interest in a supporting obligation. Under subsection (a)(1) the secured party is authorized to instruct an account debtor or other person obligated upon the collateral to make payment to or for the benefit of the secured party. Under subsection (a)(2) the secured party is authorized to take any proceeds to which it is entitled under Section 36-9-315. Under subsection (a)(3) the secured party is entitled to enforce the obligations of the account debtor or other person obligated upon the collateral. Under subsections (a)(4) and (5) a secured party with control of a deposit account may apply the balance of the deposit account toward the secured obligation or instruct the bank at which the account is maintained to pay the balance to or for the benefit of the secured party.

Subsection (b) provides a method by which a secured party holding a security interest in a promissory note secured by a real estate mortgage can obtain a nonjudicial foreclosure of the mortgage without obtaining and recording an assignment of the mortgage. The provision does not extend to a judicial foreclosure and to obtain that remedy the secured party would have to obtain an assignment of the mortgage.

Subsection (c) requires a secured party to proceed in commercially reasonable manner in collecting or enforcing an obligation of an account debtor or other person obligated upon the collateral unless the secured party has no right of recourse against the debtor or a secondary obligor.

Subsection (e) provides that Section 36-9-607 does not determine whether an account debtor, bank, or person obligated on the collateral owes a duty to the secured party. For example, a secured party who obtains a security interest in a letter of credit supporting a debtor's accounts receivable because the letter of credit is a supporting obligation may not be entitled to receive payment from the issuer.

Definitional Cross:

"Account debtor"	Section 36-9-102(a)(3)
"Collateral"	Section 36-9-102(a)(12)

"Debtor"	Section 36-9-102(a)(28)
"Deposit account"	Section 36-9-102(a)(29)
"Mortgage"	Section 36-9-102(a)(55)
"Obligor"	Section 36-9-102(a)(59)
"Notifies"	Section 36-1-201(26)
"Proceeds"	Section 36-9-102(a)(64)
"Secured party"	Section 36-9-102(a)(73)
"Security agreement"	Section 36-9-102(a)(74)

Cross --

1. The attachment of a security interest in collateral gives the secured party a security interest in a supporting obligation for the collateral. Section 36-9-203(f).

2. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation. Section 36-9-308(d).

3. A security interest attaches to identifiable proceeds of collateral. Sections 36-9-203(f) and 36-9-315(a)(2).

4. Perfection of a security interest in proceeds. Section 36-9-315(c)--(e).

5. Requirements for control of deposit accounts. Section 36-9-104.

6. The rights of an assignee of an account against an account debtor. Sections 36-9-403, 36-9-404, and 36-9-405.

7. Limits upon the rights of secured party with a security interest in a letter-of-credit right perfected by control to enforce the drawing rights of the beneficiary against the issuer or nominated person. See Section 36-9-329, Official Comment 3 and 4.

8. Application of proceeds realized upon enforcement or collection from account debtor's or other persons obligated on the collateral. Section 36-9-608.

Transition for 2013 revisions

SECTION 19. Chapter 9, Tile 36 of the 1976 Code is amended by adding:

"Part 8

Transition

Section 36-9-802. (a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) This act does not affect an action, case, or proceeding commenced before this act takes effect.

Section 36-9-803. (a) A security interest that is a perfected security interest immediately before this act takes effect is a perfected security interest under Chapter 9, Title 36 as amended by this act if, when this act takes effect, the applicable requirements for attachment and perfection under Chapter 9, Title 36 as amended by this act are satisfied without further action.

(b) Except as otherwise provided in Section 36-9-805, if, immediately before this act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are not satisfied when this act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are satisfied within one year after this act takes effect.

Section 36-9-804. A security interest that is an unperfected security interest immediately before this act takes effect becomes a perfected security interest:

(1) without further action, when this act takes effect if the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 36-9-805. (a) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Chapter 9, Title 36, as amended by this act.

(b) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36 as it existed before this act. However, except as otherwise provided in subsections (c) and (d) and Section 36-9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this act not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after this act takes effect does not continue the effectiveness of a financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36 as it existed before this act, only to the extent that Chapter 9, Title 36, as amended by this act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 as amended by this act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 36-9-503(a)(2) as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 36-9-503(a)(3) as amended by this act.

Section 36-9-806. (a) The filing of an initial financing statement in the office specified in Section 36-9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) the preeffective-date financing statement was filed in an office in another State; and

(3) the initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the preeffective-date financing statement:

(1) if the initial financing statement is filed before this act takes effect, for the period provided in former Section 36-9-515 with respect to an initial financing statement; and

(2) if the initial financing statement is filed after this act takes effect, for the period provided in Section 36-9-515 as amended by this act with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 as amended by this act for an initial financing statement;

(2) identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the preeffective-date financing statement remains effective.

Section 36-9-807. (a) In this section, 'preeffective-date financing statement' means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36, as amended by this act. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after this act takes effect only if:

(1) the preeffective-date financing statement and an amendment are filed in the office specified in Section 36-9-501;

(2) an amendment is filed in the office specified in Section 36-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 36-9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 36-9-806(c) is filed in the office specified in Section 36-9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under Section 36-9-805(c) and (e) or 36-9-806.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this State may be terminated after this act takes effect by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies Section 36-9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

Section 36-9-808. A person may file an initial financing statement or a continuation statement under this part if the:

(1) secured party of record authorizes the filing; and

(2) filing is necessary under this part to:

(A) continue the effectiveness of a financing statement filed before this act takes effect; or

(B) perfect or continue the perfection of a security interest.

Section 36-9-809. This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, former Chapter 9, Title 36 determines priority."

Time effective

SECTION 20. This act takes effect on July 1, 2013.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 97

(R118, S310)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-29-95 SO AS TO REQUIRE THE MANUFACTURED HOUSING BOARD TO CONSIDER THE FINANCIAL RESPONSIBILITY OF AN APPLICANT FOR LICENSURE BY THE BOARD, TO PROVIDE THE BOARD SHALL PROMULGATE RELATED REGULATIONS, TO PROVIDE THAT A MANUFACTURED HOUSING RETAIL DEALER WHO FAILS TO MEET CERTAIN FINANCIAL RESPONSIBILITY REQUIREMENTS SHALL APPEAR BEFORE THE BOARD, AND TO PROVIDE THAT THE BOARD MAY RESTRICT OR MODIFY THE ACTIVITIES OF A LICENSEE WHO FAILS TO MEET THESE FINANCIAL RESPONSIBILITY REQUIREMENTS; BY ADDING SECTION 40-29-325 SO AS TO PROVIDE A LICENSED MANUFACTURED HOUSING RETAIL DEALER SHALL INCLUDE ITS DEALER LICENSE NUMBER ON CERTAIN ADVERTISEMENTS FOR THE MANUFACTURED HOUSING BY THE DEALER; TO AMEND SECTION 40-29-200, RELATING TO APPLICATIONS FOR LICENSURE AND RENEWAL, SO AS TO PROVIDE AN APPLICANT FOR LICENSURE AS A RETAIL DEALER SHALL PROVIDE A FINANCIAL STATEMENT REVIEWED BY A LICENSED CERTIFIED PUBLIC ACCOUNTANT TO THE BOARD, TO PROVIDE THE HOLDER OF A LIEN ON A MANUFACTURED HOME IS NOT SUBJECT TO THE PROVISIONS OF CHAPTER 29, TITLE 40 FOR THE SALE, EXCHANGE, OR TRANSFER BY LEASE-PURCHASE OF A REPOSSESSED MANUFACTURED HOME MADE THROUGH A LICENSED MANUFACTURED HOME RETAILER OR A SALE MADE THROUGH THE FORECLOSURE PROCESS, AND TO PROVIDE FOR THE DENIAL OF A LICENSE TO AN APPLICANT CONVICTED OF CERTAIN CRIMES, AND TO MAKE A CONFORMING CHANGE; AND TO AMEND SECTION 40-29-230, RELATING TO VIOLATIONS OF SURETY BOND, CLAIM, AND RELEASE REQUIREMENTS FOR APPLICANTS FOR LICENSURE BY THE BOARD, SO AS TO INCLUDE THE INABILITY OF AN APPLICANT TO SATISFY REQUISITE FINANCIAL RESPONSIBILITY

GUIDELINES AS A BASIS FOR INCREASING THE AMOUNT OF THE REQUIRED SURETY BOND OR OTHER APPROVED SECURITY.

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

Financial responsibility requirements

SECTION 1. Chapter 29, Title 40 of the 1976 Code is amended by adding:

"Section 40-29-95. (A) The board shall consider the financial responsibility of an applicant as determined by this section and regulations promulgated by the board.

(B) A retail dealer applicant who fails to possess cash or cash equivalency in an amount equal to or greater than one hundred fifty thousand dollars or a credit score of less than seven hundred must appear before the board.

(C) Should the board license an applicant who is unable to meet the financial responsibility guidelines of this section or the regulations of the board, then the board may modify or restrict the activities of the licensee."

Dealer license number required in certain advertisements

SECTION 2. Chapter 29, Title 40 of the 1976 Code is amended by adding:

"Section 40-29-325. Licensed manufactured housing retail dealers shall include their dealer license number on any print, Internet, or email advertisement by the retail dealer for the sale of a manufactured home located in South Carolina."

Application requirements, certain lienholder conveyance exempt

SECTION 3. Section 40-29-200 of the 1976 Code is amended to read:

"Section 40-29-200. (A) All licenses expire June thirtieth of each even-numbered year following the date of issue, unless sooner revoked or suspended.

(B) An applicant for licensure shall:

(1) demonstrate financial responsibility as required by Section 40-29-95;

(2) for a retail dealer, provide a financial statement reviewed by a licensed certified public accountant;

(3) not have engaged illegally in the licensed classification;

(4) demonstrate familiarity with the regulations adopted by the board concerning the classification for which application is made;

(5) if a corporation, have complied with the laws of South Carolina regarding qualification for doing business in this State or have been incorporated in South Carolina and have and maintain a registered agent and a registered office in this State;

(6) submit proof of registration with the Department of Revenue and submit a current tax identification number;

(7) where applicable, pass an examination administered by the board or its designated test provider in the license classification for which application is made;

(8) where applicable, complete training as prescribed by the board.

(C) A manufactured housing license is not required for a licensed real estate salesman or licensed real estate broker who negotiates or attempts to negotiate for any legal entity the listing, sale, purchase, exchange, lease, or other disposition of a used manufactured or mobile home in conjunction with the listing, sale, purchase, exchange, lease, or other disposition of real estate upon which the used manufactured or mobile home is located.

(D) The holder of a lien on a manufactured home who sells, exchanges, or transfers by lease-purchase a repossessed manufactured home subject to the lien is not subject to the provisions of this chapter if the sale, exchange, or transfer is through a licensed manufactured home retail dealer. A sale by a lienholder conducted through the foreclosure process of Section 29-3-610, et seq. may not be subject to the provisions of this chapter.

(E) A license must be issued in only one person's name who may be the individual owner, stockholder, copartner, manufactured home retail salesman or other representative of a manufactured home manufacturer, manufactured home retail dealer, or other entity required to be licensed. It is the duty of a manufactured home retail dealer and manufactured home manufacturer to conspicuously display the licenses in the established place of business. Manufactured home retail salesmen and manufactured home contractors, installers, and repairers are required to carry their licenses on their persons at all times when

they are doing business in this State, and they must be shown upon request.

(F) The board may deny a license to an applicant who submits an application meeting the requirements of this chapter if the applicant has been convicted in a court of competent jurisdiction of a violent crime as defined in Section 16-1-60, a felony directly related to any aspect of the business of manufactured housing, or a felony, an essential element of which is dishonesty, reasonably related to any aspect of the business of manufactured housing.

(G) No person may be issued a license as a manufactured home retail dealer unless the person can show proof satisfactory to the board of two years' experience in the manufactured home industry or other relevant experience acceptable to the board.

(H) Notwithstanding any other provision of law, the board may not grant reciprocity or issue a license to an applicant:

(1) whose license in another state is currently restricted in any way, including probationary or other conditions, or was surrendered in lieu of disciplinary action or was revoked;

(2) who has disciplinary action pending against him in another state; or

(3) who is currently under sentence, including probation or parole, for a violation of Section 16-1-60, a felony directly related to any aspect of the business of manufactured housing, or a felony, an essential element of which is dishonesty, reasonably related to any aspect of the business of manufactured housing.

(I)(1) An applicant may be granted an apprentice salesperson license for up to one hundred twenty days. An apprentice salesperson license may not be issued to an applicant if the applicant has ever been:

(a) denied any type of license issued pursuant to this chapter;

(b) subject to suspension or revocation of a license issued pursuant to this chapter; or

(c) subject to any disciplinary action taken in accordance with this chapter.

(2) An applicant is subject to all of the requirements of this chapter and regulations promulgated pursuant to this chapter, except that an applicant is not required to complete the training, testing, and bond requirements established for a regular retail salesperson license."

Surety bonds and other required security

SECTION 4. Section 40-29-230(B)(3) of the 1976 Code is amended to read:

"(3) The board, upon a finding of a violation by a licensee or that an applicant is unable to meet the financial responsibility guidelines, may further require the licensee to increase the amount of a surety bond or other approved security. An increase must be proportioned to the seriousness of the offense, the repeat nature of the licensee's violations, or related to the financial condition of an applicant. The total amount may not exceed an additional seventy-five thousand dollars for manufacturers, fifty thousand dollars for dealers, twenty thousand dollars for salespersons, and ten thousand dollars for manufactured home contractors, installers, and repairers. The board, after one year, may reduce an increased surety bond or other approved security when satisfied that violations have been cured by appropriate corrective action and that the licensee is otherwise in good standing. The bonds cannot be reduced below amounts provided in this section."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 19th day of June, 2013.

Approved the 20th day of June, 2013.

No. 98

(R119, H3360)

AN ACT TO AMEND SECTIONS 57-5-10, 57-5-70, AND 57-5-80, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMPOSITION OF THE STATE HIGHWAY SYSTEM, ADDITIONS TO THE STATE HIGHWAY SECONDARY SYSTEM, AND THE DELETION AND REMOVAL OF ROADS FROM THE STATE HIGHWAY SECONDARY SYSTEM, SO AS TO PROVIDE THAT ALL HIGHWAYS WITHIN THE STATE HIGHWAY SYSTEM SHALL BE CONSTRUCTED TO THE DEPARTMENT OF TRANSPORTATION STANDARDS, TO PROVIDE THE FUNDING SOURCES THAT THE DEPARTMENT MAY USE TO CONSTRUCT AND MAINTAIN THESE HIGHWAYS, TO

REVISE THE PROCEDURE AND ENTITIES TO WHICH THE DEPARTMENT MAY TRANSFER ROADS WITHIN THE STATE HIGHWAY SECONDARY SYSTEM, AND TO REVISE THE PROCEDURE WHEREBY THE DEPARTMENT MAY ADD A COUNTY OR MUNICIPAL ROAD TO THE STATE HIGHWAY SYSTEM; BY ADDING SECTION 11-43-165 SO AS TO PROVIDE THAT DURING EACH FISCAL YEAR, THE DEPARTMENT OF TRANSPORTATION SHALL TRANSFER FIFTY MILLION DOLLARS FROM NONTAX SOURCES TO THE SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK TO BE USED TO FINANCE CERTAIN PROJECTS, TO PROVIDE THAT GENERAL REVENUE APPROPRIATED TO THE DEPARTMENT FOR "HIGHWAY ENGINEERING PERMANENT IMPROVEMENTS" IS EXEMPT FROM ACROSS-THE-BOARD REDUCTIONS, AND TO PROVIDE THAT THE IMPLEMENTATION OF THIS SECTION IS CONTINGENT UPON FIFTY MILLION DOLLARS BEING APPROPRIATED TO THE DEPARTMENT OF TRANSPORTATION IN THE 2013-2014 GENERAL APPROPRIATIONS ACT FOR THE PURPOSES PROVIDED IN THIS SECTION; BY ADDING SECTION 12-36-2647 SO AS TO PROVIDE THAT FIFTY PERCENT OF THE REVENUES OF CERTAIN SALES, USE, AND CASUAL EXCISE TAXES DERIVED ON THE SALE, USE, OR TITLING OF MOTOR VEHICLES REQUIRED TO BE LICENSED AND REGISTERED BY THE DEPARTMENT OF MOTOR VEHICLES MUST BE CREDITED TO THE STATE NON-FEDERAL AID HIGHWAY FUND AND USED EXCLUSIVELY FOR CERTAIN PURPOSES; AND TO PROVIDE THAT THERE IS TRANSFERRED TO THE DEPARTMENT OF TRANSPORTATION AN AMOUNT NOT TO EXCEED FIFTY MILLION DOLLARS TO BE USED BY THE DEPARTMENT FOR BRIDGE REPLACEMENT AND REHABILITATION WHICH SHALL SERVE AS THE MATCH REQUIREMENT FOR CERTAIN ACTIVE FEDERAL AID ELIGIBLE BRIDGE REPLACEMENT PROJECTS AND PRIORITIZED REHABILITATION PROJECTS.

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

Funding sources for the state highway system

SECTION 1. Section 57-5-10 of the 1976 Code is amended to read:

"Section 57-5-10. The state highway system shall consist of a statewide system of connecting highways that shall be constructed to the Department of Transportation's standards and that shall be maintained by the department in a safe and serviceable condition as state highways. The department may utilize funding sources including, but not limited to, the State Non-Federal Aid Highway Fund and the State Highway Fund as established by Section 57-11-20 in carrying out the provisions of this section. The complete state highway system shall mean the system of state highways as now constituted, consisting of the roads, streets, and highways designated as state highways or designated for construction or maintenance by the department pursuant to law, together with the roads, streets, and highways added to the state highway system by the Commission of the Department of Transportation, and the roads, streets, and highways that may be added to the system pursuant to law. Roads and highways in the state highway system are classified into three classifications:

(1) interstate system of highways;
(2) state highway primary system; and
(3) state highway secondary system."

Highway transfers to the state highway system

SECTION 2. Section 57-5-70 of the 1976 Code is amended to read:

"Section 57-5-70. A county or municipality and the department may by mutual consent agree to transfer a road from the county or municipal road system to the state highway system. The transfer may be of the road 'as is', without further improvement to the road or upon such terms and conditions as the parties mutually agree. Notification of the transfer must be given to the county's legislative delegation. If the department determines that a road in the county or municipal road system is necessary for the interconnectivity of the state highway system, and the municipality or county does not consent to the transfer, the department may initiate a condemnation action to acquire the road, or a portion of it, and the county or municipality is not required to make any further improvements to it."

Highway transfers from the state secondary system

SECTION 3. Section 57-5-80 of the 1976 Code is amended to read:

"Section 57-5-80. The department may transfer from the state highway secondary system any road under its jurisdiction, determined by the department to be of low traffic importance, to one of the parties indicated in this section if mutual consent is reached between the department and the party that the road is being transferred to:

(a) a county or municipality;
(b) a school;
(c) a governmental agency;
(d) a nongovernmental entity; or
(e) a person.

In all cases, the county or municipality shall have right of first refusal to accept roads into their maintenance responsibility when roads are considered for transfer from the state highway system to a nongovernmental entity or person and in no case may a state road be transferred to a nongovernmental entity unless all persons and businesses located on that road are in agreement with the transfer. Maintenance responsibility for roads transferred from the state highway system pursuant to the provisions of this section shall transfer from the jurisdiction of the department to the jurisdiction of the county or municipality, school, governmental agency, nongovernmental entity, or person, effective upon notice from the department of official action removing the road from the state highway system. Notification of the transfer must be given to the county's legislative delegation."

South Carolina Transportation Infrastructure Bank

SECTION 4. A. Article 1, Chapter 43, Title 11 of the 1976 Code is amended by adding:

"Section 11-43-165. Each fiscal year, the South Carolina Department of Transportation shall transfer fifty million dollars from nontax sources to the South Carolina Transportation Infrastructure Bank. The department may transfer the total amount in one lump sum or it may transfer the amount quarterly in four equal installments. The general fund revenue appropriated to the department for 'Highway Engineering Permanent Improvements' in the annual general appropriations act is exempt from any across-the-board reductions. The transferred funds must be used solely by the bank to finance bridge

replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates. The department shall submit a list of bridge and road projects to the bank for its consideration. Transferred funds may not be used for projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed by this section to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing."

B. This section takes effect July 1, 2013. Implementation of Section 11-43-165 is contingent upon fifty million dollars being appropriated to the South Carolina Department of Transportation in the 2013-2014 General Appropriations Act for the purposes provided for in Section 11-43-165.

Sources of revenue used for highway construction and maintenance

SECTION 5. A. The General Assembly finds that:

(1) before a motor vehicle may be licensed and registered by the South Carolina Department of Motor Vehicles for the privilege of using the public highways of this State, that department either collects or confirms the collection of any applicable sales, use, and casual excise taxes due on the vehicle;

(2) without the required registration and licensing it is unlawful for a motor vehicle to use the public highways of this State; and

(3) the revenue of the sales, use, and casual excise tax required to be paid before a motor vehicle may be registered and licensed in this State is included within the "sources of revenue" that may be pledged to secure highway bonds pursuant to Section 13(6)(a), Article X of the Constitution of this State.

B. Article 25, Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Section 12-36-2647. Notwithstanding the provisions of Section 59-21-1010, fifty percent of the revenues of sales, use, and casual excise taxes derived pursuant to Sections 12-36-2620(1) and 12-36-2640(1) on the sale, use, or titling of a motor vehicle required to be licensed and registered by the South Carolina Department of Motor Vehicles, otherwise required to be credited as provided pursuant to Section 59-21-1010, instead must be credited to the State Non-Federal

Aid Highway Fund established pursuant to Section 57-11-20. Revenues credited to the State Non-Federal Aid Highway Fund pursuant to this section must be used exclusively for highway, road, and bridge maintenance, construction, and repair."

C. This section takes effect July 1, 2013.

Transfer of revenue to the Department of Transportation

SECTION 6. A. There is transferred to the Department of Transportation an amount of unobligated Fiscal Year 2012-2013 general fund revenue not to exceed $50,000,000, which is in excess of the $159,845,460 designated as the source of revenue to fund the appropriations in Proviso 118.17 of the Fiscal Year 2013-2014 General Appropriations Act, to be used solely by the department for bridge replacement and rehabilitation. The revenue is deemed to have occurred and is available for use after September 1, 2013, following the Comptroller General's close of the state's books on Fiscal Year 2012-2013. These funds shall serve as the match requirement for active federal aid eligible bridge replacement projects currently programmed in the Statewide Transportation Improvement Program (STIP) and Section 57-1-370(B)(8) prioritized rehabilitation projects approved by the commission for future inclusion in the STIP as of February 21, 2013.

B. This section takes effect July 1, 2013.

Savings clause

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 8. Unless otherwise provided, this act takes effect upon approval by the Governor.

Ratified the 19th day of June, 2013.

Approved the 24th day of June, 2013.

No. 99

(R122, H3717)

AN ACT TO AMEND SECTION 16-3-1700, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE OFFENSES OF HARASSMENT AND STALKING, SO AS TO INCLUDE IN THE PURVIEW OF THE OFFENSES PERSONS WHO COMMIT THE OFFENSES WHILE SUBJECT TO THE TERMS OF A RESTRAINING ORDER ISSUED BY THE FAMILY COURT; TO AMEND SECTIONS 16-3-1710, 16-3-1720, AND 16-3-1730, ALL AS AMENDED, RELATING TO PENALTIES FOR HARASSMENT IN THE SECOND DEGREE, HARASSMENT IN THE FIRST DEGREE, AND STALKING, RESPECTIVELY, ALL SO AS TO INCLUDE PERSONS SUBJECT TO A RESTRAINING ORDER ISSUED BY THE FAMILY COURT; TO AMEND SECTION 20-4-60, AS AMENDED, RELATING TO ORDERS OF PROTECTION FROM DOMESTIC ABUSE, SO AS TO PROVIDE A PROCEDURE FOR VACATING AN ORDER OF PROTECTION AND DESTRUCTION OF THE RECORDS OF THE ORDER WHEN MUTUAL ORDERS OF PROTECTION HAVE BEEN ENTERED THAT DO NOT COMPLY WITH THE PROVISIONS OF THE STATUTE; AND TO AMEND SECTION 16-3-1760, AS AMENDED, RELATING TO EMERGENCY HEARINGS FOR TEMPORARY RESTRAINING ORDERS, SO AS TO PROVIDE A PROCEDURE FOR VACATING A TEMPORARY RESTRAINING ORDER AND DESTRUCTION OF THE RECORDS OF THE ORDER WHEN AN ORDER WAS IMPROPERLY ISSUED DUE TO UNKNOWN FACTS.

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

Harassment and stalking, definitions, inclusion of family court restraining orders

SECTION 1. Section 16-3-1700 of the 1976 Code, as last amended by Act 106 of 2005, is further amended by adding an appropriately lettered subsection at the end to read:

"( ) A person who commits the offense of harassment in any degree or stalking, as defined in this section, while subject to the terms of a restraining order issued by the family court may be charged with a violation of this article and, upon conviction, may be sentenced pursuant to the provisions of Section 16-3-1710, 16-3-1720, or 16-3-1730."

Harassment, penalties, inclusion of family court restraining orders

SECTION 2. Section 16-3-1710(B) of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"(B) A person convicted of harassment in the second degree is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, imprisoned not more than one year, or both if:

(1) the person has a prior conviction of harassment or stalking within the preceding ten years; or

(2) at the time of the harassment an injunction or restraining order, including a restraining order issued by the family court, was in effect prohibiting the harassment."

Harassment, penalties, inclusion of family court restraining orders

SECTION 3. Section 16-3-1720(B) of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"(B) A person who engages in harassment in the first degree when an injunction or restraining order, including a restraining order issued by the family court, is in effect prohibiting this conduct is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars, imprisoned not more than three years, or both."

Stalking, penalties, inclusion of family court restraining orders

SECTION 4. Section 16-3-1730(B) of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"(B) A person who engages in stalking when an injunction or restraining order, including a restraining order issued by the family court, is in effect prohibiting this conduct is guilty of a felony and, upon conviction, must be fined not more than seven thousand dollars, imprisoned not more than ten years, or both."

Orders of protection, vacating the order, destruction of records

SECTION 5. Section 20-4-60 of the 1976 Code, as last amended by Act 319 of 2008, is further amended by adding at the end:

"(F) If mutual orders of protection have been entered that do not comply with the provisions of this section a petitioner may request the order be vacated and all records of the order be destroyed."

Temporary restraining orders, vacating the order, destruction of records

SECTION 6. Section 16-3-1760 of the 1976 Code, as last amended by Act 106 of 2005, is further amended by adding at the end:

"(E) Upon motion of a party, the court may determine that a temporary restraining order was improperly issued due to unknown facts. The court may order the temporary restraining order vacated and all records of the improperly issued restraining order destroyed."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 19th day of June, 2013.

Approved the 20th day of June, 2013.

No. 100

(R46, S143)

AN ACT TO AMEND ARTICLES 1, 2, 3, AND 4 OF TITLE 62, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA PROBATE CODE, SO AS TO, AMONG OTHER THINGS, DEFINE THE JURISDICTION OF THE PROBATE CODE, TO DETERMINE INTESTATE SUCCESSION, TO PROVIDE FOR THE PROCESS OF EXECUTING A WILL, TO PROVIDE FOR THE PROCESS TO PROBATE AND ADMINISTER A WILL, AND TO PROVIDE FOR LOCAL AND FOREIGN PERSONAL REPRESENTATIVES; AND TO AMEND ARTICLES 6 AND 7 OF TITLE 62, RELATING TO THE SOUTH CAROLINA PROBATE CODE, SO AS TO PROVIDE FOR THE GOVERNANCE OF NONPROBATE TRANSFERS, AND TO AMEND THE SOUTH CAROLINA TRUST CODE.

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

Articles 1, 2, 3, and 4 revised

SECTION 1. Articles 1, 2, 3, and 4 of Title 62 of the 1976 Code are amended to read:

"Article 1

General Provisions, Definitions, and Probate Jurisdiction of Court

Part 1

Short Title, Construction, General Provisions

Section 62-1-100. (a) Except as otherwise provided, this Code takes effect July 1, 1987.

(b) Except as provided elsewhere in this Code, on the effective date of this Code:

(1) the Code applies to any estates of decedents dying thereafter;

(2) the procedural provisions of the Code apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the

opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

(3) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this Code. Unless otherwise provided in the Code, a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions remain in force with respect to that right;

(5) a rule of construction or presumption provided in this code applies to multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

(c) Section 62-2-502 is effective for all wills executed after June 27, 1984, whether the testator dies before or after July 1, 1987.

Section 62-1-101. Sections 62-1-101 et seq. shall be known and may be cited as the South Carolina Probate Code. References in Sections 62-1-101 et seq. to the term 'Code', unless the context clearly indicates otherwise, shall mean the South Carolina Probate Code.

Section 62-1-102. (a) This Code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this Code are:

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(2) to discover and make effective the intent of a decedent in the distribution of his property;

(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;

(4) to facilitate use and enforcement of certain trusts;

(5) to make uniform the law among the various jurisdictions.

Section 62-1-103. Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions.

Section 62-1-104. If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application and to this end the provisions of this Code are declared to be severable.

Section 62-1-105. This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Section 62-1-106. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may: (i) obtain appropriate relief against the perpetrator of the fraud and (ii) restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

REPORTER'S COMMENT
By virtue of this section, the six-year period of limitation provided by Section 15-3-530(7) of the 1976 Code for actions for relief on the ground of fraud is reduced, with respect to fraud perpetrated in connection with proceedings and statements filed under this Code, or to circumvent its provisions or purposes. Under this section, actions for relief on the ground of fraud must be brought within two years after discovery of the fraud. In no event, however, may an action be brought against one not the perpetrator of the fraud (such as an innocent party benefiting from the fraud) later than five years after the commission of the fraud.
The last sentence of this section, however, excepts from this section actions 'relating to fraud practiced on a decedent during his lifetime which affect the succession of his estate' such as fraud inducing the execution or revocation of a will. There is some general authority for the proposition that one who is damaged by fraud which interferes with

the making of a will may maintain an action for damages against the person who commits the fraud, 79 Am. Jur. 2d, Wills Section 414. In cases involving direct contest of wills which are allegedly the result of fraud, however, the provisions of Section 62-3-108 would be applicable and a formal probate proceeding would have to be commenced within the later of twelve months from the informal probate or three years from the decedent's death, at which time the allegations of fraud would be considered.

The 2013 amendment clarified that any person injured by the effects of fraud may (i) obtain relief against the perpetrator of the fraud and (ii) restitution from any other person (other than a bona fide purchaser) benefitting from the fraud.

Section 62-1-107. In proceedings under this Code the South Carolina Rules of Evidence are applicable unless specifically displaced by the Code.

REPORTER'S COMMENT
This section states that the rules of evidence that apply in circuit court also apply in probate court proceedings unless specifically displaced by provisions of the South Carolina Probate Code. The 2011 Amendment removed those sections related to evidence as to the status of death, and these provisions have been incorporated into §62-1-507 of the Uniform Simultaneous Death Act. See §§62-1-500 to 62-1-510 for the Uniform Simultaneous Death Act.

Section 62-1-108. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. The term 'presently exercisable general power of appointment' includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.

REPORTER'S COMMENT
This section allows one who is the holder of a presently exercisable 'general power of appointment' (which, in this context, means one having the power to take absolute ownership of property to himself, either by appointment, by amendment, or by revocation) to agree to actions taken by a personal representative or by a trustee, to consent to the modification or termination of a trust or a deviation from its terms, and, thereby, to bind the beneficiaries whose interests are subject to the power.

Section 62-1-109. Unless expressly provided otherwise in a written employment agreement, the creation of an attorney-client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. This section is intended to be declaratory of the common law and governs relationships in existence between lawyers and persons serving as fiduciaries as well as such relationships hereafter created.

REPORTER'S COMMENTS
This section was enacted and intended to clarify to whom an attorney representing a fiduciary owes a duty: unless a written employment agreement expressly provides otherwise, the attorney for a fiduciary owes a duty only to the fiduciary and not to any other person. Thus, this section confirms that an attorney for the fiduciary does not owe any duty or obligation to a beneficiary of the estate for which the fiduciary serves; there is no direct or vicarious duty owed by the attorney to a beneficiary without an express written agreement to the contrary. Moreover, the attorney for the fiduciary owes no duty to the fiduciary estate or property. The attorney effectively represents the fiduciary and not the fiduciary estate. The rule of this section applies even if the fiduciary pays the attorney from the estate for which the fiduciary serves. The section is expressly declarative of the common law and applies to attorney-client relationships existing before and after the enactment of this section.

Section 62-1-110. Whenever an attorney-client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney-client privilege unless waived by the fiduciary, even though fiduciary funds may be used to

compensate the lawyer for legal services rendered to the fiduciary. The existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to any waiver of the privilege for communications between the lawyer and the fiduciary.

REPORTER'S COMMENT
This section was enacted and intended to: (i) expressly reject the concept of a 'fiduciary exception' to any attorney-client privilege; (ii) encourage full disclosure by the fiduciary to the lawyer to further the administration of justice; and (iii) foster confidence between a fiduciary and his lawyer that will lead to a trusting and open attorney-client dialogue. See Estate of Kofsky, 487 Pa. 473 (1979). This section also expressly rejects the holding set forth in the case of Riggs Natl. Bank v. Zimmer, 355 A.2d 709 (Del. Ch. 1976)(trustee's invocation of the attorney-client privilege does not shield document from disclosure to trust beneficiaries) as applied by the Court in Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005).

Section 62-1-111. In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy.

REPORTER'S COMMENT
This section was enacted to clarify the probate court's authority to award costs and expenses. See §62-7-1004 for a similar provision in the South Carolina Trust Code.

Part 2

Definitions

Section 62-1-201. Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code:

(1) 'Application' means a written request to the probate court for an order. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.

(2) 'Beneficiary', as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer

and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) 'Child' includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(4) 'Claims', in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) 'Court' means the court or branch having jurisdiction in matters as provided in this Code.

(6) 'Conservator' means a person who is appointed by a court to manage the estate of a protected person.

(7) 'Devise', when used as a noun, means a testamentary disposition of real or personal property, including both devise and bequest as formerly used, and when used as a verb, means to dispose of real or personal property by will.

(8) 'Devisee' means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) 'Disability' means cause for a protective order as described by Section 62-5-401.

(10) 'Distributee' means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, 'testamentary trustee' includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(11) 'Estate' includes the property of the decedent, trust, or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration.

(12) 'Exempt property' means that property of a decedent's estate which is described in Section 62-2-401.

(13) 'Expense of administration' includes commissions of personal representatives, fees and disbursements of attorneys, fees of appraisers, and such other expenses that are reasonably incurred in the administration of the estate.

(14) 'Fair market value' is the price that property would sell for on the open market that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.

(15) 'Fiduciary' includes personal representative, guardian, conservator, and trustee.

(16) 'Foreign personal representative' means a personal representative of another jurisdiction.

(17) 'Formal proceedings' means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for circuit courts and other rules of procedure in this title.

(18) 'Guardian' means a person appointed by the court as guardian, but excludes one who is a guardian ad litem.

(19) 'General power of appointment' means any power that would cause income to be taxed to the fiduciary in his individual capacity under Section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under Section 2041(a)(2) or 2514(c) of the Internal Revenue Code.

(20) 'Heirs' means those persons, including the surviving spouse, who are entitled under the statute of intestate succession to the property of a decedent.

(21) 'Incapacitated person' is as defined in Section 62-5-101.

(22) 'Informal proceedings' means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.

(23) 'Interested person' includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(24) 'Issue' of a person means all his lineal descendants whether natural or adoptive of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.

(25) 'Lease' includes an oil, gas, or other mineral lease.

(26) 'Letters' includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(27) 'Minor' means a person who is under eighteen years of age, excluding a person under the age of eighteen who is married or emancipated as decreed by the family court.

(28) 'Mortgage' means any conveyance, agreement, or arrangement in which real property is used as security.

(29) 'Nonresident decedent' means a decedent who was domiciled in another jurisdiction at the time of his death.

(30) 'Organization' includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(31) 'Parent' includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(32) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(33) 'Personal representative' includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. 'General personal representative' excludes special administrator.

(34) 'Petition' means a complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

(35) 'Probate estate' means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy.

(36) 'Proceeding' includes action at law and suit in equity.

(37) 'Property' includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(38) 'Protected person' is as defined in Section 62-5-101.

(39) 'Protective proceeding' is as defined in Section 62-5-101.

(40) 'SCACR' means the South Carolina Appellate Court Rules.

(41) 'Security' includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) 'Security interest' means any conveyance, agreement, or arrangement in which personal property is used as security.

(43) 'Settlement' in reference to a decedent's estate includes the full process of administration, distribution, and closing.

(44) 'Special administrator' means a personal representative as described by Sections 62-3-614 through 62-3-618.

(45) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(46) 'Successor personal representative' means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(47) 'Successors' means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.

(48) 'Testacy proceeding' means a formal proceeding to establish a will or determine intestacy.

(49) 'Trust' includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. 'Trust' excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6 (Sections 62-6-101 et seq.), custodial arrangements pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee

benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(50) 'Trustee' includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(51) 'Ward' is as defined in Section 62-5-101.

(52) 'Will' includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

REPORTER'S COMMENT

The definitions set out in this section are applicable throughout this Code. Of interest is the definition of 'claims' in item (4) which includes claims arising out of tort.

Also see Sections 62-4-101, 62-5-101, and 62-6-101 for additional definitions for Articles 4, 5, and 6.

The 2010 amendment revised certain definitions in Section 62-1-201, i.e., 'application' in item (1), 'formal proceedings' in item (17), 'informal proceedings' in item (22), 'petition' in item (34), and 'testacy proceeding' in item (48), as well as other relevant sections throughout the Probate Code, to clarify that the law requires a summons in formal proceedings and the rules of civil procedure adopted for the circuit court and other rules of procedure in this title apply to and govern formal proceedings in probate court. See S.C. Code §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP; also see, Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).

Prior to the 2010 amendments, certain confusion existed regarding the requirement of a summons in a formal proceeding and how the South Carolina Rules of Civil Procedure apply to formal proceedings in the probate court. The 2010 amendments in this section and throughout other portions of the Probate Code are intended to minimize such confusion and to expressly clarify that a 'formal proceeding' is commenced by a summons and petition and governed by the rules of civil procedure adopted for the circuit court and other rules of procedure in this title, and that an 'application' does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court. Where applicable and appropriate, the 2010 amendments expand the matters in which an application may be utilized.

The 2013 amendment added definitions for 'Fair Market Value' and 'Probate Estate'. The 2013 amendment also made changes to the definitions of 'Guardian', 'Person', and 'State'. The definition of 'Stepchild' has been removed as a result of changes to Section 62-2-103(6).

Part 3

Scope, Jurisdiction, and Courts

Section 62-1-301. Except as otherwise provided in this Code, this Code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected domiciled in this State, (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State, (3) incapacitated persons and minors in this State, (4) survivorship and related accounts in this State, and (5) trusts subject to administration in this State.

REPORTER'S COMMENT
This section merely states that this Code applies to matters having a connection to this State by reason of a person's domicile or the situs of property.

Section 62-1-302. (a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court;

(2) subject to Part 7, Article 5, and excluding jurisdiction over the care, custody, and control of a person or minor:

(i) protective proceedings and guardianship proceedings under Article 5;

(ii) gifts made pursuant to the South Carolina Uniform Gifts to Minors Act under Article 5, Chapter 5, Title 63;

(3) trusts, inter vivos or testamentary, including the appointment of successor trustees;

(4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;

(5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights of way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights of way; and

(6) the involuntary commitment of persons suffering from mental illness, mental retardation, alcoholism, drug addiction, and active pulmonary tuberculosis.

(b) The court's jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15-51-41 and 15-51-42 and to the allocation of settlement proceeds among the parties involved in the estate.

(c) The probate court has jurisdiction to hear and determine issues relating to paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to Section 63-3-530.

(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:

(1) formal proceedings for the probate of wills and for the appointment of general personal representatives;

(2) construction of wills;

(3) actions to try title concerning property in which the estate of a decedent or protected person asserts an interest;

(4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a 'special needs trust' as described in Article 7;

(5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and

(6) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.

(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.

(f) Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy. For any matter removed by the probate court to the circuit court pursuant to this subsection, the circuit court shall proceed upon the matter de novo.

REPORTER'S COMMENT

This section clearly states the subject matter jurisdiction of the probate court. It should be noted that the probate court has 'exclusive original jurisdiction' over the matters enumerated in this section. This means, when read with other Code provisions (such as subsection (c) of this section and Section 62-3-105), that matters within the original jurisdiction of the probate court must be brought in that court, subject to certain provisions made for removal to the circuit court by the probate court or on motion of any party.

The language of this section is similar to Section 14-23-1150 of the 1976 Code, which, in item (a), provides that probate judges are to have jurisdiction as provided in Sections 62-1-301 and 62-1-302, and other applicable sections of this South Carolina Probate Code.

The 2013 amendments added 'determination of property in which the estate of a decedent or protected person has an interest' to subsection (a)(1), substantially rewrote subsections (a)(2), (d)(3), and (d)(4), and added subsection (f), which allows the probate court to remove any pending matter to circuit court in the event a party or the court removes a related matter pursuant to subsection (d), even if that pending matter is not otherwise covered by the removal provisions of (d).

Section 62-1-303. (a) Subject to the provisions of Section 62-3-201, where a proceeding under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected persons, ward, or trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

(d) If a court transfers venue of a proceeding or file to a court in another county, venue for that proceeding or file, and any subsequent matters concerning that proceeding or file, including appeals, shall be retained by the county to which the venue has been transferred.

(e) If a probate court judge is disqualified from matters concerning a proceeding or a file, and venue has not been transferred to another county, a special probate court judge appointed for that proceeding or file has all of the powers and duties appertaining to the probate court judge of the county where the proceeding or file commenced, and venue for any subsequent matters concerning that proceeding or file, including appeals, remains with the county where that proceeding or file commenced.

REPORTER'S COMMENTS

This section provides that, where a proceeding could be held in more than one county under Section 62-3-201, the probate court in which the proceeding is first commenced has the exclusive right to proceed. If proceedings are commenced in more than one probate court, the court in which the proceeding was first commenced must continue to hear the matter unless it decides that venue is properly in another county, in which event it is to transfer the matter to that other county. Section 62-3-201 relates to testacy or appointment proceedings after death and grants venue to the county of the decedent's domicile or, if the decedent was not domiciled in this State, to any county in which his property was located.

This section also provides that venue with respect to a nonresident's estate could be in any county where he owned property. The 2013

amendment clarified that, when venue of a proceeding or file is transferred to another county, subsequent matters concerning that proceeding or file, including appeals, shall be retained by the county to which venue has been transferred. If a special probate judge is appointed because a probate judge is disqualified and recused from hearing a proceeding or an entire file, venue remains with the county where the proceeding or file commenced, unless a probate court otherwise transfers venue.

Section 62-1-304. The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a 'civil action' as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.

REPORTER'S COMMENT
The 2010 amendment revised and essentially rewrote Section 62-1-304 in order to clarify that 'formal proceedings' are governed by and subject to the rules of civil procedure adopted for the circuit court [SCRCP] and other rules of procedure in this title and that the SCRCP also govern formal proceedings and commencement of same. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP; see also, Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).

Section 62-1-305. The court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this Code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the probate court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to letters must show the date of appointment.

REPORTER'S COMMENT
This section requires that the probate court keep a record of all matters filed with the court and that records be so indexed and filed as to make them useful to those examining them. Further, the court is required to issue certified copies of documents on file.
This section does not go into the detail of Sections 14-23-1100 and 14-23-1130 of the 1976 Code which list in some detail the records which must be kept by the probate court. These sections are not incompatible with Section 62-1-305. Probate Court Rule 1, pertaining to a calendar and to books denoting titles of all cases and transactions therein, is not disturbed by this section.

Section 62-1-306. (a) If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, unless waived as provided in the rules of civil procedure for the courts of this State. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.

(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

(c) The method of drawing, summoning, and compensating jurors under this section shall be within the province of the county jury commission and shall be governed by Chapter 7, Title 14 of the 1976 Code relating to juries in circuit courts.

REPORTER'S COMMENT
This section confers a right to trial by jury in the probate court in the same kinds of proceedings in which the right to jury trial exists in the circuit court, namely, proceedings involving an issue of fact in an action for the recovery of money only or of specific real or personal property, Section 15-23-60 of the 1976 Code. If no right to trial by jury exists, the court may impanel a jury to decide any issue or fact on an advisory basis.
Chapter 7, Title 14 of the 1976 Code, relating to juries in the circuit court, governs the method of drawing, summoning, and compensating jurors.

Section 62-1-307. The acts and orders which this Code specifies as performable by the court may be performed either by the judge or by a

person, including one or more clerks, designated by the judge by a written order filed and recorded in the office of the court.

Section 62-1-308. Except as provided in subsection (1), appeals from the probate court must be to the circuit court and are governed by the following rules:

(a) A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.

(b) Within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.

(c) Where a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript. If the appellant has not received the transcript within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant may make a motion to the circuit court for an extension to serve and file the parties' briefs and Designations of Matter to be Included in the Record on Appeal, as provided in subsections (d) and (e).

(d) Within thirty days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.

(e) At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The appellant's brief shall be in a format described in Rule 208(b)(1), SCACR. Within thirty days after service of the appellant's brief, the respondent shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with

proof of service. The respondent's brief shall be in a format described in Rule 208(b)(2), SCACR. Appellant may file and serve a brief in reply to the brief of the respondent. If a reply brief is prepared, the appellant shall, within ten days after service of the respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of circuit court one copy of the reply brief with proof of service. The appellant's reply brief shall be in a format described in Rule 208(b)(3), SCACR.

(f) Within thirty days after service of the respondent's brief, the appellant shall serve a copy of the Record on Appeal (in a format described in subsections (c), (e), (f) and (g) of Rule 210, SCACR, except that the Record of Appeal need not comply with the requirements of Rule 267, SCACR) on each party who has served a brief and file with the clerk of the circuit court one copy of the Record on Appeal with proof of service.

(g) Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules. Upon final disposition of the appeal, all exhibits filed separately (as described in Rule 210(f), SCACR), but not included in the Record on Appeal, must be forwarded to the probate court.

(h) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(i) The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

(j) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court. Within forty-five days after receipt of written notice of the final decision and judgment in cases appealed, the prevailing party shall provide a copy of such decision and judgment to the probate court.

(k) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

(l) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.

REPORTER'S COMMENTS
This section provides that appeals from the probate court are to the circuit court. Under Section 62-1-308(i), any appeal from the probate court is strictly on the record.

The 2013 amendments to this section were intended to clarify the process for appeals from the probate court. With these changes, (i) the form for the Statement of Issues on Appeal follows that form set forth in Rule 208(b)(1)(B); (ii) the use of briefs is specifically contemplated and the form of the briefs follows that set forth in Rule 208, SCACR; (iii) the appellant bears the burden of preparing the record on appeal; and (iv) the prevailing party bears the burden of providing the probate court with a copy of the final decision and judgment from the circuit court, court of appeals, or Supreme Court. While the 2013 amendments do incorporate certain provisions of the SCACR, paragraph (g) clarifies that not all provisions of the SCACR apply to appeals from probate court to circuit court.

Section 62-1-309. The judges of the probate court shall be elected by the qualified electors of the respective counties for the term of four years in the manner specified by Section 14-23-1020.

REPORTER'S COMMENT
This section does not disturb Section 14-23-1040 of the 1976 Code which requires that a probate judge or an associate judge must be a qualified elector of the county in which he is to be a judge.

Part 4

Notice, Parties, and Representation
in Estate Litigation and other matters

Section 62-1-401. (a) If notice of a hearing on any petition is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his

attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) by mailing a copy thereof at least twenty days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or

(3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy thereof in the same manner as required by law in the case of the publication of a summons for an absent defendant in the court of common pleas.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

(d) Notwithstanding a provision to the contrary, the notice provisions in this section do not, and are not intended to, constitute a summons that is required for a petition.

REPORTER'S COMMENT

This section provides that, where notice of hearing on a petition is required, the petitioner shall give notice to any interested person or his attorney (1) by mailing at least twenty days in advance of the hearing, or (2) by personal delivery at least twenty days in advance of the hearing, or (3) if the person's address or identity is not known and cannot be ascertained, by publication as in the court of common pleas.

Under this Code, when a petition is filed with the court, the court is to fix a time and place of hearing and it is then the responsibility of the petitioner to give notice as provided in Section 62-1-401. See, for example, Sections 62-3-402 and 62-3-403.

The 2010 amendment added subsection (d) to clarify and avoid confusion that previously existed regarding the notice provisions in this section. The effect of the 2010 amendment was intended to make it clear that the notice provisions in this section are not intended to and do not constitute a summons, which is required for a petition in formal proceedings. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-1-402. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

Section 62-1-403. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements the following apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class by reference to the instrument creating the interests or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(i) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a person may represent his minor or unborn issue.

(iii) A minor or unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Service of summons, petition, and notice is required as follows:

(i) Service of summons, petition, and notice must be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Service of summons and petition upon, as well as notice, may be given both to a person and to another who may bind him.

(ii) Service upon and notice is given to unborn or unascertained persons who are not represented under (2)(i) or (2)(ii) above by giving

notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

REPORTER'S COMMENT

This section applies to formal proceedings and judicially supervised settlements. It provides that in certain specified instances a person will be bound by orders which are binding on others. Subitem (i) of item (2) provides that an order which is binding upon the person or persons holding a power of revocation or a general power of appointment will bind others, such as objects or takers in default, to the extent that their interests are subject to the power. This would mean that an order which is binding on one who has discretion will bind those in whose favor he might act.

Absent a conflict of interest, subitem (ii) of item (2) provides that orders binding a conservator or guardian are binding on the protected person. In certain limited instances, orders binding on a trustee or a personal representative are binding on beneficiaries and interested persons. Further, under subitem (iii) of item (2) an unborn or unascertained person is bound by orders affecting persons having a substantially identical interest. These provisions facilitate proceedings by limiting multiplicity of parties.

Item (4) permits the court at any point in a proceeding to appoint a guardian ad litem to represent a minor, an incapacitated person, an unborn or unascertained person, or one whose identity or address is unknown if the court determines that representation of that interest would otherwise be inadequate. Accordingly, in a proceeding where there are adult parties having the same interest as the minor or incapacitated person, the court may not deem it necessary to appoint a guardian ad litem if it appears that the common interest will be adequately represented. In the case of minors, the appointment of a guardian ad litem (or an attorney having the powers and duties of a guardian ad litem) is discretionary with the court. However, this Code does require that notice of the proceeding be given to adults presumably having an interest in the minor's welfare, such as the

person having care and custody of the minor, parent(s), or nearest adult relatives.

The 2010 amendment revised subsections (1) and (3) to clarify procedure for a formal proceeding, which requires a summons and petition to commence a formal proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP. The 2010 amendment also revised subsection (2)(ii) to delete 'parent' and replace it with 'person,' so that it is consistent with the remainder of that subsection and also delete 'child' and replace it with 'issue' to be broader and more inclusive.

Part 5

Uniform Simultaneous Death Act

Section 62-1-500. This part may be cited as the 'Uniform Simultaneous Death Act'.

REPORTER'S COMMENT

The 2013 amendment made significant changes to Part 5. Prior to the 2013 amendment, Part 5 did not include a 120 hour survival requirement similar to §62-2-104. The revisions to Part 5 now incorporate a default 120 hour survival requirement for testate and intestate decedents as well as for nonprobate transfers, subject to the exceptions set forth in §62-1-506.

Section 62-1-501. For purposes of this part:

(1) 'Co-owners with right of survivorship' includes joint tenants in a joint tenancy with right of survivorship, joint tenants in a tenancy in common with right of survivorship, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) 'Governing instrument' means a deed, will, trust, insurance or annuity policy, account with POD designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) 'Payor' means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or

any other person authorized or obligated by law or a governing instrument to make payments.

Section 62-1-502. (a) Except as otherwise provided by this Code, where the title to property, the devolution of property, the right to elect an interest in property, or any other right or benefit depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by at least one hundred twenty hours is deemed to have predeceased the other individual.

(b) If the language of the governing instrument disposes of property in such a way that two or more beneficiaries are designated to take alternatively by reason of surviving each other and it is not established by clear and convincing evidence that any such beneficiary has survived any other beneficiary by at least one hundred twenty hours, the property shall be divided into as many equal shares as there are alternative beneficiaries, and these shares shall be distributed respectively to each such beneficiary's estate.

(c) If the language of the governing instrument disposes of property in such a way that it is to be distributed to the member or members of a class who survived an individual, each member of the class will be deemed to have survived that individual by at least one hundred twenty hours unless it is established by clear and convincing evidence that the individual survived the class member or members by at least one hundred twenty hours.

Section 62-1-503. Except as otherwise provided by this Code, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by at least one hundred twenty hours is deemed to have predeceased the event.

Section 62-1-504. Except as otherwise provided by this Code, if:

(a) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by at least one hundred twenty hours, one-half of the property passes as if one had survived by at least one hundred twenty hours and one-half as if the other had survived by at least one hundred twenty hours;

(b) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the

others by at least one hundred twenty hours, the property passes to the estates of each of the co-owners in the proportion that one bears to the whole number of co-owners.

REPORTER'S COMMENT
This section applies to property or accounts held by co-owners with right of survivorship. As defined in §62-1-501, the term 'co-owners with right of survivorship' includes multiple-party accounts with right of survivorship.

Section 62-1-505. Notwithstanding any other provisions of the Code, solely for the purpose of determining whether a decedent is entitled to any right or benefit that depends on surviving the death of a decedent's killer under Section 62-2-803, the killer is deemed to have predeceased the decedent, and the decedent is deemed to have survived the killer by at least one hundred twenty hours, or any greater survival period required of the decedent under the killer's will or other governing instrument, unless it is established by clear and convincing evidence that the killer survived the victim by at least one hundred twenty hours.

Section 62-1-506. Survival by one hundred twenty hours is not required if any of the following apply:

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a specified period; but survival of the event or the specified period must be established by clear and convincing evidence;

(3) the imposition of a one hundred twenty hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under other provisions of the Code; but survival must be established by clear and convincing evidence;

(4) the application of a one hundred and twenty hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence;

(5) the application of a one hundred twenty hour requirement of survival would deprive an individual or the estate of an individual of an

otherwise available tax exemption, deduction, exclusion, or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or a decedent's estate, other person, or their estate, as the transferor of any property. 'Tax' includes any federal or state gift, estate or inheritance tax;

(6) the application of a one hundred twenty hour requirement of survival would result in an escheat.

REPORTER'S COMMENT

The 2013 amendment rewrote this section.

Subsection (1). Subsection (1) provides that the 120-hour requirement of survival is inapplicable if the governing instrument 'contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case.' The application of this provision is illustrated by the following example.

Example. G died leaving a will devising her entire estate to her husband, H, adding that 'in the event he dies before I do, at the same time that I do, or under circumstances as to make it doubtful who died first,' my estate is to go to my brother Melvin. H died about 38 hours after G's death, both having died as a result of injuries sustained in an automobile accident.

Under this section, G's estate passes under the alternative devise to Melvin because H's failure to survive G by 120 hours means that H is deemed to have predeceased G. The language in the governing instrument does not, under subsection (1), nullify the provision that causes H, because of his failure to survive G by 120 hours, to be deemed to have predeceased G. Although the governing instrument does contain language dealing with simultaneous deaths, that language is not operable under the facts of the case because H did not die before G, at the same time as G, or under circumstances as to make it doubtful who died first.

Subsection (2). Subsection (2) provides that the 120-hour requirement of survival is inapplicable if 'the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period.'

Mere words of survivorship in a governing instrument do not expressly indicate that an individual is not required to survive an event by any specified period. If, for example, a trust provides that the net income is to be paid to A for life, remainder in corpus to B if B

survives A, the 120-hour requirement of survival would still apply. B would have to survive A by 120 hours. If, however, the trust expressly stated that B need not survive A by any specified period, that language would negate the 120-hour requirement of survival.

Language in a governing instrument requiring an individual to survive by a specified period also renders the 120-hour requirement of survival inapplicable. Thus, if a will devises property 'to A if A survives me by 30 days,' the express 30-day requirement of survival overrides the 120-hour survival period provided by this Act.

Subsection (4). Subsection (4) provides that the 120-hour requirement of survival is inapplicable if 'the application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.' The application of this provision is illustrated by the following example.

Example. Pursuant to a common plan, H and W executed mutual wills with reciprocal provisions. Their intention was that a $50,000 charitable devise would be made on the death of the survivor. To that end, H's will devised $50,000 to the charity if W predeceased him. W's will devised $50,000 to the charity if H predeceased her. Subsequently, H and W were involved in a common accident. W survived H by 48 hours.

Were it not for subsection (4), not only would the charitable devise in W's will be effective, because H in fact predeceased W, but the charitable devise in H's will would also be effective, because W's failure to survive H by 120 hours would result in her being deemed to have predeceased H. Because this would result in an unintended duplication of the $50,000 devise, subsection (4) provides that the 120-hour requirement of survival is inapplicable. Thus, only the $50,000 charitable devise in W's will is effective.

Subsection (4) also renders the 120-hour requirement of survival inapplicable had H and W died in circumstances in which it could not be established by clear and convincing evidence that either survived the other. In such a case, an appropriate result might be to give effect to the common plan by paying half of the intended $50,000 devise from H's estate and half from W's estate.

Under subsection (5), if the application of the 120-hour survival requirement would cause the loss of an available tax exemption, deduction, exclusion, or credit, creating a federal or State gift, estate or inheritance tax, the 120-hour survival requirement will not be applied. Additionally, under subsection (6), the 120-hour survival requirement is not applicable if it would cause an escheat.

Section 62-1-507. In addition to the South Carolina Rules of Evidence, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead under the Uniform Determination of Death Act, Section 44-43-460.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) A person whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death one hundred twenty hours or more after the time of death of another person, however the time of death of the other person is determined, establishes by clear and convincing evidence that the person survived the other person by one hundred twenty hours.

REPORTER'S COMMENT

The 2013 amendment rewrote this section. This section incorporates the provisions of former Section 62-1-107.

Section 62-1-508. (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this part, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a

claimed lack of entitlement under this part. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this part.

(2) Written notice of a claimed lack of entitlement under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this part, a payor or other third party may pay any amount owed or transfer or deposit any item of property, other than tangible personal property, held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this part, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is not obligated under this part to return the payment, item of property, or benefit, and is not liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this part is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this part.

Section 62-1-509. This part [Sections 62-1-501 et seq.] shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact substantially identical laws.

REPORTER'S COMMENT
Prior to the 2013 amendment this section was previously Section 62-1-508.

Article 2

Intestate Succession and Wills

Part 1

Intestate Succession

Section 62-2-101. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code.

REPORTER'S COMMENT
Section 62-2-101 establishes intestate succession as the method of disposition of any part of a decedent's estate not effectively disposed of by his will, as under Sections 62-2-501 and 62-2-602. It applies both in cases of total intestacy and in cases of partial intestacy. See Sections 62-1-201(11) and 62-1-201(35) for this Code's definition of the estate governed by Section 62-2-101 as to intestate succession.

Section 62-2-102. The intestate share of the surviving spouse is:
(1) if there is no surviving issue of the decedent, the entire intestate estate;
(2) if there are surviving issue, one-half of the intestate estate.

REPORTER'S COMMENT
Section 62-2-102 defines the intestate share of the decedent's surviving spouse (which term is in turn defined by Section 62-2-802) by limiting the persons with whom the surviving spouse must share any part of the intestate estate to the decedent's surviving issue, i.e., if no issue survive, the spouse takes all, and, in case issue do survive, the spouse takes one-half of the intestate estate. Section 62-2-102 draws no distinction between cases of single child survival and multiple child survival.
A husband or wife who desires to leave his or her surviving spouse more or less than the share provided by this section and to leave to other persons more or less than would otherwise be available to them may do so by executing a will.

Section 62-2-103. The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

(4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half;

(5) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the surviving paternal great-grandparents in equal shares, or to the surviving paternal great-grandparent if only one survives, or to the issue of the paternal great-grandparents if none of the great-grandparents survive, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving great-grandparent or issue of a great-grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

REPORTER'S COMMENT

Section 62-2-103 defines the intestate shares of persons, other than the surviving spouse, in that part of the intestate estate not passing to the surviving spouse under Section 62-2-102.

Subsection (1) of Section 62-2-103 gives preference to the decedent's issue as against all others, except the surviving spouse (see Section 62-2-102).

Where the surviving issue who are heirs are all of the same degree of kinship to the decedent, they take per capita, i.e., in equal shares. Where the surviving issue who are heirs are of unequal degrees, they take per capita with per capita representation, i.e., those in the nearest

degree take per capita, equal shares, as before, while those in the more remote degrees take, by representation, the equal share which their deceased ancestor in the nearest degree would have taken had he survived the decedent. Such issue in more remote degrees take their deceased ancestor's equal share, in turn, per capita with per capita representation. This section, read together with Section 62-2-106, minimizes the occurrence of unequal distributions among members of the same generation.

For an example of issue taking per capita with per capita representation, suppose death is indicated by parentheses and:

1. (X) dies intestate:
2. predeceased by two children, (A) and (B):
3. survived by two grandchildren, A's child C, and B's child D, and predeceased by one grandchild, B's child (E):
4. predeceased by two great-grandchildren, E's children (F) and (G):
5. and survived by three great-great grandchildren F's child H, and G's children I and J.

Under Section 62-2-103(1), the number of issue, in the nearest degree of kinship having surviving members, counting both those who survive and those who predecease leaving issue surviving, determines the basic shares. In this example, 'thirds' go to each of the living grandchildren C and D and, collectively, to the issue of the predeceased grandchild E. In turn, E's 'third' is divided among his issue in the same manner; and the number of his issue, in the nearest degree having surviving members, determines the further shares, which are, in this example, 'thirds' of E's 'third', or 'ninths' which go to H, I, and J. Under Section 62-2-103(1), the pre-existence of A, B, F, and G is ignored because no member of their respective degrees of kinship survived the decedent.

Subsection (2) of Section 62-2-103 allocates the entire intestate estate to the parents of the decedent if there is neither a surviving spouse nor any surviving issue.

Subsection (3) of Section 62-2-103 apportions the entire intestate estate, by representation, among the issue of the parents of the decedent only if the decedent leaves neither spouse nor issue nor parents. All issue of parents of the decedent, however remotely related to the decedent they may be, share by representation. For example, a grandnephew of decedent, related through a brother and nephew of decedent, themselves both predeceased, takes by representation and is not excluded by the survival of another brother or of another nephew of decedent.

All issue of the decedent's parents take under Section 62-2-103(3) by representation so that half blood heirs are treated the same as whole blood heirs.

Subsections (4) and (5) of Section 62-2-103 apply in cases in which the decedent is survived by neither spouse, nor issue, nor parents, nor issue of parents, but is survived by grandparents or their issue (then the entire intestate estate is distributed to them under subsection (4)), or the decedent is survived neither by grandparents nor their issue but by great-grandparents or their issue (then the entire intestate estate is distributed to them under subsection (5)). Persons, even more remotely related to decedent, the so-called 'laughing heirs,' do not share at all.

Section 62-2-104. (1) For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (2):

(a) an individual who was born before a decedent's death but who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. If it is not established that an individual who was born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period;

(b) an individual who was in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established that an individual who was in gestation at the decedent's death lived one hundred twenty hours after birth, it is deemed that the individual failed to survive for the required period.

(2) This section does not apply if it would result in a taking of the intestate estate by the state under Section 62-2-105.

REPORTER'S COMMENT

Section 62-2-104 makes clear that survival for the 120 hours is a condition for benefit of intestate succession, the homestead allowance, and the exempt property exclusion; the amendment clarifies that an infant in gestation must survive for 120 hours following birth.

Section 62-2-105. If there is no taker under the provisions of this article [Sections 62-2-101 et seq.], the intestate estate passes to the State of South Carolina.

REPORTER'S COMMENT
Section 62-2-105 provides for escheat of an intestate estate to the State of South Carolina whenever there are no heirs as prescribed in Sections 62-2-102 and 62-2-103, as affected by other sections of this Article 2, i.e., whenever neither spouse nor great-grandparents of decedent, nor issue thereof, survive decedent. The procedures regulating escheat to the State are embodied in Sections 27-19-10, et seq., of the 1976 Code.

Section 62-2-106. If representation is called for by this Code, the estate is divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner. If an interest created by intestate succession is disclaimed, the beneficiary is not treated as having predeceased the decedent for purposes of determining the generation at which the division of the estate is to be made.

REPORTER'S COMMENT
Section 62-2-106 defines the division of an intestate estate, among the heirs' respective shares, by 'representation,' i.e., as an equal division among the nearest surviving kin, with the issue of any equally near but predeceased kin taking their ancestor's share in the same manner, by representation. For an example of the application of Section 62-2-106, see the Comment to Section 62-2-103(1).

Section 62-2-107. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

REPORTER'S COMMENT
These rules of this section are carried over into the construction of wills' dispositions by Section 62-2-609.

Section 62-2-108. Issue of the decedent (but no other persons) conceived before his death but born within ten months thereafter inherit as if they had been born in the lifetime of the decedent.

REPORTER'S COMMENT
Section 62-2-108 codifies South Carolina case law establishing the right of an afterborn child of an intestate decedent to inherit. Pearson v. Carlton, 18 S.C. 47 (1882). This section expands the principle to

benefit other issue of the intestate decedent, more remotely related than his children, e.g., grandchildren. The section further expressly excepts collateral relatives of the decedent from the principle's operation.

Section 62-2-109. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) From the date the final decree of adoption is entered, and except as otherwise provided in Section 63-9-1120, an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father if:

(i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication commenced before the death of the father or within the later of eight months after the death of the father or six months after the initial appointment of a personal representative of his estate and, if after his death, by clear and convincing proof, except that the paternity established under this subitem (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

(3) A person is not the child of a parent whose parental rights have been terminated under Section 63-7-2580 of the 1976 Code, except that the termination of parental rights is ineffective to disqualify the child or its kindred to inherit from or through the parent.

REPORTER'S COMMENT

Section 62-2-109 concerns intestate succession as affected by adoptions of persons, by births out of wedlock, and by the termination of parental rights. However, this section's definition of the parent-child relationship is imported by references in Sections 62-1-201(3) defining 'child', 62-1-201(24) defining 'issue', and 62-1-201(31) defining 'parent', and in Section 62-2-609 construing class gift and family relationship terminology into the meanings of such terms and terminology as used throughout this Code and also in testators' wills. See Sections 62-2-102, 62-2-103, 62-2-106, 62-2-302, 62-2-401, 62-2-402, 62-2-603, and 62-2-609.

The rule of general applicability of Section 62-2-109(1) is that upon adoption the adopted person's intestacy relationships with all his natural relatives are severed, but are supplanted by newly established intestacy relationships with all of his adopted relatives.

However, the general rule does not apply to cases of adoption of adults. Rather, the intestacy relationships of the parties are left undisturbed by the adoption decree, unless a court finds it to be in the best interests of the persons involved to apply the general rule.

To cover the case of the marriage of a child's natural parent to a person who adopts the child, Section 62-2-109(1) provides that adoption does not sever the adopted child's intestacy relationship with 'that' natural parent. Adoption does, however, sever the adopted child's intestacy relationship with the 'other' natural parent, i.e., the natural parent not married to the person adopting the child.

Subsection (2) of Section 62-2-109 relates to the taking in intestacy by, through, or from persons born out of wedlock. It does not purport to declare such illegitimate children to be legitimate. No part of the prior South Carolina law, establishing the legitimacy of a child, is meant to be affected by Section 62-2-109(2). The bases for a finding of legitimacy, i.e., either birth to validly married parents, whether validly ceremonially married or married as at common law, or birth to parents covered by one of the legitimation statutes, Sections 20-1-30, 20-1-40, 20-1-50, 20-1-60, 20-1-80, and 20-1-90 of the 1976 Code, remains as under prior law; and, of course, such legitimate children bear intestacy relationships with their relatives.

Section 62-2-109(2) merely establishes intestacy relationships between illegitimate children and their maternal and paternal relatives.

The rule set forth in Section 62-2-109(2)(i) relates to the establishment of the illegitimate child's intestacy relationship with his father, whenever the father and mother have been ceremonially married, albeit invalidly so.

Section 62-2-109(2)(ii) allows an illegitimate child to inherit from and through his father if paternity is established by an adjudication commenced either before the father's death or within six months thereafter. A standard higher than usual, clear and convincing proof is required to be met in an adjudication commenced after, but not in an adjudication before, the father's death.

The imposition of a required adjudication and a higher standard of proof upon illegitimate children seeking to inherit from their fathers, as compared with legitimate children not similarly burdened, should pass constitutional muster under the decision of Lalli v. Lalli, 439 U.S. 259 (1978). Section 62-2-109(2)(ii) precludes the father and his kindred

from inheriting from or through the child unless the father has openly treated the child as his and has not refused to support the child.
Subsection (3) of Section 62-2-109, on intestacy relationships following the termination of parental rights, is meant to conform with Section 63-7-2590 of the 1976 Code, cutting the parent off from the child's intestate estate, but not cutting the child off from the parent's intestate estate.

Section 62-2-110. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing signed by the decedent or acknowledged in a writing signed by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property shall be taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

REPORTER'S COMMENT
Section 62-2-110 concerns the effect on intestate succession of lifetime gifts made by the intestate to donees who are his prospective heirs. The section charges such lifetime gifts, as advancements, against the intestate share of the donee-heir, but only if, first, the intestate dies wholly intestate, i.e., without a will disposing of any part of his estate. See Section 62-2-610 on satisfaction for a rule analogous to the rule of advancements but operative in the event of succession under a will.
Such gifts are treated as advancements under Section 62-2-110 only if, second, they are contemporaneously declared by the intestate or acknowledged by the donee, in writing, to be advancements.
If the donee predeceases the intestate, but issue of the donee survive as heirs of the intestate, Section 62-2-110 charges the ancestor's lifetime gifts as advancements against the intestate share of the issue-heirs, again, only if there is a total intestacy and the above-mentioned writing exists but not if the writing provides that the lifetime gifts to the ancestor are not to be treated as advancements to such issue.
Section 62-2-110 applies to lifetime gifts made to any of the heirs of the intestate, a class of donees broader than the former law's language 'child or issue of the intestate.' See Section 62-1-201(20) defining 'heirs'.

Section 62-2-110 values the advancement at the earlier of the donee's actual receipt of the gift or the intestate's death, resulting in most cases in a valuation at the date of the gift rather than at the date of death.

Section 62-2-111. A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

REPORTER'S COMMENT
Section 62-2-111 qualifies the personal representative's right and obligation of retainer, i.e., to offset or charge the amounts of debts owed to the decedent against the shares of successors to his estate, as provided for in Section 62-3-903. Section 62-2-111 limits such charge's effects so that they affect only the debtor's share and not also the intestate shares of the debtor's issue. This codifies South Carolina case law. See Stokes v. Stokes, 62 S.C. 346, 40 S.E. 662 (1902), where the debt of a predeceased brother of the intestate was not charged against the brother's children's intestate shares.

Section 62-2-112. No person is disqualified to take as an heir because he, or a person through whom he claims, is or has been an alien.

REPORTER'S COMMENT
Section 62-2-112 allows an individual to inherit property even though he, or a person through whom he claims, is or has been an alien. This was the prior South Carolina law notwithstanding the mandate of Article 3, Section 35 of the South Carolina Constitution (1895) and the provisions of former Sections 27-13-30 and 27-13-40 of the 1976 Code, limiting alien ownership of South Carolina land to five hundred thousand acres, the last obviously unrealistic as an effective limit at approximately twenty-eight miles square.

Section 62-2-113. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.

REPORTER'S COMMENT
Section 62-2-113 precludes possibility of a person related to the decedent through two lines of relationship, adopted and natural or

either, from inheriting other than through the single line which will entitle him to the larger share.

Section 62-2-114. Notwithstanding any other provision of law, if the parents of the deceased would be the intestate heirs pursuant to Section 62-2-103(2), upon the service of a summons, petition and notice by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority. If the court makes such a determination as to a parent or parents, the parent shall be a disqualified parent. The proceeds, or portion of the proceeds, that a disqualified parent would have taken shall pass as though the disqualified parent had predeceased the decedent.

REPORTER'S COMMENT
The 2013 amendment makes clear that an action under this section must be commenced by the service of a Summons, Petition and Notice by either parent or any other party of potential interest; the amendment defines a disqualified parent as a parent found by the court by a preponderance of the evidence not to have reasonably have provided support for the deceased child; the amendment clarifies that the portion, or all , as the court determines, of the intestate share denied to the disqualified parent shall pass as if the disqualified parent had predeceased the child.

Part 2

Elective Share of Surviving Spouse

Section 62-2-201. (a) If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of one-third of the decedent's probate estate, as computed under Section 62-2-202, the share to be satisfied as detailed in Sections 62-2-206 and 62-2-207 and, generally, under the limitations and conditions hereinafter stated.

(b) If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

(c) 'Surviving spouse', as used in this Part, is as defined in Section 62-2-802.

REPORTER'S COMMENT
See Section 62-2-802 for the definition of 'spouse' which controls in this part.
Under the common law, a widow was entitled to dower which was a life estate in a fraction of lands of which her husband was seized of an estate of inheritance at any time during the marriage. The South Carolina Supreme Court in Boan v. Watson, 281 S.C. 516, 316 S.E.2d 401 (1984) declared that dower was unconstitutional as a violation of the equal protection clauses of the South Carolina and United States Constitutions. South Carolina, like other states, substitutes an elective share in the whole estate for dower and the widower's common law right of curtesy.

Section 62-2-202. (a) For purposes of this Part, probate estate means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy, reduced by funeral and administration expenses and enforceable claims.

(b) Except as provided in Section 62-7-401(c) with respect to a revocable inter vivos trust found to be illusory, the elective share shall apply only to the decedent's probate estate.

REPORTER'S COMMENT
The 2013 amendment does not change the definition of 'probate estate,' a term with a settled meaning. As defined, the 'probate estate' to which the elective share is applicable is actually the net probate estate, after the probate estate is reduced by funeral and administration expenses and enforceable claims.

The 2013 amendment adds a new sub-paragraph (b), which takes into account and leaves unchanged the provisions of Section 62-7-401(c) of the South Carolina Trust Code. SCTC Section 62-7-401(c) is the statutory descendant of former SCPC Section 62-7-112, which was enacted after the Siefert decision, Seifert v. Southern Nat'l Bank of South Carolina , 305 S.C. 353, 409 S.E.2d 337 (1991). Seifert found that the revocable trust before the court was 'illusory' and, even though not a part of the settlor/decedent's probate estate, assets owned by the trust were nevertheless subject to the elective share. The amendment means to leave intact Section 62-7-401(c), including the possibility that assets owned by a revocable inter vivos trust found not to be illusory are not subject to the elective

share. The amendment clarifies that the only nonprobate assets subject to the elective share in South Carolina are assets in a revocable trust found to be illusory under Section 67-7-401(c).

The intent of the amendment is to clarify and provide certainty with respect to all other of a decedent's nonprobate assets, which by this amendment are not subject to the elective share in South Carolina.

The amendment expressly rejects the concept of the 'augmented estate' as the multiplicand of the one-third elective share entitlement. This rejection is in keeping with and continues the intent of the drafters of the elective share statute as originally effective in 1987, whose comment to this section stated 'This section rejects the 'augmented estate' concept promulgated by the drafters of the Uniform Probate Code as unnecessarily complex.' The latest concept of 'augmented estate' promulgated by the drafters of the Uniform Probate Code is more onerous and complex than the version rejected in 1987.

The revised Uniform Probate Code last promulgated by the National Conference of Commissioners on Uniform State Laws, as well as statutes adopted in some states (for example, North Carolina) have extended the reach of the statutory spousal share or elective share to nonprobate assets. The property to which the surviving electing spouse is entitled to receive a portion is referred to as the augmented estate.

The effective and expeditious administration of decedents' estates would be virtually impossible if nonprobate assets owned by persons not subject to the personal jurisdiction of any South Carolina court are subject to disgorgement by reason of the elective share. A similar problem presently exists in estates in South Carolina where an equitable apportionment of the estate tax imposes on the personal representative the duty of collecting the proportionate share of tax from recipients of nonprobate property. Current laws provide no efficient, cost effective means to reach these assets in the hands of persons outside the range of existing long arm statutes.

Section 62-2-203. The right of election of the surviving spouse may be exercised only during his lifetime by him or by his duly appointed attorney in fact. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending.

REPORTER'S COMMENT
See Section 62-5-101 for definitions of protected person and protective proceedings.

Section 62-2-204. (A) The rights of a surviving spouse to an elective share, homestead allowance, and exempt property, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver voluntarily signed by the waiving party after fair and reasonable disclosures to the waiving party of the other party's property and financial obligations have been given in writing.

(B) Unless it provides to the contrary, a waiver of all rights in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, and exempt property by each spouse in the property of the other and a disclaimer by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of a will executed before the waiver or property settlement.

REPORTER'S COMMENT
The right to homestead allowance is conferred by Article 1, Chapter 41, Title 15 of the 1976 Code, and exempt property by Section 62-2-401. The right to disclaim interests passing by testate or intestate succession is recognized by Section 62-2-801. The provisions of this section, permitting a spouse or prospective spouse to waive all statutory rights in the other spouse's property, seem desirable in view of the common and commendable desire of parties to second and later marriages to ensure that property derived from prior spouses passes at death to the issue of the prior spouses instead of to the newly acquired spouse. The operation of a property settlement as a waiver and disclaimer takes care of the situation which arises when a spouse dies while a divorce suit is pending.

Section 62-2-205. (a) The surviving spouse may elect to take an elective share in the probate estate by filing in the court and serving upon the personal representative, if any, a summons and petition for the elective share within the later of (1) eight months after the date of death, (2) six months after the informal or formal probate of the decedent's will, or (3) thirty days after a surviving spouse is served with a summons and petition to set aside an informal probate or to modify or vacate an order for formal probate of decedent's will.

(b) The surviving spouse shall give notice of the time and place set for the hearing on the elective share claim to the personal representative and to distributees and recipients of portions of the

probate estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw or reduce his demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the probate estate or by contribution as set out in Sections 62-2-206 and 62-2-207.

(e) The order or judgment of the court for payment or contribution may be enforced as necessary in other courts of this State or other jurisdictions.

REPORTER'S COMMENT
The 2010 amendment revised subsection (a) by deleting "mailing or delivering" and replacing it with "serving upon" and also adding "summons and" to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for elective share. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP. The 2013 amendment revised the time limit within which the surviving spouse may claim an elective share.

Section 62-2-206. A surviving spouse is entitled to benefits provided under or outside of the decedent's will, by any homestead allowance, by Section 62-2-401, whether or not he elects to take an elective share, but such amounts as pass under the will or by intestacy, by any homestead allowance, and by Section 62-2-401 are to be charged against the elective share pursuant to Section 62-2-207(a).

REPORTER'S COMMENT
This election does not result in a loss of benefits under, outside, or against the will (in the absence of renunciation) but (to the extent that such gifts are part of the estate) they are charged against the elective share under Sections 62-2-201, 62-2-202, and 62-2-207(a).

Section 62-2-207. (a) In the proceeding for an elective share, all property, including any beneficial interest, which passes or has passed to the surviving spouse, or would have passed to the surviving spouse, but was renounced or disclaimed, must be applied first to satisfy the elective share and to reduce any contributions due from other recipients

of transfers included in the probate estate, so long as the property is passed to the surviving spouse:

(1) under the decedent's will;

(2) by intestacy;

(3) by a homestead allowance;

(4) by Section 62-2-401;

(5) by a beneficiary designation in life insurance policies;

(6) by a beneficiary designation of an Individual Retirement Account, qualified retirement plan, or annuity;

(7) in a trust created by the decedent's will; or

(8) in a revocable inter vivos trust created by the decedent.

(b) A beneficial interest that passes or has passed to a surviving spouse under the decedent's will includes:

(1) an interest as a beneficiary in a trust created by the decedent's will;

(2) an interest as a beneficiary in property passing under the decedent's will to an inter vivos trust created by the decedent; and

(3) an interest as a beneficiary in property contained at the decedent's death in a revocable inter vivos trust found to be illusory, as provided in Section 62-7-401(c).

(c)(1) For purposes of this provision, the value of the electing spouse's beneficial interest in property which qualifies for the federal estate tax marital deduction pursuant to Section 2056 of the Internal Revenue Code, as amended, or, if the federal estate tax is not applicable at the decedent's death, would have qualified for the federal estate tax marital deduction pursuant to Section 2056 of the Internal Revenue Code, as amended, in effect on December 31, 2009, must be computed at the full value of the qualifying property. Qualifying for these purposes must be determined without regard to whether an election has been made to treat the property as qualified terminable interest property.

(2) The value of this qualifying property shall be the value at the date of death as finally determined in the decedent's estate tax proceedings, or if there is no federal estate tax proceeding, as shown on the inventory and appraisement or as determined by the court. The personal representative must choose assets, in order of abatement pursuant to Section 62-3-902, to satisfy the elective share, using the fair market value at the date of distribution. The elective share is pecuniary in nature.

(3) The electing spouse who is the income beneficiary of a trust, the value of which is treated, or could be treated, as qualifying property, shall have the right to require a conversion of the income

trust to a total return unitrust as defined in the South Carolina Uniform Principal and Income Act.

(d) In choosing assets to fund the elective share, remaining property of the probate estate is applied so that liability for the balance of the elective share of the surviving spouse is satisfied from the probate estate, with devises abating in accordance with Section 62-3-902.

REPORTER'S COMMENT

The 2013 amendment changes substantively the method of calculation of the elective share in South Carolina. Under the law prior to this amendment, nonprobate assets passing to the surviving spouse were not offset against the elective share. Under the amendment, the amount of the probate estate subject to the elective share is reduced by the value of nonprobate assets passing to the spouse at the death of the decedent. Including the value of nonprobate assets passing to the surviving spouse at the death of the decedent in the calculation of the elective share imposes on the personal representative the duty to ascertain the value of those nonprobate assets as well as the duty to verify that the assets in fact pass to the surviving spouse. Probate courts may require that nonprobate assets be identified sufficiently on the inventory and appraisement to enable the calculation to be made. The amendment makes clear that the nonprobate assets are applied first to satisfy the elective share before assets from the probate estate are applied in satisfaction. The amendment clarifies and makes certain that property passing directly to the surviving spouse in a revocable inter vivos trust, including a beneficial interest, will satisfy the elective share. The amendment eliminates the concern that property had to 'pass under the will' first in order to be applied in satisfaction of the elective share.

The amendment leaves unchanged the law that the value of the electing spouse's beneficial interest in any property which qualifies for the federal estate tax marital deduction pursuant to Section 2056 of the Internal Revenue Code, as amended (or, if the federal estate tax is not applicable at the decedent's death, would have qualified for the federal estate tax marital deduction pursuant to Section 2056 of the Internal Revenue Code, as amended, in effect on December 31, 2009), must be computed at the full value of any such qualifying property. Two comments are relevant here. First, the future of the federal estate tax is at best uncertain. The federal estate tax law in effect on December 31, 2009, as it pertained to the qualification for the federal estate tax marital deduction, was settled law, familiar to laymen and practitioners alike. Consequently, incorporation of the qualification requirements

for the federal estate tax marital deduction then in effect, particularly with respect to the so called 'QTIP' marital trust, is the measure least likely to cause confusion and error. Next, in rejecting the 'augmented estate' while at the same time continuing to credit at full value the assets in an income only QTIP trust, this section takes into account the possibility that the consequences to a surviving spouse in the present and projected economy could be harsh as well as changes to South Carolina law since 1987, including adoption of the South Carolina version of the Uniform Prudent Investor Act (Section 62-7-933), predicated on Modern Portfolio Theory. Recognizing that simple, income only trusts may be disappointing and inadequate, the 2013 amendment provides that the electing spouse who is the beneficiary of an income trust, the value of which is treated (or could be treated) as qualifying property, shall have the right to require a conversion of the income trust to a total return unitrust as defined in the South Carolina Uniform Principal and Income Act.

The 2013 amendment clarifies that the value of such qualifying property shall be the value at the date of death as finally determined in the decedent's estate tax proceedings, or if there is no federal estate tax proceeding, as shown on the inventory and appraisement or as determined by the court. Generally this is fair market value. The amendment makes clear, first, that in satisfying the elective share, probate assets will be valued at date of distribution values; second, the amendment provides that the elective share is pecuniary in nature and not fractional. This is less burdensome and requires revaluation only of assets in kind used to fund the elective share. Although the law prior to the 2013 amendment may have been unclear about whether the elective share was fractional or pecuniary, the treatment of the elective share as pecuniary will be clear prospectively from the effective date of the amendment.

The amendment leaves unchanged the order of abatement within the probate estate.

Part 3

Spouse and Children Unprovided for in Wills

Section 62-2-301. (a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse, upon compliance with the provisions of subsection (c), shall receive the same share of the estate he would have received if the decedent left no will unless:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 62-3-902.

(c) The spouse may claim a share as provided by this section by filing in the court and serving upon the personal representative, if any, a summons and petition for such share within the later of (1) eight months after the date of death, (2) six months after the informal or formal probate of the decedent's will, or (3) thirty days after the omitted spouse is served with a summons and petition to set aside an informal probate or to modify or vacate an order for formal probate of decedent's will . The spouse shall give notice of the time and place set for the hearing on the omitted spouse claim to the personal representative and to distributees and recipients of portions of the probate estate whose interests will be adversely affected by the taking of the share.

REPORTER'S COMMENT

Section 62-2-301 sets aside an intestate share for any surviving spouse who is married to a testator after the execution of a will which omits provision for the spouse, unless the omission was intentional or the spouse was otherwise provided for outside of and intentionally in lieu of a will's provisions. Compare the set aside for omitted afterborn children under Section 62-2-302. The testator's intentions may be shown on the face of the will or by his statements concerning or from the amount of or from other evidence concerning the nontestamentary transfer.

Section 62-2-301 does not totally revoke the will; rather, Section 62-2-301 merely abates the will's devises to the extent necessary to satisfy the spouse's intestate share. Compare Section 62-2-507, effecting a partial revocation of a will's provisions to the extent that they benefit a spouse divorced from testator after execution of the will, and otherwise providing that no change of circumstances, e.g., marriage, revokes a will by operation of law.

The spouse's protection accorded by Section 62-2-301 presumably may be waived. See Section 62-2-801. The 2013 amendment revised the time limit within which an omitted spouse may claim a share of the estate.

Section 62-2-302. (a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child, upon compliance with subsection (d), receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional; or

(2) when the will was executed the testator devised substantially all his estate to his spouse; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If, at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes that child to be dead, the child, upon compliance with subsection (d), receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 62-3-902.

(d) The child, and his guardian or conservator acting for him, may claim a share as provided by this section by filing in the court and serving upon the personal representative, if any, a summons and petition for such share within the later of (1) eight months after the date of death, (2) six months after the informal or formal probate of the decedent's will, or (3) thirty days after the omitted child is served with a summons and petition to set aside an informal probate or to modify or vacate an order for formal probate of a decedent's will. The child, and his guardian or conservator acting for him, shall give notice of the time and place set for the hearing on the omitted child claim to the personal representative and to distributees and recipients of portions of the probate estate whose interests will be adversely affected by the taking of the share.

REPORTER'S COMMENT

Section 62-2-302 sets aside an intestate share for any surviving child who either was unprovided for because he was thought to be dead at the execution of a will or is born to or adopted by a testator after the execution of a will which omits provision for the child; but, in the case of the afterborn child, he does not take a set aside if the omission was intentional, or if the child was otherwise provided for outside of and intentionally in lieu of a will's provisions. Compare the set aside for omitted spouses under Section 62-2-301. The testator's intentions may

be shown on the face of the will or by his statements concerning or from the amount of or from other evidence concerning the nontestamentary transfer.

The 2013 amendment addressed afterborn children by providing that a will devising substantially all of a testator's estate to his spouse is valid against the claim of a child omitted under such will regardless of whether the will was executed by the decedent before or after the child was born or adopted. It also revised the time limit under which an omitted child may claim a share of the estate.

Part 4

Exempt Property

Section 62-2-401. The surviving spouse of a decedent who was domiciled in this State is entitled from the estate to a value not exceeding twenty-five thousand dollars in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, minor or dependent children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than twenty-five thousand dollars, or if there is not twenty-five thousand dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the twenty-five thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except claims described in Section 62-3-805(a)(1). These rights are in addition to any right of homestead and personal property exemption otherwise granted by law but are chargeable against and not in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by the elective share. Any surviving spouse or minor or dependent children of the decedent who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of this section.

REPORTER'S COMMENT
Section 62-2-401 sets aside an unencumbered twenty-five thousand dollars worth of exempt personal property to a domiciliary decedent's surviving spouse or minor or dependent children. Claimants must

survive the decedent by one hundred twenty hours in order to qualify under Section 62-2-401.

Section 62-2-401 sets aside the indicated amount free of the claims of both the unsecured creditors of the decedent's estate (a creditors' claim exemption) and the decedent's will's named beneficiaries, i.e., notwithstanding any provisions in the will to the contrary (a mandatory set aside).

While the mandatory set aside is chargeable against and not in addition to any provisions in the will or in intestacy in favor of the spouse or children, unless otherwise provided in the will, Section 62-2-401 provides that the mandatory set aside and creditors' claim exemption is to be in addition to and not chargeable against any right of homestead allowance, i.e., real property exemption, and personal property exemption, available to the decedent's survivors pursuant to Section 15-41-30 of the 1976 Code, and otherwise.

For a discussion of which of these exemptions apply to a decedent's estate, see (Scholtec v. Estate of Reeves, 327 S.C. 551, 490 S.E. 2d 603 (S.C. App. 1997).

Section 62-2-402. (a) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians or conservators of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians or conservators of the minor children are unable or fail to do so within a reasonable time or if there are no guardians or conservators of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may make application to the court for appropriate relief.

(b) The surviving spouse or the minor or dependent child, and the minor's guardian or conservator acting for him, as the case may be, may claim a share of exempt property as provided in this part by filing in the court and mailing or delivering to the personal representative, if any, a claim for such share within eight months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires.

REPORTER'S COMMENT
Section 62-2-402 governs the administration of the exempt property provisions of Section 62-2-401.

The 2010 amendment revised subsection (a) by deleting "petition" and replacing it with "make application," so that the personal representative or any interested person as referred to in this section can make application to the probate court. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201(1).

Section 62-2-403. All monies paid for insurance, compensation, or pensions by the United States of America to the executors, administrators, or heirs-at-law of any deceased veteran who served during any 'period of war' as determined in reference to pension entitlement under 38 U.S.C. 1521, 1541 and 1542 and the regulations issued thereunder, and whose estate is administered in this State for insurance, compensation, or pensions is hereby declared to be exempt from the claims of any and all creditors of such deceased veteran.

REPORTER'S COMMENT
The 2013 amendment exempts monies paid for insurance, compensation, or pensions by the United States of America to the executors, administrators, or heirs-at-law of any deceased veteran who served during any 'period of war' as that term is defined under federal regulations. Prior to amendment the protection did not cover veterans of conflicts after World War II.

Part 5

Wills

Section 62-2-501. An individual who is of sound mind and who is not a minor as defined in Section 62-1-201(27) may make a will.

REPORTER'S COMMENT
Section 62-2-501 allows any individual of sound mind who is not a minor to make a will. An individual is not a minor if the individual is either (1) at least eighteen, (2) married, or (3) emancipated. An individual may make a will of his or her 'estate.' The estate which may be so devised is defined in item (11) of Section 62-1-201 as 'property', in turn defined in item (37) of Section 62-1-201 as both real and personal and 'anything that may be the subject of ownership.' No

distinction on the question of capacity to make a will is drawn by Section 62-2-501 between men and women or between citizens and aliens.

Section 62-2-501 is not meant to reverse the South Carolina law with respect to tenants in fee simple conditional, Jones v. Postell, 16 S.C.L. 92 (Harp. L.)(1824), and tenants in joint tenancies with express provisions for right of survivorship, Davis v. Davis, 223 S.C. 182, 75 S.E.2d 46 (1963)In both cases the law disabled such tenants from passing their estates by will. The spirit, if not the letter, of this Code's provisions is opposed to the grant of any such novel right to devise.

Tenants who hold real property in joint tenancies lacking express survivorship provisions may devise their interest in such real property. In the absence of a will such tenant's interest in such real property will pass in intestacy. See Section 62-2-804.

The elaborate body of case law developed in the application of former Sections 21-7-10, et seq., will continue to supply guidance in the application of Section 62-2-501. That case law concerns the matters of sufficient testamentary intent, Madden v. Madden, 237 S.C. 629, 118 S.E.2d 443 (1961), C. & S. Nat. Bank of S. C. v. Roach, 239 S.C. 291, 122 S.E.2d 644 (1961), including conditional wills, S. Alan Medlin, The Law of Wills and Trusts (S.C. Bar 2002) Section 305; and sufficient mental capacity, Lee's Heirs v. Lee's Executor, 15 S.C.L. 183 (4 McC. L.) (1827), Hellams v. Ross, 268 S.C. 284, 233 S.E.2d 98 (1977), Medlin, supia at Section 301.2; as well as the effect of undue influence, Farr v. Thompson, 25 S.C.L. 37 (Cheves L.) (1839); Thompson v. Farr, 28 S.C.L. 93 (1 Sp. L.) (1842); O'Neall v. Farr, 30 S.C.L. 80 (1 Rich. L.) (1844), Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976), Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982), Medlin, supra at Section 301.4; and the burdens of proof applicable and the presumptions of fact available with respect to mental capacity and undue influence, Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969), Medlin, supra at Sections 301.2, 301.4. The developed South Carolina case law also covers the matters of mistake in the execution of wills, Ex Parte King, 132 S.C. 63, 128 S.E. 850 (1925), Medlin, supra at Section 301.2; and fraud as it affects the making of wills.

Section 62-2-502. Except as provided for writings within Section 62-2-512 and wills within Section 62-2-505, every will shall be:

(1) in writing;

(2) signed by the testator or signed in the testator's name by some other individual in the testator's presence and by the testator's direction; and

(3) signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

REPORTER'S COMMENT

Section 62-2-502 specifies the usual requirements for the valid formal execution of every will: a writing signed by the testator, or for him by another, and also signed by two witnesses, witnessing either the testator's signing or his acknowledgment of either his signature or the will. All of these formalities were required by prior South Carolina law, formerly Sections 21-7-20 and 21-7-50 of the 1976 code, which, however, further required that three witnesses sign and that they do so in the presence of the testator and of each other. The required number of witnesses is reduced from three to two with respect to all wills executed after June 27, 1984, the effective date of South Carolina's first statute recognizing the device of the self-proving will affidavit, formerly Section 21-7-615 of the 1976 code, embodied in Section 62-2-503 of this Code. That statute might have been read by some testators to allow for the valid execution and attestation of a will by only two witnesses. As the policy of this Code is to require just two witnesses at testation, it appears advisable to bring within the Code's protection any testators whose wills were attested by but two witnesses between June 28, 1984, and the effective date of this Code. Section 62-2-502 requires neither subscription of the testator's signature, i.e., that it appear at the end of the will, nor publication of the will, i.e., the testator's announcement to the witnesses that the document is his will, nor a specific request by the testator that the witnesses attest and sign. Each of these practices is, however, customary and unobjectionable.

This Code does not recognize the holographic method of execution of a will, i.e., dispensing with the witnesses but requiring that the whole will be cast in the testator's handwriting and that it be signed by him. Such a will is not valid in South Carolina, unless specifically by valid out-state execution or out-state probate, which special rules are to be found at Sections 62-2-505, 62-3-303(c) and (d), and 62-3-408 of this Code. Further, this Code recognizes neither soldiers' and mariners' wills of personalty nor nuncupative wills of personalty, i.e., oral wills.

The effect of Section 62-2-502 is that every will must be in an integrated writing, signed and witnessed as described, except only as

provided in Sections 62-2-505 (written wills duly executed elsewhere) and 62-2-512 (writings disposing of tangible personal property).

Section 62-2-503. (a) Any will may be simultaneously executed, attested, and made self-proved. The self-proof shall be effective upon the acknowledgment by the testator and the affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in the following form or in a similar form showing the same intent:

I, _____, the testator, sign my name to this instrument this ___ day of _____, 20___, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older (or if under the age of eighteen, am married or emancipated as decreed by a family court), of sound mind, and under no constraint or undue influence.

We, _____ and _____, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older (or if under the age of eighteen, was married or emancipated as decreed by a family court), of sound mind, and under no constraint or undue influence.

(b) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached, or annexed to the will in the following form or in a similar form showing the same intent:

The State of _____ County of _____ We, _____ and _____, the testator and at least one of the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and

that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and to the best of his knowledge the testator was at that time eighteen years of age or older (or if under the age of eighteen, was married or emancipated as decreed by a family court), of sound mind, and under no constraint or undue influence.

(c) A witness to any will who is also an officer authorized to administer oaths under the laws of this State may notarize the signature of the other witness of the will in the manner provided by this section.

REPORTER'S COMMENT

Section 62-2-503 provides for an expediting feature for the proof of wills. The self-proved will is a will into which an affidavit has been incorporated, signed by the testator, the witnesses and a notary, declaring the due execution of the will, the testamentary capacity of the testator and the absence of undue influence worked upon the testator. Probate of a self-proved will is freed of the requirement of producing the available testimony of such witnesses to the due execution of the will, as otherwise required by Sections 62-3-405 and 62-3-406 of this Code as to formal testacy proceedings.

The testator's affidavit may be drafted into the testimonium clause of the will so that his one signature suffices for both the execution of the will and the execution of his affidavit. Similarly, the witnesses' affidavit may be drafted into their attestation clause, requiring each of them to sign only once. Section 62-2-503 (a). Alternatively, under Section 62-2-503(b), a will may be drafted with traditional testimonium and attestation clauses, requiring the signatures of the testator and the witnesses, respectively, with the affidavits of the testator and of the witnesses drafted as one, but separated from the testimonium and attestation clauses, and thus requiring each of such persons to sign a second time. The Section 62-2-503(b) form may be attached to a will executed simultaneously with the affidavit or, more to the point, a will executed at any time prior to the execution of the affidavit, even one executed prior to the enactment of this statute.

Section 62-2-503 makes a will self-proved if affidavits in 'substantially' the form of those set forth in the section are executed. Therefore, neither merely formal variations, nor the subscription of the will and of the affidavit by more than two witnesses, nor the failure of one or more of the witnesses to sign the affidavit should frustrate the self-proof of the will by way of the affidavit, that is, at least not insofar

as the proof of the will depends upon the testimony of the witnesses who do sign the affidavit.

Section 62-2-504. (a) A subscribing witness to any will is not incompetent to attest or prove the same by reason of any devise therein in favor of the witness, the witness's spouse, or the witness's issue . If there are two disinterested witnesses to a will in addition to the interested witness, then the devise is valid and effectual, if otherwise effective. If there are not two disinterested witnesses to a will in addition to an interested witness, then the devise is null and void to the extent of the value of the excess property, estate, or interest so devised over the value of the property, estate or interest to which the witness, the witness's spouse, or the witness' issue would be entitled upon the failure to establish the will. The voided portion of the devise shall pass by intestacy in accordance with Section 62-2-101 et seq., provided the share of the interested witness, the witness's spouse, or the witness' issue shall not increase due to the devise passing by intestacy.

(b) A subscribing witness to any will is not incompetent to attest or prove the will by reason of any appointment within the will of the witness, the witness's spouse, or the witness's issue to any office, trust, or duty. The appointment of a witness, a witness's spouse, or a witness's issue is valid, if otherwise so, and the individual so appointed, in such case, is entitled by law to take or receive any commissions or other compensation on account thereof.

(c) A subscribing witness to any will is not incompetent to attest or prove the will by reason of any charge within the will of debts to any part of the estate in favor of the witness, the witness's spouse, or the witness's issue as creditor.

REPORTER'S COMMENT
The purpose of this section is to remove from the interested witness any benefit to the witness from the will that the witness would not otherwise receive so that the witness can be used to prove the will.

An 'interested witness' is an individual (1) who is named as a devisee in the testator's will; (2) whose spouse is named as a devisee in the testator's will, or (3) whose issue are named as devisees in the testator's will.

Section 62-2-505. A written will is valid if:

(a) it is executed in compliance with Section 62-2-502 either at the time of execution or at the date of the testator's death; or

(b) if its execution complies with the law at the time of execution of either (1) the place where the will is executed, or (2) the place where the testator is domiciled at the time of execution or at the time of death.

REPORTER'S COMMENT

Section 62-2-505 specifies the extraordinary requirements, alternative to the usual requirements of Section 62-2-502 of this Code, for the valid formal execution of a will: a writing executed in compliance with the law applicable at the time of the will's execution (not that at the time of the testator's date of death), of the place (whether South Carolina or elsewhere): (1) where the will is executed; (2) where the testator is domiciled at the time of the will's execution; or (3) where the testator is domiciled at the time of his death.

The policy of Section 62-2-505, the effectuation of the testator's intention to duly execute his will in accordance with the law as he may understand it at the date of the will's execution is furthered by the definition of the applicable law for purposes of Section 62-2-505 as that at the time of execution and as that of any of several different mentioned places.

The wills of all decedents, domiciliary or otherwise, are covered by this section and may benefit thereby.

One further alternative to this Code's provisions for valid in-state execution under Section 62-2-502 and valid out-state execution under Section 62-2-505 exists in its provisions for probate in South Carolina of a will already validly probated out-state; see Sections 62-3-303(c) and (d) and 62-3-408.

Section 62-2-506. (a) A will or any part thereof is revoked:

(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and by the testator's direction.

(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(1) The testator is presumed to have intended a subsequent will to replace rather than to supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing

evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(2) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent.

REPORTER'S COMMENT

Section 62-2-506 specifies the broad requirements for the valid intentional revocation of a will and of any part of a will: either (1) a subsequent will, defined in Section 62-1-201(52) of this Code, acting expressly or by implication on the will being revoked, or (2) a physical act affecting the will being revoked.

The elaborate body of case law developed in the application of former Section 21-7-210 will continue to supply guidance in the application of Section 62-2-506. S. Alan Medlin, The Law of Wills and Trusts (S.C. Bar 2002) Sections 310, 310.1. That case law stressed the necessity to meet the statute's requirements in order to effect a revocation, Madden v. Madden, 237 S.C. 629, 118 S.E.2d 443 (1961); distinguished intended revocations from the accidental inclusion of express language of revocation in subsequent wills, Owens v. Fahnestock, 110 S.C. 130, 96 S.E. 557 (1918), and the accidental destruction of wills, such accidents involving no revocation in the eyes of the law unless, perhaps, the accident was later confirmed as an intended revocation, Davis v. Davis, 214 S.C. 247, 52 S.E.2d 192 (1949). It distinguished unmistaken, unconditional revocations from cases of dependent relative revocation, i.e., mistaken revocations, not effective as revocations at law, Pringle v. McPherson's Executors, 4 S.C.L. 279 (2 Brev.) (1809), Johnson v. Brailsford, 2 Nott and McC. 272 (S.C. 1820) Charleston Library Society v. C. & S. Nat. Bank, 200 S.C. 96, 20 S.E.2d 623 (1942), Stevens v. Royalls, 223 S.C. 510, 77 S.E.2d 198 (1953). It allowed partial revocations by either one of the two broad methods of revocation, Brown v. Brown, 91 S.C. 101, 74 S.E. 135 (1912). It gave effect to revocations by implication from the inconsistency between the provisions of the will being revoked and the subsequent will and also determined whether any such inconsistency existed, Starratt v. Morse, 332 F. Supp. 1038 (D.S.C. 1971) and Werber v. Moses, 117 S.C. 157, 108 S.E. 396 (1921). It governed

revocations by physical act, including those accomplished 'by another person in his (the testator's) presence and by his direction,' Means v. Moore, 16 S.C.L. 314 (Harp. L.) (1824), and those rebuttably presumed to have occurred in cases of mutilated wills, Johnson v. Brailsford, supra, and in cases of missing wills, Lowe v. Fickling, 207 S.C. 442, 36 S.E.2d 293 (1945).

Section 62-2-507. (a) In this section:

(1) 'Disposition or appointment of property' includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) 'Divorce or annulment' means any divorce or annulment or declaration of invalidity of a marriage or other event that would exclude the spouse as a surviving spouse in accordance with Section 62-2-802. It also includes a court order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(3) 'Divorced individual' includes an individual whose marriage has been annulled.

(4) 'Governing instrument' means an instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse including, but not limited to wills, revocable inter vivos trusts, powers of attorney, life insurance beneficiary designations, annuity beneficiary designations, retirement plan beneficiary designations and transfer on death accounts.

(5) 'Revocable' with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse and whether or not the divorced individual then had the capacity to exercise the power.

(b) No change of circumstances other than those described in this section and in Section 62-2-803 effects a revocation.

(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the

marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(i) disposition or appointment of property or beneficiary designation made by a divorced individual to the divorced individual's former spouse in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse; or

(iii) nomination in a governing instrument, nominating a divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, trustee, conservator, agent, attorney in fact or guardian;

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(d) A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving the property, as evidence of ownership.

(e) Provisions of a governing instrument and nomination in a fiduciary or representative capacity that are revoked by this section are given effect as if the former spouse predeceased the decedent.

(f) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(g)(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a

payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(h)(1) A person who purchases property from a former spouse or any other person for value and without notice, or who receives from a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

REPORTER'S COMMENT
The 2013 amendment expands this section to cover life insurance and retirement plan beneficiary designations, transfer on death accounts, and other revocable dispositions to the former spouse that the divorced individual established before the divorce or annulment. This section effectuates a decedent's presumed intent: without a contrary indication by the decedent, a former spouse will not receive any probate or nonprobate transfer as a result of the decedent's death.

Section 62-2-508. (a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under Section 62-2-506(a)(2) the previous will remains revoked unless it is revived. The previous will is revived if it appears by clear and convincing evidence that the testator intended to revive or make effective the previous will.

(b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under Section 62-2-506(a)(2), a revoked part of the previous will is revived unless it appears by clear and convincing evidence that the testator did not intend the revoked part to take effect as executed.

(c) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

REPORTER'S COMMENT
Section 62-2-508 addresses the question whether the revival of a former and revoked will is intended and will be effected by the revocation of a subsequent and revoking will, either by physical act or by way of the execution of yet a third will revoking the subsequent will.

The 2013 amendment distinguishes between the revocation of a subsequent will that effects a complete revocation or a partial revocation of a previous will.

There is a presumption against revival where the subsequent will wholly revokes the previous will. The presumption against revival is intended to be heightened by the requirement of 'clear and convincing evidence' to rebut it.

There is a presumption in favor of revival (of the revoked part or parts of the previous will) where a subsequent will partially revoked

the previous will. The justification is that where the subsequent will only partially revoked the previous will, the subsequent will is only a codicil to the previous will and the testator should know that the previous will has continuing effect.

Section 62-2-509. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

REPORTER'S COMMENT
Section 62-2-509 permits incorporation by reference in a will of a separate writing, in existence at the date of the execution of the will, if both the intent to incorporate and the identification of the writing appear in the language of the will. However, Section 62-2-509 does not require that the will describe the writing as existent and requires only that the writing be described 'sufficiently to permit its identification.'

Compare Section 62-2-512 which allows a writing not sufficiently incorporated by reference into a will, as under Section 62-2-509, to affect the will's dispositions in certain cases.

Section 62-2-510. (A) A devise made by a will to the trustee of a trust to a trust is valid so long as:

(1) the trust is identified in the testator's will and its terms are set forth in:

(a) a written instrument (other than a will) executed before, concurrently with, or after the execution of the testator's will but not later than the testator's death; or

(b) in the valid last will of another individual who has predeceased the testator;

(B) The trust is not required to have a trust corpus other than the expectancy of receiving the testator's devise.

(C) The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator.

(D) Unless the testator's will provides otherwise, the property so devised:

(1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given; and

(2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust,

including any amendments thereto made before or after the death of the testator.

(E) Unless the testator's will provides otherwise, a revocation or termination of the trust before the death of the testator causes the devise to lapse.

(F) Death benefits of any kind, including but not limited to proceeds of life insurance policies and payments under an employees' trust, or contract of insurance purchased by such a trust, forming part of a pension, stock-bonus or profit-sharing plan, or under a retirement annuity contract, may be paid to the trustee of a trust established by the insured, employee, or annuitant or by some other person if the trust is in existence at the death of the insured, employee, or annuitant, it is identified and its terms are set forth in a written instrument, and such death benefits shall be administered and disposed of in accordance with the provisions of the instrument setting forth the terms of the trust including any amendments made thereto before the death of the insured, employee, or annuitant and, if the instrument so provides, including any amendments to the trust made after the death of the insured, employee, or annuitant. It shall not be necessary to the validity of any such trust instrument, whether revocable or irrevocable, that it have a trust corpus other than the right of the trustee to receive such death benefits.

(G) Death benefits of any kind, including but not limited to proceeds of life insurance policies and payments under an employees' trust, or contract of insurance purchased by such a trust, forming part of a pension, stock-bonus, or profit-sharing plan, or under a retirement annuity contract, may be paid to a trustee named, or to be named, in a will which is admitted to probate as the last will of the insured or the owner of the policy, or the employee covered by such plan or contract, as the case may be, whether or not such will is in existence at the time of such designation. Upon the admission of such will to probate, and the payment thereof to the trustee, such death benefits shall be administered and disposed of in accordance with the provisions of the testamentary trust created by the will as they exist at the time of the death of the testator. Such payments shall be deemed to pass directly to the trustee of the testamentary trust and shall not be deemed to have passed to or be receivable by the executor of the estate of the insured, employee, or annuitant.

(H) In the event no trustee makes proper claim to the proceeds payable as provided in subsections (F) and (G) of this section from the insurance company or the obligor within a period of one year after the date of the death of the insured, employee, or annuitant, or if

satisfactory evidence is furnished to the insurance company or other obligor within such one year period that there is or will be no trustee to receive the proceeds, payment must be made by the executors or administrators of the person making such designations, unless otherwise provided by agreement.

(I) Death benefits payable as provided in subsections (F) and (G) of this section shall not be subject to the debts of the insured, employee, or annuitant nor to transfer or estate taxes to any greater extent than if such proceeds were payable to the beneficiary of such trust and not to the estate of the insured, employee, or annuitant.

(J) Such death benefits payable as provided in subsections (F) and (G) of this section so held in trust may be commingled with any other assets which may properly come into such trust.

REPORTER'S COMMENT
This section allows a receptacle trust to be executed after the execution of the testator's will, and makes clear that the trust does not have to have a corpus other than the expectancy of receiving the testator's devise.

Section 62-2-511. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

REPORTER'S COMMENT
Under Section 62-2-511, acts and events extraneous to a will are allowed to affect the will's dispositions if they have some significance apart from their effect upon the will's dispositions. The acts or events, including the execution or revocation of another person's will, might occur either before or after the dates of either the execution of the will or the testator's death and yet be given such effect.

Compare Section 62-2-512 which in certain cases allows an act extraneous to a will to affect the will's dispositions although the act has no independent significance.

Section 62-2-512. A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the

handwriting of the testator or be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect upon the dispositions made by the will.

REPORTER'S COMMENT
Section 62-2-512 relaxes the normal application of the rules of incorporation by reference, Section 62-2-509, and of facts of independent significance, Section 62-2-511, all in favor of the special case of extraneous writings, either in the testator's handwriting or signed by the testator, referred to in the testator's will, and which dispose of certain items of tangible personal property. They are given effect, albeit they are neither required to be in existence at the date when the will is executed nor to have independent significance. They may be altered by the testator at any time.

Black's Law Dictionary defines 'tangible personal property' as including coin collections; therefore, coin collections may be items disposed of in a tangible personal property memorandum. Vehicles and boats are also tangible personal property.

Part 6

Construction

Section 62-2-601. (A) The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

(B) Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous, to conform the terms to the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement.

REPORTER'S COMMENT
Section 62-2-601 states the first principle of the construction of wills, that the testator's intention as expressed in the will controls, a codification of South Carolina case law. See King v. S.C. Tax Comm., 253 S.C. 246, 173 S.E.2d 92 (1970). Only in the absence of expression

in the will of the testator's intention do the rules of construction of this Part (6) control.

Subsection (B) tracks Uniform Probate Code Reformation to Correct Mistakes to give probate judges statutory authority to reform a will's terms when there is clear and convincing evidence of a mistake (for example, in husband/wife wills where the attorney mistakenly forgets to change the name of the devisee from wife to husband in wife's will). Additionally, subsection (B) mirrors Section 62-7-415 in the Trust Code.

Section 62-2-602. A will is construed to pass all property which the testator owns at the testator's death including property acquired after the execution of the will and all property acquired by the testator's estate after the testator's death.

REPORTER'S COMMENT

Section 62-2-602 establishes the general rule that an ambiguous will is construed to pass all property owned at the testator's date of death, if at all possible to do so. Thus is stated the South Carolina law's presumption against intestacy. See MacDonald v. Fagan, 118 S.C. 510, 111 S.E. 793 (1922).

Property specifically described in the will presents no problem; it is property not specifically described which raises the question answered by this section's rule. Provisions referring generally to classes of property of the decedent, without specification of the items of such property, are construed to refer to all items within the scope of their general reference, whether the items were acquired before or after the execution of the will. However, items of property not within the scope of reference of any general provision contained in the will do not pass under that will; they pass in intestacy, regardless of when they were acquired by the testator. Cornelson v. Vance, 220 S.C. 47, 66 S.E.2d 421, 426 (1951).

This section also expresses the particular rule that after-acquired property is to be treated the same as property owned at the execution of the will even if that property is acquired by the testor's estate after the testater's death.

Section 62-2-603. (A) Unless a contrary intent appears in the will, if a devisee, who is a great-grandparent or a lineal descendant of a great-grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator take

in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree than those of more remote degree take by representation.

(B) One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

(C) Words of survivorship in a devise to an individual, such as, 'if he survives me,' or to 'my surviving children,' are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of subsections (A) and (B).

REPORTER'S COMMENT

The anti-lapse rule of Section 62-2-603 applies unless the decedent's will provides otherwise and unless lifetime gifts to a devisee satisfy his devise under Section 62-2-610. The rule preserves some devises which otherwise would be void or would lapse because of the failure of the devisees to survive to take the devise. The rule saves only devises to persons who are related to the testator as or through the testator's great-grandparents, whether they are individually named in the devise, or merely described by class terminology, and whether they predecease the will's execution or the testator's date of death or they are merely treated as predeceasing his death, as under the Uniform Simultaneous Death Act, Sections 62-1-501 et seq., or as under Section 62-2-801 respecting devisees who renounce their succession rights, or as under Section 62-2-803 respecting devisees who feloniously and intentionally kill their testators. Those of the devisee's issue, defined by Section 62-1-201(24) who survive the testator take the devise in place of the devisee; they take among themselves per capita with per capita representation, as in intestate succession under Section 62-2-106 (see Reporter's Comments to Sections 62-2-106 and 62-2-103(1)).

Section 62-2-603 unifies in one anti-lapse rule the simplified and expanded protection of those related to the testator as or through his great-grandparents and it also clarifies and expands the coverage of the anti-lapse rule, applying it to class gifts as well as to void devises.

The 2013 amendment added a presumption that words of survivorship are sufficient indication that the testator does not intend the antilapse section to apply.

Section 62-2-604. (A) Except as provided in Section 62-2-603, if a devise other than a residuary devise fails for any reason it becomes a part of the residue.

(B) Except as provided in Section 62-2-603 if the residue is devised to two or more persons, the share of the residuary devisees that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

REPORTER'S COMMENT
The pro-residuary anti-failure rule of Section 62-2-604 applies to a failed devise unless the decedent's will provides otherwise, Section 62-2-601, as by substituting other takers for the failed devise, and unless the anti-lapse rule of Section 62-2-603 applies to preserve the otherwise failed devise.
The rule preserves from intestacy devises failing for any reason, e.g., because of the indefiniteness of the devise, illegality, a violation of any Rule Against Perpetuities, incapacity of the devisee, or the failure of the devisee to survive to take the devise, including treatment of such devisee as being predeceased, as under the Uniform Simultaneous Death Act, Sections 62-1-501 et seq., and under Sections 62-2-801 and 62-2-803. The rule passes the failed devise to such of the residuary devisees whose devises do not fail, if any, who take proportionately in place of the devisee with respect to whom the devise failed. The rule of Section 62-2-604 applies whether the failed devise is pre-residuary, subsection (A), or residuary, subsection (B).

Section 62-2-605. (A) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the testator's estate at the time of the testator's death;

(2) any additional or other securities of the same organization owned by the testator by reason of action initiated by the organization or any successor, related or acquiring organization excluding any acquired by exercise of purchase options;

(3) securities of another organization owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the organization or any successor, related or acquiring organization;

(4) any additional securities of the organization owned by the testator as a result of a plan of reinvestment in the organization.

(B) Distributions in cash declared prior to death with respect to a specifically devised security not provided for in subsection (A) are not part of the specific devise.

REPORTER'S COMMENTS

Section 62-2-605 establishes the rule that a specific devise, i.e., not merely a devise of equivalent value, of securities, defined at Section 62-1-201(41), is construed to pass only certain related securities, owned by the testator at his death, and listed in Section 62-2-605(A), and not to pass any other related securities or distributions of record before the death of the testator not so listed, Section 62-2-605(B), unless the decedent's will provides otherwise, Section 62-2-601. For the generally applicable nonademption rule see Section 62-2-606. See Section 62-7-908(A) concerning distributions of record after the death of testator.

The specific devise carries out with it as much of the securities specifically referred to as remain owned by the testator at his death, Section 62-2-605(A)(1), codifying South Carolina case law. See Gist v. Craig, 142 S.C. 407, 141 S.E. 26 (1927) and Watson v. Watson, 231 S.C. 247, 95 S.E.2d 266 (1956) (identified specifically devised proceeds not adeemed).

Also carried out with the specific devise are additional securities of both entities other than the organization issuing the specifically devised securities, owned by the testator as a result of merger or the like, Section 62-2-605(A)(3), and of the organization itself, Section 62-2-605(A)(2), in either case owned by the testator by reason of actions initiated by the organization, Sections 62-2-605(A)(2) and (A)(3), and not initiated by testator himself. Additional securities received by the testator in mergers, name changes, stock splits and stock dividends, and spin-offs of subsidiaries, more representing change in the form of ownership of the specifically devised securities than change in the substance of that which is owned, and none at the initiative of the testator, are here bulked with and carried out with the specifically devised securities themselves, as is likely to be intended by the testator.

Not carried out with the specific devise are additional securities of the organization itself owned by the testator by reason of his exercise of purchase options, i.e., at the initiative of the testator, Section 62-2-605(A)(2), and thus not to be bulked with the specifically devised securities, the testator himself having failed to do so by the route, open to but not taken by him, of amending his will. This is consistent with South Carolina case law, Rogers v. Rogers, 67S.C. 168, 45 S.E. 176 (1903), notwithstanding the case of Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545 (1934), a case not of a specific devise but rather of a devise of equivalent value of certain securities.

However, there are carried out with the specifically devised securities of an organization any additional securities resulting from a plan of reinvestment in the organization. These are owned also at the initiative of the testator, but are bulked with the specifically devised securities because the testator himself has practically done so by his assent to the plan of reinvestment.

The rule of Section 62-2-605(B) that distributions not provided for in Section 62-2-605(A) are not carried out with the specifically devised securities is, as the residual rule in this Code's scheme, consistent with the general rule of South Carolina case law, Bailey v. Wagner, 21 S.C. Eq. 1, 8, 10 (2 Strob. Eq.) (1848) (proceeds of sale of adeemed specific bequest not carried out); Rogers v. Rogers, supra, Pinson v. Pinsom, 150 S.C. 368, 148 S.E. 211 (1928), and Rikard v. Miller, 231 S.C. 98, 107, 97 S.E.2d 257 (1957) (identified proceeds of collection or sale of adeemed specific bequests not carried out); and Stanton v. David, 193 S.C. 108, 7 S.E.2d 852 (1940), and Taylor v. Goddard, 265 S.C. 327, 218 S.E.2d 246 (1975) (nor unidentified proceeds).

The 2013 amendment substituted the word 'organization' for 'entity' because 'organization' is defined in the probate code at Section 62-1-201(30). The amendment also added 'successor, related, or acquiring organization' to contemplate multiple changes in title of securities between the testator's acquisition of the security and the testator's death. The amendment eliminated 'if it is a regulated investment company' from (A)(4). The amendment added the words 'in cash' to subsection (B) to clarify that distributions made in cash do not fall within subsection (A) while distributions of other securities do fall within subsection (A). Finally, the amendment added the word 'declared' to subsection (B) to clarify that the cash distributions declared before death do not pass as part of the devise regardless of whether they are paid before or after death.

Section 62-2-606. (a) A specific devisee has the right to the specifically devised property in the testator's estate at the testator's death and to:

(1) any balance of the purchase price (together with any mortgage or other security interest) owed by a purchaser to the testator at the testator's death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at the testator's death;

(3) any proceeds unpaid at the testator's death on fire or casualty insurance or on other recovery for injury to the property;

(4) any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

(b) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or a condemnation award or insurance proceeds or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(c) The right of the specific devisee under subsection (b) is reduced by the value of any right he has under subsection (a).

(d) For purposes of references in subsection (b) to a conservator, subsection (b) does not apply if after the sale, mortgage, condemnation, casualty or recovery, it was adjudicated that the testator's disability ceased and the testator survived the adjudication for at least one year.

(e) For purposes of references in subsection (b) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, (i) 'incapacitated principal' means a principal who is an incapacitated person, (ii) no adjudication of incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

REPORTER'S COMMENT

Section 62-2-606 establishes the rule that a specific devise of any property, including securities also governed by Section 62-2-605, is construed to pass, not only as much of the specifically devised property as remains at testator's death, but also the proceeds of sale, subsection (a)(1), and condemnation, subsection (a)(2), of the property, and the proceeds of policies of insurance against fire or casualty to the property, subsection (a)(3), but only if such proceeds are yet unpaid to the testator at the testator's death, Section 62-2-606(a), or if such proceeds have been paid to an agent acting within the authority of a durable power of attorney or to a conservator, defined at Section 62-1-201(6), of the testator during the testator's life, provided less than one year separates the death of the testator and a prior adjudication that his disability had ceased, Section 62-2-606(b). Further, a specific devise of a secured obligation passes the products of foreclosure, or settlement in lieu of foreclosure, of such security, Section

62-2-606(a)(4). Section 62-2-606 applies unless the decedent's will provides otherwise, Section 62-2-601.

The 2013 amendment adds the provisions regarding an agent acting within the authority of a durable power of attorney

Section 62-2-607. A specific devise passes subject to any mortgage, pledge, security interest or other lien existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

REPORTER'S COMMENT
Section 62-2-607 establishes a rule of construction that specific devises pass not exonerated of but subject to any related security interests, unless the decedent's will provides otherwise, Section 62-2-601.
See Section 62-3-814 empowering the personal representative to pay an encumbrance under some circumstances; the last sentence of that section makes it clear that such payment does not increase the right of the specific devisee. The present section governs the substantive rights of the devisee.
For the rule as to exempt property, see Section 62-2-401.

Section 62-2-608. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

REPORTER'S COMMENT
Section 62-2-608 follows the common law rule of construction that, unless the decedent's will provides otherwise, Sections 62-2-601 and 62-2-608, general dispositive provisions in a will do not pass property subject to the testator's powers of appointment.

Section 62-2-609. Half bloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

REPORTER'S COMMENT
Section 62-2-609 establishes the meaning of terms of family relationship, as used in wills, as including the meaning which such terms have for purposes of intestate succession by certain persons under Part l of Article 2, unless the decedent's will provides otherwise, Section 62-2-601. Hence, references to 'children', 'issue', or 'heirs', and the like, are read to include or exclude half blood and adopted persons and persons born out of wedlock according to the rules of Sections 62-2-103(3) and 62-2-107, half bloods, 62-2-109(1), adopted persons, 62-2-109(2), persons born out of wedlock, 62-2-112, aliens, and 62-2-113, twice related persons, at least those who are otherwise implicated by mention in Section 62-2-609.
Half Blood:
Section 62-2-107 generally treats half bloods just as whole bloods in the event of intestacy; hence, Section 62-2-609 would generally treat them without discrimination in the construction of wills.
Adopted Persons:
Section 62-2-109(1) generally treats adopted persons as natural born members of their adoptive families in the event of intestacy, as would Section 62-2-609 generally treat them in the construction of wills.
Persons Born Out of Wedlock:
Section 62-2-109(2) treats persons born out of wedlock just as legitimate persons in the event of the intestacy of their mothers, as would Section 62-2-609 treat them in the construction of wills. Section 62-2-109 treats persons born out of wedlock just as legitimate persons in the event of the intestacy of their fathers, but only in cases of ceremonial marriage of the person's parents even if the attempted marriage was void, Section 62-2-109(2)(i), or in cases of adjudication of the father's paternity, Section 62-2-109(2)(ii), and so would Section 62-2-609 treat them in the construction of wills but for its additional proviso that the person born out of wedlock is treated as the child of the father only if the father himself openly and notoriously so treated him.

Section 62-2-610. (a) Property which a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if:

(i) the will provides for deduction of the lifetime gift;

(ii) the testator declared in a contemporaneous writing that the gift is to be deducted from the devise; or

(iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(b) For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 62-2-603 and 62-2-604, unless the testator's contemporaneous writing provides otherwise.

REPORTER'S COMMENT

Section 62-2-610 concerns the effect on testate succession of lifetime gifts made by the testator to persons who are also devisees under his will. The section establishes a rule of construction which charges such lifetime gifts, in satisfaction, against the will's devise, but only if either they are declared thus to be in satisfaction, either by the will or by the testator, contemporaneously in writing, or they are thus acknowledged by the devisee, again in writing. If the devisee predeceases the testator, but issue of the devisee survive as beneficiaries of the anti-lapse provision of this Code, Section 62-2-603, then Sections 62-2-610 and 62-2-603 read together charge the ancestor's lifetime gifts in satisfaction against the devise to the issue, again, however, only if the above-mentioned writing exists.

Section 62-2-610 values the satisfaction at the earlier of the devisee's actual receipt of the gift or the testator's date of death, resulting in most cases in a valuation at the date of the gift rather than at the date of death.

See Section 62-2-110 on advancements, for a rule analogous to the rule of satisfaction, but operative in the event of intestacy.

The 2013 amendment added subsection (c) to provide that if a devisee fails to survive the testator and the devisee's descendants take under 62-2-603 and if this devise is reduced with respect to the devisee, it shall automatically be reduced with respect to the devisee's descendants.

Consider Section 62-2-606 as it relates to ademption.

Section 62-2-611. A devise of land is construed to pass an estate in fee simple, regardless of the absence of words of limitation in the devise.

Section 62-2-612. The personal representative, trustee, or any affected beneficiary under a will, trust, or other instrument of a decedent who dies or did die after December 31, 2009, and before

January 1, 2011, may bring a proceeding to determine the decedent's intent when the will, trust, or other instrument contains a formula that is based on the federal estate tax or generation-skipping tax.

Part 7

Contractual Arrangements Relating to Death

Section 62-2-701. A contract to make a will or devise, or to revoke a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

REPORTER'S COMMENT
Section 62-2-701 allows the proof of a contract binding a decedent and concerning the succession to his estate, testate or intestate, only by way of some signed writing, either (1) his written, signed will containing the material provisions of the contract; (2) his written, signed will containing an express reference to the contract (extrinsic evidence proving its terms); or (3) a writing other than a will but signed by the decedent and containing evidence of the contract (allowing extrinsic evidence to prove its terms). The section's requirement of a signed writing to prove such contracts is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively.

Noting that the only concern of Section 62-2-701 is with the proof of contracts concerning succession, it should be recognized that the prior South Carolina law, concerning the formation of such contracts and the effects of such contracts' formation and the breach thereof, remains intact. See S. Alan Medlin, The Law of Wills and Trusts (S.C. Bar 2002) Sections 341, 342; W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965); and T. Stubbs, Oral Contracts to Make Wills, IX Selden Soc. Y.B. Part III, 10 (1948).

The policies basing Section 62-2-701 and Sections 62-2-502 (execution of wills), 62-2-506 (revocation of wills), and 62-2-509 (incorporation of other matter by reference in wills) are the same. All of these sections are aimed at protecting the integrity of the process of

succession to the estates of decedents in accordance with their own true wills. Each of these sections requires that the decedent's will be expressed either in some writing or by way of a physical act done to some writing; the writings are required in the expectation of increasing the reliability of the proof of the decedent's true will. See K. Walsh, Note: The Statute of Frauds' Lifetime and Testamentary Provisions: Safeguarding Decedents' Estates, 50 Ford. L. Rev. 239 (1981) (hereinafter Walsh).

Section 32-3-10(4) of the 1976 Code does require contracts concerning land to be 'in writing and signed by the party to be charged therewith.' Accordingly, contracts concerning the succession to land as an asset of a decedent's estate were, Brown v. Golightly, 106 S.C. 519, 91 S.E. 869 (1917), White v. McKnight, 146 S.C. 59, 143 S.E. 552 (1928), and will yet be required to be in writing and signed by the decedent, i.e., 'by the party to be charged therewith (only in the sense that to charge the personal representative or other successor or assign of the decedent is to charge the decedent himself).'

In addition, prior South Carolina case law was said to require that contracts concerning succession be proved by 'clear, cogent, and convincing evidence.' Caulder v. Knox, 251 S.C. 337, 346, 162 S.E.2d 262 (1968), Brown v. Graham, 242 S.C. 491, 131 S.E.2d 421 (1963). While Section 2-701 fails to codify the stated higher standard of proof per se, the provision's requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect.

Further, Section 62-2-701 provides that no presumption of the existence of a contract concerning succession arises from the mere execution of mutual wills or of a joint will. And while there is South Carolina authority, relying on the reciprocating nature of the terms of a joint will, together with surrounding family circumstances, for the satisfaction by implication of the clear, cogent, and convincing evidentiary standard as to the existence of a contract not to revoke the joint will, in a case in which the joint will failed to actually express an agreement of nonrevocability, Pruitt v. Moss, 271 S.C. 305, 247 S.E.2d 324 (1978), Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract.

Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract whose mere existence is proved by a signed writing. However, as a brake on the provision's liberality with respect to extrinsic evidence, Section 19-11-20 of the 1976 Code, the

'Dead man's' statute, will continue to limit the admissibility of that extrinsic evidence which is subject to its application, this notwithstanding the enactment of Section 62-2-701. See Brown v. Golightly, supra.

Section 62-2-701 avoids the problems, both that of the possibly uneven application of the stated higher standard of proof of contracts concerning succession and that of the questionable breadth of application of the several pre-existing Statutes of Frauds provisions as to contracts concerning succession, quite simply by establishing a signed writing requirement specifically applicable to all such contracts. Presumably Section 62-2-701 will be construed as preempting the field, rendering all other such statutory and case law provisions inapplicable to such contracts in the future.

However, it may be questioned whether Section 62-2-701 should not be subject, in its operation, to the familiar legal and equitable exceptions to the operation of the other Statutes of Frauds provisions. See Section 62-1-103 and Walsh, supra, at 258-270. These include the remedies of restitution of monies advanced and the imposition of a constructive trust to force the restitution of other specific assets advanced by the promisee on an oral contract, and the effects of part performance of the oral contract by the promisee as well as equitable and promissory estoppel, either matter binding the promissor to the oral contract notwithstanding any applicable Statute of Frauds. One case has reached such a conclusion after the enactment of Section 62-2-701. See Satcher v. Satcher, 351 S.C. 477, 570 S.E. 2d 535 (S.C. App. 2002). See also White v. McKnight, supra, Turnipseed v. Sirrine, supra 57 S.C. at 578, Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936), Bruce v. Moon, 57 S.C. 60, 35 S.E. 415 (1900). See W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965).

For the enforcement of a contract concerning succession while the testator is still alive, see Wright v. Trask, 329 S.C. 170, 495 S.E. 2d 222 (S.C. App. 1997).

Part 8

General Provisions

Section 62-2-801. (a) This section applies to disclaimers of any interest in or power over property, whenever created, and, in addition to other methods, is the means by which a disclaimer may be made under the laws of this State.

(b) For purpose of this section:

(1) 'Disclaimer' means any writing which disclaims, renounces, declines, or refuses an interest in or power over property.

(2) 'Disclaimant' means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(3) 'Disclaimed interest' means the interest that would have passed to the disclaimant had the disclaimer not been made.

(4) 'Fiduciary' means a personal representative, trustee, agent acting under a power of attorney, guardian, conservator, or other person authorized to act as a fiduciary with respect to the property of another person.

(c)(1) A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment.

(2) Unless barred, a disclaimer must be made within a reasonable time after the disclaimant acquires actual knowledge of the interest. A disclaimer is conclusively presumed to have been made within a reasonable time if made within nine months after the date of effectiveness of the transfer as determined under subsection (d)(3).

(3) To be effective, a disclaimer must be:

(i) in writing;

(ii) declare the writing as a disclaimer;

(iii) describe the interest or power disclaimed; and

(iv) be delivered to the transferor of the interest, the transferor's fiduciary, the holder of the legal title to or the person in possession of the property to which the interest relates, or a court that would have jurisdiction over such interest or subject matter. A disclaimer of a power must be delivered as if the power disclaimed were an interest in property. Delivery of a disclaimer may be made by personal delivery, first-class mail, or any other method that results in its receipt. A disclaimer sent by first-class mail shall be deemed to have been delivered on the date it is postmarked.

(4) A disclaimer is not a transfer, assignment, or release if made within a reasonable time after the disclaimant acquires actual knowledge of the interest and if not otherwise barred.

(5) A barred disclaimer is ineffective as a disclaimer under this section. A disclaimer is barred by any of the following conditions occurring before the disclaimer becomes effective:

(i) the disclaimant waived in writing the right to disclaim;

(ii) the disclaimant accepted the interest sought to be disclaimed;

(iii) the disclaimant voluntarily assigned, conveyed, encumbered, pledged, transferred, or directed the interest sought to be disclaimed or has contracted to do so; or

(iv) a judicial sale of the interest sought to be disclaimed has occurred.

(6) A disclaimer is not barred by a spendthrift provision or similar restriction on transfer or the right to disclaim imposed by the creator of the interest in or power over the property.

(7) A disclaimer is not barred by a disclaimant's financial condition, whether or not insolvent, and a disclaimer that complies with this section is not a fraudulent transfer under the laws of this State.

(8) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(9) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred unless the power is exercisable in favor of a disclaimant.

(10) Unless a disclaimer is barred, a disclaimer treated as a qualified disclaimer pursuant to Internal Revenue Code Section 2518 is effective as a disclaimer under this section.

(d)(1) If a disclaimant makes a disclaimer with respect to any transferor's transfer (including transfers by any means whatsoever, lifetime and testamentary, voluntary and by operation of law, initial and successive, by grant, gift, trust, contract, intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property, devise, bequest, beneficiary designation, survivorship provision, exercise and nonexercise of a power, and otherwise) to the disclaimant of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant.

(2) Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred), as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest. The disclaimer shall relate back to that date of effectiveness for all purposes, and any future interest which is provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested. Provided, that an interest disclaimed by a disclaimant who is the spouse of a decedent, the transferor of the interest, may pass by any further process of transfer to

such spouse, notwithstanding the treatment of the transfer of the disclaimed interest as if the disclaimant had predeceased.

(3) The date of effectiveness of the transfer of the disclaimed interest is (i) as to transfers by intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, and devise and bequest, the date of death of the decedent transferor, or that of the donee of a testamentary power of appointment (whether exercised or not exercised) with respect to, the interest, as the case may be, and (ii) as to all other transfers, the date of effectiveness of the instrument, contract, or act of transfer.

(e)(1) If and to the extent an instrument creates a fiduciary relationship and expressly grants the fiduciary the right to disclaim, the fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. If there is no instrument expressly granting the fiduciary the right to disclaim, the fiduciary's right to disclaim shall be determined by the laws of this State applicable to that fiduciary relationship.

(2) If a trustee disclaims an interest in property that otherwise would have become trust property, the disclaimed interest does not become trust property.

(3) A fiduciary may disclaim a power held in a fiduciary capacity. If the power has not been previously exercised, the disclaimer takes effect as of the time the instrument creating the power became irrevocable. If the power has been previously exercised, the disclaimer takes effect immediately after the last exercise of the power. The disclaimer of a fiduciary power may be made binding on any successor fiduciary if the disclaimer so provides.

(4) If no conservator or guardian has been appointed, a parent may disclaim on behalf of that parent's minor child and unborn issue, in whole or in part, any interest in or power over property which the minor child or unborn issue is to receive as a result of another disclaimer, but only if the disclaimed interest or power does not pass outright to that parent as a result of the disclaimer.

(f) A fiduciary or other person having custody of the disclaimed interest is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is barred pursuant to subsection (c)(5), for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual knowledge of the facts constituting the bar of the right to disclaim.

REPORTER'S COMMENTS
Section 62-2-801 provides for the state law effectiveness of the disclaimer of transfers by way of succession to the estates of decedents and otherwise. It affects transfers by will as well as transfers through intestate estates. Section 62-2-801 also regulates the method by which a disclaimer must be made in order to be effective, its nature, timeliness, formal execution and delivery, and also the effect of a disclaimer on the further disposition of the interest renounced.

The purpose of the enactment of Section 62-2-801 is to establish the state property law basis for the recognition of the effectiveness of such disclaimers. The antilapse statutes, Sections 62-2-603 and 62-7-606, apply to cases of disclaimers of gifts under wills and interests in revocable trusts unless the transferor provides otherwise.

Section 62-2-802. (a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3, and 4 of Article 2 [Sections 62-2-101 et seq., 62-2-201 et seq., 62-2-301 et seq., and 62-2-401 et seq.] and of Section 62-3-203, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or live together as husband and wife at the time of the decedent's death;

(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person;

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death; or

(4) an individual claiming to be a common law spouse who has not been established to be a common law spouse by an adjudication commenced before the death of the decedent or within the later of eight months after the death of the decedent or six months after the initial appointment of a personal representative; if the action is commenced

after the death of the decedent, proof must be by clear and convincing evidence.

(c) A divorce or annulment is not final until signed by the court and filed in the office of the clerk of court.

REPORTER'S COMMENT

Section 62-2-802 provides, with respect to the capacity of a putative surviving spouse to take by way of succession to the estate of a decedent, whether testate or intestate, for the effects of (1) a divorce, (2) an annulment, (3) a decree of separate maintenance, and (4) an order terminating marital property rights, or confirming equitable distribution between spouses, in cases in which any such event affects the marriage of the decedent to the putative surviving spouse.

Valid Divorce and Annulment.

Under Section 62-2-802(a), a valid divorce or a valid annulment deprives the putative spouse of the status of surviving spouse of the decedent and the capacity to take as such in succession to the decedent's estate under this Code, i.e., by way of provisions in favor of a 'surviving spouse,' whether found in the decedent's will, Parts 5 and 6 of Article 2, or in the intestacy statute, Section 62-2-102, or in the provision for an elective share, Section 62-2-201 et. seq., or in the provision for an omitted spouse, Section 62-2-301, or in that for a spouse with respect to exempt property, Section 62-2-401. However, the issuance of a decree of separate maintenance, not terminating the marital status, has no such effect. It should be apparent that a valid divorce or annulment must always have deprived the former spouse of the status of spouse of the decedent for purposes of succession.

Marital Conditions Other than Divorce or Annulment.

Under Section 62-2-802(b), any one of the following, an order terminating marital property rights, or confirming equitable distribution between spouses, subsection (3), a divorce or an annulment not recognized as valid in South Carolina if the putative spouse obtained or consented to it, subsection (1), or subsequent to it he or she participated in a marriage ceremony with some third person, subsection (2), deprives the putative spouse of the status of surviving spouse of the decedent; but, under Section 62-2-802(b) itself, the deprivation is only for the purposes of succession to the decedent's estate in intestacy, as a spouse with respect to an elective share as an omitted spouse, as a spouse with respect to exempt property, and as a spouse in line for appointment as an administrator in intestacy, i.e., as under Parts 1, 2, 3, and 4 of Article 2 and under Section 62-3-203.

However, under Section 62-2-507, such an order, a divorce or annulment, whether valid or invalid as under Section 62-2-802(b) has the additional effect of revoking, by operation of law, so much of the decedent's will as affects the putative spouse. Section 62-2-507 refers to Section 62-2-802 for the definition of divorce and annulment.

Perhaps other marital conditions, not valid as divorces or annulments and not detailed in Section 62-2-802(b), will continue by the common law to estop a putative spouse from claiming as a surviving spouse. See Section 62-1-103. Further, matters of succession not within the coverage of Sections 62-2-802(b) and 62-2-507 will continue to be governed by the prior South Carolina law, e.g., recovery under the Wrongful Death Act, Section 15-51-20 of the 1976 Code. See Folk v. U.S., 102 F. Supp. 736 (W.D.S.C. 1952), and see Lytle v. Southern Ry.-Carolina Division, 171, S.C. 221, 171 S.E. 42 (1933) and Lytle v. Southern Ry.-Carolina Division, 152 S.C. 161, 149 S.E. 692 (1929).

Both Sections 62-2-802 and 62-2-507 provide for the exceptional case of the subsequent marriage of the decedent to the putative spouse, those sections being rendered inapplicable to such a case.

The 2013 amendment clarifies that an individual who undergoes a divorce that is either invalid or not recognized in South Carolina will be considered a surviving spouse if the individual is living as husband and wife with the decedent at the time of decedent's death.

Section 62-2-803. (a) An individual who feloniously and intentionally kills the decedent is not entitled to any benefits under the decedent's will, trust of which the decedent is a grantor or under this article with respect to the decedent's estate, including, but not limited to, an intestate share, an elective share, an omitted spouse's share or child's share, a homestead allowance, and exempt property, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, retirement plan, annuity, or other contractual arrangement who feloniously and

intentionally kills the principal obligee or the individual upon whose life the policy is issued is not entitled to any benefit under the bond, policy, retirement plan, annuity, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section. A beneficiary whose interest is increased as a result of feloniously and intentionally killing shall be treated in accordance with the principles of this section.

(e) The felonious and intentional killing of the decedent revokes the nomination of the killer in a will or other document nominating or appointing the killer to serve in any fiduciary capacity or representative capacity, including, but not limited to, as personal representative, trustee, agent or guardian.

(f) A final judgment by conviction, or guilty plea establishing criminal accountability of felonious and intentional killing the decedent conclusively establishes that the convicted individual feloniously and intentionally killed the decedent for purposes of this section. In the absence of such final judgment the court, upon the petition of an interested person, must determine whether, upon the preponderance of the evidence standard, the individual would be found responsible for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be responsible for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(g) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer, for value and without notice, property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(h) If an individual feloniously and intentionally kills the decedent, and if the killer dies within one hundred twenty hours of the decedent's death, then the decedent shall be deemed to have survived the killer for purposes of distributing the killer's estate, including, but not limited to, property passing by intestacy, the killer's will, any trust of which the killer is a grantor, joint tenancy with right of survivorship and benefits

payable under a life insurance policy, retirement plan, annuity or other contractual arrangement.

REPORTER'S COMMENT

Section 62-2-803, subsections (a) through (e), governs the effects of the proof of a putative successor's felonious and intentional killing of a decedent upon whose death some matter of succession depends. Under this Code, such a killer is disabled from taking the succession and the succession proceeds as if the killer had predeceased the decedent. Under Section 62-2-803(f), a final judgment of conviction or a guilty plea of felonious and intentional killing conclusively invokes the operation of Section 62-2-803, but the lack of a conviction is no bar to invocation of the provision where the killing is proved by the preponderance of the evidence.

At common law, according to the maxim that 'no one shall be permitted to profit by his own ... wrong,' Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930), those, who were by the preponderance of the evidence, Smith v. Todd, supra, proven to have feloniously, Smith v. Todd, supra; and Keels v. Atlantic Coast Line R. Co., 159 S.C. 520, 157 S.E. 834 (1931), and intentionally, i.e., maliciously and not merely recklessly or involuntarily, Leggette v. Smith, 226 S.C. 403, 85 S.E.2d 576 (1955), but see Fowler v. Fowler, 242 S.C. 252, 254, 130 S.E.2d 568 (1963), killed another, were disabled from taking in succession to their victim, whether by their being named as the beneficiary of a policy of life insurance on their victim, Smith v. Todd, supra, or of employment death benefits with respect to their victim, Keels, supra, or by their taking in intestacy from their victim, or otherwise, Leggette v. Smith, supra. The maxim applied and the civilly proven killer was disabled from taking notwithstanding that on the criminal side he had been convicted of involuntary manslaughter, Keels, supra, or had been acquitted of crime, Leggette v. Smith, supra.

Former Section 21-1-50 of the 1976 Code was enacted, importantly, in supplementation of the common law maxim disabling a killer from taking in succession to his victim, and was enacted merely in order to establish a conclusive presumption of the disablement of the killer in the single specified case of his criminal court conviction of an unlawful killing, Sections 16-3-10 and 16-3-50 of the 1976 Code and Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545 (1934), presumably because of the higher standard of proof bound to have been imposed in that proceeding; not including coroner's convictions, Smith v. Todd, supra, nor including, of course, complete acquittals, Leggette v. Smith, supra, nor involuntary manslaughter convictions, Keels, supra, Sections

16-3-50 and 16-3-60 of the 1976 Code, but, perhaps, including other reckless homicide convictions, Section 56-5-2910 of the 1976 Code, unlawful albeit unintended, i.e., nonmalicious and involuntary. See Fowler v. Fowler, supra, at 254 and C. Karesh, Survey of South Carolina Law, 8 S.C.L.Q. 150 (1955) and E. McCrackin, Inheritance--Unintentional Killing, 7 S.C.L.Q. 475 (1955).

The thrust of Section 62-2-803 is meant to encompass not only the intended unlawful killing cases covered by former Section 21-1-50 of the 1976 Code, but also the cases left to the common law maxim. See Section 62-2-803(d). Perhaps the common law maxim retains some validity, as under Section 62-1-103, with respect to cases of killings or of succession, not covered by Section 62-2-803, if any. For instance, perhaps the common law maxim will yet apply to deprive unintended but reckless homicides of the benefits of the Wrongful Death Act, Sections 15-51-10, 15-51-20 of the 1976 Code et seq. See Fowler v. Fowler, supra at 254 but compare Leggette v. Smith, supra.

Under Section 62-2-803, subsections (a) through (d), the effect of the proving of the killing is not only to disable the killer from taking in succession but also to redirect the succession so that the matter proceeds as if the killer had predeceased the decedent.

Section 62-2-803(g) provides for the protection, from the claims of the takers on the redirected succession, of obligors who pay benefits to a killer without notice of such claims and also for the protection, from such claims, of purchasers from a killer, for value and without notice, who purchase before the adjudication of such claims.

In protecting the killer's subsequent purchasers, for value and without notice, Section 62-2-803(g), having first established the theoretical base that the killer is deprived by his crime of all legal title in the property which the killer would have acquired except for this section, the interest then, however, accords to the killer's subsequent purchasers, for value and without notice, in whom presumably later mere equitable title arises, the kind of protection against the claims of the earlier legal title claimants, i.e., those who take the redirected succession under Section 2-803. Thus, Section 62-2-803(g) carves out a further statutory exception to the common law rule of priority.

Section 62-2-804. When any individual is seized or possessed of any real property held in joint tenancy at the time of the individual's death, the joint tenancy is deemed to have been severed by the death of the joint tenant and the real property is distributable as a tenancy in common unless the instrument which creates the joint tenancy in real property, including any instrument in which one individual conveys to

himself and one or more other persons, or two or more persons convey to themselves, or to themselves and another or others, expressly provides for a right of survivorship, in which case the severance does not occur. While other methods for the creation of a joint tenancy in real property may be utilized, an express provision for a right of survivorship is conclusively considered to have occurred if the will or instrument of conveyance contains the names of the devisees or grantees followed by the words 'as joint tenants with right of survivorship and not as tenants in common'.

REPORTER'S COMMENT
Section 62-2-804 is incorporated into Article 2 in order to integrate particularly with Sections 62-2-101 and 62-2-501 the South Carolina law on the effects of the establishment of a joint tenancy in real property, with and without express provision for right of survivorship, on the succession to a decedent joint tenant's interest in such real property by, respectively, the surviving joint tenants or the decedent's testate or intestate successors. The case law developed in South Carolina in the application of former Section 21-3-50 of the 1976 Code and its predecessor statutes, recodified as Section 62-2-804, continues to apply.

Section 62-2-805. (A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property:

(1) acquired by either spouse before marriage;

(2) acquired by either spouse by gift or inheritance during the marriage;

(3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest;

(4) held for another; or

(5) specifically devised in a will or devised in a written statement or list disposing of tangible personal property pursuant to Section 62-2-512.

(B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.

Section 62-2-806. To achieve the testator's tax objectives, the personal representative or any interested person may file a summons and petition requesting the court, after notice and a hearing, to issue an order modifying the terms of a testator's will in a manner not contrary to the testator's probable intent. The court may provide that the modification has retroactive effect.

REPORTER'S COMMENT
The 2013 amendment added this section with provisions similar to Section 62-7-416.

Part 9

Delivery and Suppression of Wills

Section 62-2-901. (a) After the death of a testator, a person having custody of a will of the testator shall deliver such will, within thirty days of actual notice or knowledge of the testator's death to the judge of the probate court having jurisdiction to admit the same or to a person named as personal representative in the will who shall deliver the will to the judge of the probate court. Upon receipt of the will, the judge of probate shall file the same in probate court and if proceedings for the probate are not begun within thirty days the judge shall publish a notice of such delivery and filing in one of the newspapers in the county of the probate court for once a week for three consecutive weeks.

(b) Any person who intentionally or fraudulently destroys, suppresses, conceals, or fails to deliver the will to the judge of the probate court having jurisdiction to admit it to probate is liable to any person aggrieved for any damages that may be sustained by such action or inaction.

(c) Any person who intentionally or fraudulently destroys, suppresses, conceals, or fails to deliver the will to the judge of the probate court having jurisdiction to admit it to probate, after being ordered by the court in a proceeding brought for the purpose of compelling delivery, is subject to a penalty for contempt of court.

REPORTER'S COMMENT
Section 62-2-901 requires a custodian of a will, who has actual notice or knowledge of the testator's death, to deliver the will to the probate court or to the personal representative named in the will.

Article 3

Probate of Wills and Administration

Part 1

General Provisions

Section 62-3-101. The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates, including the exercise of the powers of the personal representative. Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting the devolution of intestate estates, subject to the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the personal representative under Sections 62-3-709, 62-3-710, and 62-3-711, and his personal property devolves, first, to his personal representative, for the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the personal representative under Sections 62-3-709, 62-3-710, and 62-3-711, and, at the expiration of three years after the decedent's death, if not yet distributed by the personal representative, his personal property devolves to those persons to whom it is devised by will or who are his heirs in intestacy, or their substitutes, as the case may be, just as with respect to real property.

REPORTER'S COMMENT
Real property devolves to the devisees or substitutes, under decedent's will, or to his heirs or substitutes, in an intestate estate, at the death of the owner whereas personal property devolves at the expiration of three years after decedent's death if not yet distributed by the personal representative.
As to devolution of real property, see Sections 62-3-711 and 62-3-715 concerning certain powers of the personal representative over real estate.

The devolution of personal property to devisees or heirs is expressly made subject to other provisions of this Code regarding exempt property, the rights of creditors, and the administration of estates. Further, the power (and fiduciary obligation) of the personal representative to apply personal property to the benefit of creditors and others interested in the estate is provided for in Section 62-3-711. Only if the property is not required to protect the rights of creditors or others does it devolve with no affirmative act of transfer of title by distribution being necessary. Thus, under the system of this Code and the provisions of this section, title to personal property devolves to devisees or heirs, but subject to exempt property provisions and the power to shift title to the personal representative where required in administration and to protect the rights of creditors or others.

Section 62-3-102. Except as provided in Section 62-3-1201 and except as to a will that has been admitted to probate in another jurisdiction which is filed as provided in Article 4, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the court or an adjudication of probate by the court.

REPORTER'S COMMENT
A duly executed, unrevoked will must be declared to be valid by order of informal probate or an adjudication of probate in order to be effective to prove the transfer of any property or to nominate an executor, with one exception, the affidavit procedures authorized for collection of estates worth less than twenty-five thousand dollars. Section 62-3-1201. The time limitations on probate proceedings to establish testacy are stated in Section 62-3-108.

Section 62-3-103. Except as otherwise provided in this article [Sections 62-3-101 et seq.] and in Article 4 [Sections 62-4-101 et seq.], to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

REPORTER'S COMMENT
Before one acquires the status of personal representative, he must be appointed by the court, qualify, and be issued letters. Failure to secure appointment by one who possesses the goods of a decedent makes him

liable as executor in his own wrong, Sections 62-3-619, 62-3-620, 62-3-621.
The exceptions provided in Article 4 permit a personal representative appointed in another state to collect certain assets in this State, Sections 62-4-201 through 62-4-203, and to exercise the powers of a local personal representative, if no local administration or application is pending in this State, by filing authenticated copies of his appointment and any will and any bond, Sections 62-4-204, 62-4-205.
For 'qualification,' see Section 62-3-601; for 'letters,' see Section 62-1-305; for the time of accrual of duties and powers of personal representative, see Section 62-3-701.
Section 62-3-108 imposes time limitations on appointment proceedings.

Section 62-3-104. No claim may be filed against the estate of a decedent and no proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative, except as provided in Section 62-3-804(1)(b). After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article [Sections 62-3-101 et seq.]. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in Section 62-3-1004 or from a former personal representative individually liable as provided in Section 62-3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

REPORTER'S COMMENT
This section requires creditors of decedents to assert their claims against a duly appointed personal representative. Notice to creditors, time limitations, payment of claims, and other provisions relating to creditors' claims are in Part 8 of Article 3. Creditors are interested persons who may seek appointment either in informal proceedings for appointment of a personal representative, Section 62-3-301, or in formal proceedings for appointment, Section 62-3-414. A creditor may seek appointment as personal representative and has priority for appointment if no other interested person has applied for appointment within forty-five days after death, Section 62-3-203, and may do so at any time within ten years of decedent's death, Section 62-3-108. If a personal representative has been appointed and has closed the estate under circumstances which leave a creditor's claim unbarred and

unpaid, the creditor may recover from the distributees, Section 62-3-1004, or from the former personal representative individually liable for breach of fiduciary duty as provided in Sections 62-3-807 and 62-3-1003, subject to the limitations of Section 62-3-1005. A secured creditor is not affected by this section except as to any deficiency judgment sought. A secured creditor is not required to assert his claim against the personal representative of the deceased debtor; however, the secured creditor who wishes to enforce a claim for deficiency, even if unliquidated or only potential, is required to comply with the claims provisions of this section and Part 8 of this article. The 2013 amendment to Section 62-3-104 relates to the process for a creditor seeking appointment as personal representative. Pursuant to Section 62-3-804(1)(b), a creditor seeking appointment must attach a written statement of its claim to the application or petition for appointment.

Section 62-3-105. Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in this article [Sections 62-3-101 et seq.], and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article.

Section 62-3-106. In proceedings within the jurisdiction of the court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with Section 62-1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

REPORTER'S COMMENT
The notice provisions of this section cover all proceedings within the exclusive jurisdiction of the probate court where notice is required by this Code or by rule. Notice provisions also apply to proceedings to construe probated wills or to determine heirs in an intestate estate which has not been and cannot be opened for administration due to time limitations. Thus, this section and the exceptions to the time limitations of Section 62-3-108 make it clear that proceedings to construe a probated will or to determine heirs of intestates may be commenced more than ten years after death. Notice may be given to

less than all interested persons but is binding upon only those who are given notice.
For the time and method of giving notice, see Section 62-1-401; and waiver of notice, Section 62-1-402.

Section 62-3-107. Unless administration under Part 5 [Sections 62-3-501 et seq.] is involved, (1) each proceeding before the court is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay, but, except as required for proceedings which are particularly described by other sections of this article [Sections 62-3-101 et seq.], no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

REPORTER'S COMMENT
This section and the other provisions of this article are designed to establish a flexible system of administration of decedents' estates which permits interested persons to determine the extent to which matters relating to estates become the subjects of judicial orders.
Administration under Part 5, Sections 62-3-501, et seq., is a single proceeding for judicial determination of testacy, priority, and qualification for appointment as personal representative and administration and settlement of decedents' estates. Section 62-3-107 applies to all other proceedings except those which are particularly described in other sections of this article. With the exceptions stated, proceedings for probate of wills and adjudication of intestacy may be combined with proceedings for appointment of personal representatives. Jurisdiction over interested persons is facilitated by Sections 62-3-106 and 62-3-602. Venue is determined by Section 62-3-201.
Except in circumstances which permit appointment of a special administrator, Section 62-3-614, a personal representative may not be appointed unless the will to which the requested appointment relates has been formally or informally probated, Sections 62-3-308, 62-3-402, and 62-3-414.

Section 62-3-108. (A)(1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than ten years after the decedent's death.

(2) Notwithstanding any other provision of this section:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding and if that previous proceeding was commenced within the time limits of this section;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within eight months from informal probate or one year from the decedent's death, whichever is later.

(B) If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death, and no proceedings under subsection (A)(2)(b) are commenced within the applicable period of three years, it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In proceedings commenced under subsection (A)(2)(a) or (A)(2)(b), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code which relate to the date of death.

REPORTER'S COMMENT

This section establishes a time limitation of ten years after a decedent's death for commencement of any proceeding to determine whether a decedent died testate or for commencing administration of his estate, with the following exceptions:

(1) a proceeding to probate a will previously probated in testator's domicile;

(2) appointment proceedings relating to an estate in which there has been a prior appointment;

(3) if a previous proceeding was dismissed because of doubt about the fact of death, and if decedent's death in fact occurred prior to commencement of the previous proceeding, and if there has been no undue delay in commencing the subsequent proceeding;

(4) if the decedent was a protected person, as an absent, disappeared, or missing person for whose estate a conservator has been appointed, and if the proceeding is commenced within three years after the conservator is able to establish the death of the protected person; or

(5) a proceeding to contest an informally probated will and appointment if the contest is successful, may be commenced within the later of eight months from informal probate or one year from the decedent's death.

These limitations do not apply to proceedings to construe wills or to determine heirs of an intestate.

If no will is probated within ten years from death, or within the time permitted by one of the exceptions, this section makes the assumption of intestacy final.

If a will has been probated informally within ten years, this section makes the informal probate conclusive within one year from death or eight months from informal probate, whichever is later. The limitation period prescribed applies to all persons including those under disability.

Interested persons can protect themselves against changes within the period of doubt concerning whether a person died testate or intestate by commencing at an earlier date a formal proceeding, Sections 62-3-401, 62-3-402.

Protection to a personal representative appointed after informal probate of a will or informally issued letters of administration, but which is subject to change in a subsequent formal proceeding commenced within the limitations prescribed, is afforded under Section 62-3-703.

Distributees who receive distributions from an estate before the expiration of the period remain potentially liable to those determined to be entitled in properly commenced formal proceedings, Section 62-3-909, 62-3-1006.

Purchasers from the personal representative or a distributee may be protected without regard to whether the period has run, Sections 62-3-714, 62-3-910.

Creditors' claims are barred against the personal representative, heirs, and devisees after one year from date of death in any event. Section 62-3-803(a).

Section 62-3-109. The running of any statute of limitations on a cause of action belonging to a decedent which had not been barred as of the date of his death is suspended during the eight months following the decedent's death but resumes thereafter unless otherwise tolled.

REPORTER'S COMMENT
Any statute of limitations running on a decedent's cause of action surviving decedent, which had not been barred at decedent's death, is tolled for eight months after decedent's death. This section has the effect of extending the running of a statute of limitations with respect to a cause of action surviving decedent for eight months from the time when it would have run, if the action had not been barred at decedent's death.
For the tolling or suspension of any statute of limitations running on a cause of action against decedent for the eight months following decedent's death, see Section 62-3-802.

Part 2

Venue for Probate and Administration; Priority to Administer; Demand for Notice

Section 62-3-201. (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) in the county where the decedent had his domicile at the time of his death; or

(2) if the decedent was not domiciled in this State, in any county where property of the decedent was located at the time of his death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Section 62-1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a

debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

REPORTER'S COMMENT
Venue for the first informal or formal testacy and appointment proceedings and subsequent proceedings is established in Section 62-3-201. For domiciliaries, venue is the county of domicile. For decedents not domiciled in this State, venue is in any county where property of the decedent was located.
If proceedings concerning the same estate are commenced in more than one court of this State, the court in which the proceeding was first commenced makes the finding of proper venue, Sections 62-3-201, 62-1-303. Upon finding that venue is elsewhere, the court in which the first proceeding was filed may transfer the proceeding to some other court, Section 62-3-201(c). Where a proceeding could be maintained in more than one court in this State, the court in which the first proceeding was commenced has the exclusive right to proceed or to transfer, Section 62-1-303.

Section 62-3-202. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this State, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this State must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this State.

REPORTER'S COMMENT
Conflicting claims of domicile arising in a formal testacy or appointment proceeding in a court of this State and a testacy or appointment proceeding after notice pending in another state are resolved by the court in which the first proceeding was commenced.

Section 62-3-203. (a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent regardless of whether the decedent died intestate and determined as if the decedent died intestate (for the purposes of determining priority under this item, any heirs who could have qualified under items (1), (2), (3), and (4) of subsection (a) are treated as having predeceased the decedent);

(6) forty-five days after the death of the decedent, any creditor complying with the requirements of Section 62-3-804(1)(b);

(7) four months after the death of the decedent, upon application by the South Carolina Department of Revenue, a person suitable to the court.

(8) Unless a contrary intent is expressed in the decedent's will, a person with priority under subsection (a) may nominate another, who shall have the same priority as the person making the nomination, except that a person nominated by the testator to serve as personal representative or successor personal representative shall have a higher priority than a person nominated pursuant to this item.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that:

(1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

(c) Conservators of the estates of protected persons or, if there is no conservator, any guardian for the protected person or the custodial parent of a minor, except a court appointed guardian ad litem of a minor or incapacitated person may exercise the same right to be

appointed as personal representative, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(d) If the administration is necessary, appointment of one who has equal or lower priority may be made as follows within the discretion of the court:

(1) informally if all those of equal or higher priority have filed a writing with the court renouncing the right to serve and nominating the same person in his place; or

(2) in the absence of agreement, informally in accordance with the requirements of Section 62-3-310; or

(3) in formal proceedings.

(e) No person is qualified to serve as a personal representative who is:

(1) under the age of eighteen;

(2) a person whom the court finds unsuitable in formal proceedings;

(3) with respect to the estate of any person domiciled in this State at the time of his death, a corporation created by another state of the United States or by any foreign state, kingdom or government, or a corporation created under the laws of the United States and not having a business in this State, or an officer, employee, or agent of such foreign corporation, whether the officer, employee, or agent is a resident or a nonresident of this State, if such officer, employee, or agent is acting as personal representative on behalf of such corporation;

(4) a probate judge for an estate of any person within his jurisdiction; however, a probate judge may serve as a personal representative of the estate of a family member if the service does not interfere with the proper performance of the probate judge's official duties and the estate must be transferred to another county for administration. For purposes of this subsection, 'family member' means a spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

(f) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representatives in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(g) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

REPORTER'S COMMENT
The priorities of the right to appointment as personal representative or successor personal representative (but not special administrator, Sections 62-3-203(b), 62-3-615) are, in order, a person determined by a probated will, a spouse who is a devisee, other devisees, a spouse who is not a devisee, other heirs, and, after forty-five days after death, a creditor, Section 62-3-203(a). Objections to appointment can be made only in formal proceedings, Section 62-3-203(b). Conservators or guardians of protected persons may exercise the same right to nominate for or object to appointment which the protected person would have if qualified, Section 62-3-203(c). Persons disqualified include persons under age eighteen, those found unsuitable by the court, and foreign corporations not having a place of business in this State, Section 62-3-203(e).

The 2010 amendment revised subsection (d) to eliminate certain language as to 'priority resulting from renunciation or waiver,' and adding 'or informal' proceedings. The prior version of subsection (d) provided for only a formal proceeding. The 2010 amendment allows one who does not have priority to pursue either a formal proceeding (requiring summons and petition) or an informal proceeding (does not require summons and petition) for appointment. See Section 62-3-310 for informal appointments to one who does not have priority. See 2010 amendments for certain definitions in §62-1-201.
The 2013 amendment to Section 62-3-203(6) relates to the process for a creditor seeking appointment as personal representative. Pursuant to Section 62-3-804(1)(b), a creditor seeking appointment must attach a written statement of the claim to the application or petition for appointment.

Section 62-3-204. Any interested person desiring notice of any order or filing pertaining to a decedent's estate may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The demand for notice shall expire one year from the date of filing with the court. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, the personal representative must give a copy of the demanded filing to the

demandant or his attorney. If the demand is a demand for a hearing, then the personal representative must comply with Section 62-1-401. The validity of an order which is issued or filing which is accepted without compliance with this requirement is not affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and ceases upon the termination of his interest in the estate.

REPORTER'S COMMENT
Interested persons may file a demand for notice, requiring notice to be given to them or their attorneys. The 2013 amendment clarifies that a court may issue an order and accept a filing while a demand for notice is effective.
As to the method and time of giving the notice referred to, see Section 62-1-401.

Part 3

Informal Probate and Appointment Proceedings

Section 62-3-301. (a) Applications for informal probate or informal appointment shall be directed to the court, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the State at the time of his death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and

(vi) that the time limit for informal probate or appointment as provided in this article has not expired either because ten years or less has passed since the decedent's death, or, if more than ten years from death have passed, circumstances as described by Section 62-3-108 authorizing tardy probate or appointment have occurred.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed;

(iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy must state the name and address of the person whose appointment is sought and must state in addition to the statements required by item (1):

(i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under Section 62-1-301 or a statement why any such instrument of which he may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 62-3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy

status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 62-3-610, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

(7) The court may probate a will without appointing a personal representative.

(b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

REPORTER'S COMMENT

This section prescribes the contents of the application for the informal probate of a will or for the informal appointment of a personal representative. The proofs and findings required for issuance of any order of informal probate or informal appointment are contained in Sections 62-3-303 and 62-3-308. This section requires that the application be verified, 62-3-301(a) and (b). The application is a part of the public record. Persons injured by deliberately false representation may invoke remedies for fraud without any specified time limit (See Article 1).

This section allows the court to probate a will without appointing a personal representative. Further, it allows the court to appoint a personal representative without notice.

Section 62-3-302. Upon receipt of an application requesting informal probate of a will, the court, upon making the findings required by Section 62-3-303, shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

REPORTER'S COMMENT
'Informal Probate' is designed to keep the vast majority of wills, which are simple and generate no controversy, from becoming involved in truly judicial proceedings. An order of informal probate makes the will operative and may be the only official action concerning its validity. The order is subjected to the safeguards which seem appropriate to this transaction.

Section 62-3-303. (a) In an informal proceeding for original probate of a will, the court shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in Section 62-1-201;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed and apparently unrevoked will is in the court's possession;

(6) any notice required by Section 62-3-204 has been given and that the application is not within Section 62-3-304;

(7) it appears from the application that the time limit for original probate has not expired.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this State or except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 62-2-502 or 62-2-505 have been met shall be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will of a nonresident decedent which has not been probated and is not eligible for probate under subsection (a)(5) may nevertheless be probated in this State upon receipt by the court of a copy of the will authenticated as true by its legal custodian together with the legal custodian's certificate that the will is not ineligible for probate under the law of the other place.

REPORTER'S COMMENT
This section lists the proofs and findings required to be made by the court as a part of an order of informal probate.
The purpose of subparagraph (c) of the section is to permit the informal probate of a will which, from a simple attestation clause, appears to have been executed properly. It is not necessary that the will be notarized or self-proved. If the will has been made self-proved under Section 62-2-503 it will of course 'appear' to be well executed and will include the recitals necessary for ease of probate under this section. This section does not require that the court examine one or both of the subscribing witnesses to the will. Any interested person who desires more rigorous proof of due execution may commence a formal testacy proceeding.
Note the provision of subparagraph (b) that informal probate is generally unavailable if there has been a previous probate of this or another will, unless, as under subparagraph (d), ancillary probate is desired.

Section 62-3-304. Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and its codicils), the latest of which does not expressly revoke the earlier, shall be declined.

REPORTER'S COMMENT
The court is required to decline applications for informal probate in the circumstances specified in this section where a formal proceeding with notice and hearing would provide a desirable safeguard.

Section 62-3-305. If the court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 62-3-303 and 62-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

REPORTER'S COMMENT
This section confers upon the court the discretion to deny probate to an instrument even though all of the statutory requirements have arguably been met. The denial of an application for informal probate does not give rise to a right of appeal. The proponent of the will is left with the option of initiating a formal testacy proceeding.

Section 62-3-306. (a) The moving party must give notice as described by Section 62-1-401 of his application for informal probate to any person demanding it pursuant to Section 62-3-204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

(b) If an informal probate is granted, within thirty days thereafter the applicant shall give written information of the probate to the heirs (determined as if the decedent died intestate) and devisees. The information must include the name and address of the applicant, the date of execution of the will, and any codicil thereto, the name and location of the court granting the informal probate, and the date of the probate. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by Section 62-3-705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate.

REPORTER'S COMMENT
The party seeking informal probate of a will (who may or may not be seeking informal appointment as personal representative) must give notice of his application for informal probate, presumably at the time he makes his application. The notice must be given to any personal representative of the decedent whose appointment has not been terminated, and to any other person who demands notice pursuant to Section 62-3-204. Section 62-3-204 prescribes that a person demanding notice under that section must have 'a financial or property interest.' The notice must be in conformity with Section 62-1-401, which provides that a notice may be given by certified, registered, or ordinary first class mail, by personal service, or if the address or identity of the person sought to be notified cannot be ascertained, by publication.
As to notice after informal probate is granted, the requirement in subsection (b) of giving written information of the probate to heirs and

devisees is unnecessary if a personal representative is appointed who is required to give the written information required by Section 62-3-705. This latter section provides that every personal representative except any special administrator must give written information of his appointment to heirs and devisees. The information requirement of Section 62-3-306(b) is effectively limited to those circumstances where an informal probate is granted but no personal representative is appointed. The term 'heirs and devisees' appears to encompass not only those persons who take by virtue of a probated will, but also those persons who would have been the decedent's heirs had he died intestate.

Section 62-3-307. (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 62-3-614, the court, after making the findings required by Section 62-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State.

(b) The status of a personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in Sections 62-3-608 through 62-3-612, but is not subject to retroactive vacation.

REPORTER'S COMMENT
This section and those that follow establish the mechanism for informal appointment of a personal representative.
The thirty day waiting period in the case of a nonresident decedent is designed to permit the first appointment to be at the decedent's domicile and presumably, to allow the domiciliary personal representative to then seek appointment in this State.

Section 62-3-308. (a) In informal appointment proceedings, the court must determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in Section 62-1-201;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by Section 62-3-204 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(b) Unless Section 62-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Section 62-3-610 has been appointed in this or another county of this State, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

REPORTER'S COMMENTS

Subsection (a) sets out those findings required of the court in an order of informal appointment of a personal representative. Of particular importance is the finding that any will to which the requested appointment relates has been formally or informally probated. As noted in the comment to Section 62-3-301, this Code allows the court to probate a will without appointing a personal representative. However, the effect of subsection (a) is that while the court may probate a will without appointing the personal representative designated in that will, it cannot informally appoint the personal representative without a prior formal or informal probate of the will to which the personal representative's appointment relates.

The court must enter a finding that the person appears to have priority entitling him to appointment. Section 62-3-203 establishes priority among persons seeking appointment as personal representative.

Subsection (b) sets out certain circumstances in which the application must be denied. The first such circumstance is where another personal representative has been appointed in this or another county of this State, except under the special situation of Section 62-3-612. The

second such circumstance is in the case of a nondomiciliary decedent. Here, the section is designed to prevent informal appointment of a personal representative in this State when a personal representative has been previously appointed at the decedent's domicile. Sections 62-4-201, 62-4-204, and 62-4-205 may make local appointment unnecessary.

Section 62-3-309. If the court is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 62-3-307 and 62-3-308 or, for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

REPORTER'S COMMENT
Because the appointment of a personal representative confers broad powers over the assets of the decedent's estate, the authority granted the court to deny the appointment for unclassified reasons is an important safeguard.

Section 62-3-310. The applicant must give notice of his intention to seek an appointment informally to any person having equal right to appointment not waived in writing and filed with the court. The notice shall state that, if no objection or nomination of another or no competing application or petition for appointment is filed with the court within thirty days from mailing of the application and notice, the applicant may be appointed informally as the personal representative. If an objection, nomination, application, or petition is filed within the thirty day period, the court shall decline the initial application pursuant to Section 62-3-309. The court may require a formal proceeding to appoint someone of equal or lesser priority.

REPORTER'S COMMENT
This section requires that the party seeking informal appointment must give notice to any person having equal right to appointment. It provides a forty-five day period in which a person with equal right of appointment may respond.

Section 62-3-311. If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and

which is not filed for probate in this court, the court shall decline the application.

REPORTER'S COMMENT
This section is the counterpart of Section 62-3-304. Section 62-3-301(a)(4) requires that an applicant for informal appointment make certain representations concerning the existence of any unrevoked testamentary instrument. If any such instrument is not being offered for probate by the applicant, nor has been otherwise offered for probate, the court must decline the application for informal appointment. This section is a necessary safeguard against the abuse of the informal process.

Part 4

Formal Testacy and Appointment Proceedings

Section 62-3-401. A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding must be commenced by an interested person filing and serving a summons and a petition as described in Section 62-3-402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 62-3-402(b) for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the court shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal

representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

REPORTER'S COMMENT

This section establishes the formal testacy proceeding and prescribes the effect of a formal proceeding on an informal probate proceeding. The word 'testacy' as used in this section encompasses any determination with respect to the testacy status of the decedent including that the decedent died without a will. See Section 62-1-201 (48). Although not specifically listed, the six uses for a formal testacy proceeding are: (1) an original proceeding to secure probate of a will; (2) a proceeding to corroborate a previous informal probate; (3) a proceeding to block a pending application for informal probate or to prevent informal application from occurring thereafter; (4) a proceeding to contradict a previous order of informal probate; (5) a proceeding to secure a declaratory judgment of intestacy or partial intestacy and a determination of heirs; (6) a proceeding to probate a will that has been lost, destroyed, or is otherwise unavailable.

The pendency of an action under this section automatically suspends any informal probate proceeding. Unless the petitioner requests confirmation of a previous informal appointment, a formal testacy proceeding suspends the personal representative's power of distribution but has no effect on the representative's other powers. If the petitioner seeks the appointment of a different personal representative, the court may further restrain the representative's powers, specifying the court's power over representatives. See also Sections 62-3-607 and 62-3-611. It should be noted that a 'distribution' does not include a payment of claims. See Section 62-1-121(10) for the definition of 'distributee' and Section 62-3-807 regarding payment of claims.

Under this section, any interested person may initiate a formal testacy proceeding. See Section 62-1-201 (23) for the definition of 'interested person.'

A formal testacy proceeding need not follow an informal proceeding and can be commenced without regard to whether a personal representative has been appointed.

The representative's power of distribution is automatically suspended upon the representative's receipt of notice of the proceeding. If there is

a contest over who should serve, the court has the discretion to restrict further the representative's power.

The 2010 amendment deleted 'may' and replaced it with 'must' and added 'and serving a summons' to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-3-402. (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(2) contains the statements required for informal applications as stated in the six subitems under Section 62-3-301(a)(1), and the statements required by subitems (ii) and (iii) of Section 62-3-301(a)(2);

(3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of Section 62-3-301(a) and indicate whether administration under Part 5 [Sections 62-3-501 et seq.] is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subitem (ii) of Section 62-3-301(a)(4) above may be omitted.

REPORTER'S COMMENT

An interested person who petitions the court for a formal testacy proceeding must comply with the requirements of this section concerning the contents of the petition. Regardless of whether the formal testacy proceeding concerns a testate or intestate decedent, the

petitioner must request an order determining the decedent's heirs. Requiring the determination of heirship precludes later questions that might arise at the time of distribution. If formal probate of a will is requested, the petition must provide the court with information concerning the location of the original will. If the original is 'lost, destroyed, or otherwise unavailable, the petition must contain the terms of the missing will. The petition should indicate whether administration under Part 5 of this article is desired. Once a formal testacy proceeding has been initiated, notice must be given as specified in Section 62-3-403.

If a formal order of appointment is sought because of a dispute over who should serve, Section 62-3-414 describes the appropriate procedure.

Section 62-3-403. (a) Upon commencement of a formal testacy proceeding or at any time after that, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by Section 62-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 62-3-204. The following persons must be properly served with summons and petition: the surviving spouse, children, and other heirs of the decedent (regardless of whether the decedent died intestate and determined as if the decedent died intestate), the devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the summons, petition, and notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) by engaging the services of an investigator.

The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

REPORTER'S COMMENT

Section 62-3-403(a) specifies those persons to whom notice of a formal testacy proceeding must be given. If another will has been or is being offered for probate within the county, those persons named in that will must be notified. The petitioner is not required to determine whether another will has been probated or offered for probate in other counties, but if the petitioner has actual knowledge of such a will, the devisees and executors named therein must be notified.

If the notice which is given does not fully comply with the requirements of this section, that defect is not necessarily fatal to the validity of an order. Section 62-3-106 provides that an order is valid as to those given notice though less than all interested persons were given notice. Section 62-3-1001(b) allows the court to confirm or amend as it affects those persons who were not notified of the formal testacy proceeding.

Section 62-3-403(b) sets out the additional steps which must be taken if the fact of the decedent's death is in doubt. In addition to giving notice to the alleged decedent, the petitioner must make a 'reasonably diligent search' for that individual. The court is to determine whether the search has been sufficiently diligent in light of the circumstances. In the event the alleged decedent is in fact alive or if the court is not convinced of the death of the alleged decedent, the petitioner is responsible for the costs of the search. In the event the court finds the alleged decedent is dead, the estate of that decedent will bear the cost of the search.

The 2010 amendment revised subsection (a) to add 'or at any time after that,' to delete Notice at the beginning of the third sentence and replacing it with 'The following persons' and also including the requirement for a summons and petition. The 2010 amendment also revised subsection (b) to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-3-404. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

REPORTER'S COMMENT
In order to object to the formal probate of a will, the objections must be stated in a pleading. The filing of such a response makes the proceeding a contested matter, and a hearing must be held in accordance with Section 62-3-406.

Section 62-3-405. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 62-3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit (including an affidavit of self-proof executed in compliance with Section 62-2-503) or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

REPORTER'S COMMENT
If proper notice has been given and no objection has been stated in a pleading, the proceeding is an uncontested one. The court may enter relief on the pleadings alone and without a hearing if the court finds that the alleged decedent is dead, venue is proper, and the proceeding is a timely one. Even in the absence of an objection, the court may require a hearing and evidence concerning the execution of the will. In the latter case, the section provides that the affidavit or testimony of one or more witnesses is sufficient proof of such execution.

Section 14-23-330 establishes a mechanism for the judge to receive the deposition of an attesting witness who lives at a distance from the court. Under Section 62-3-405, the court is given more flexibility in considering evidence of proof of execution of the will in an uncontested proceeding.

Section 62-3-406. In a contested case in which the proper execution of a will is at issue:

(1) if the will is self-proved pursuant to Section 62-2-503, the will satisfies the requirements for execution, subject to rebuttal, without the

testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it;

(2) if the will is notarized pursuant to Section 62-2-503(c), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will;

(3) if the will is witnessed pursuant to Section 62-2-502, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

REPORTER'S COMMENT

In the event an objection to a formal testacy proceeding has been received, the evidence necessary to prove the will depends upon whether the will is self-proved or notarized. If the will is not self-proved or notarized, testimony of at least one attesting witness is required. Compliance with the self-proving procedure of Section 62-2-503 gives rise to a rebuttable presumption that the will was properly executed, and the testimony of attesting witnesses is not required. The presumption does not extend to other grounds of attack, such as undue influence, lack of testamentary intent or capacity, fraud, duress, mistake, or revocation.

Section 62-3-407. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate.

REPORTER'S COMMENT
In all contested formal testacy proceedings, the petitioner bears the burden of proving death and venue. If the petitioner is attempting to establish that the decedent died intestate, he must also prove heirship. Any person asserting that a will is valid bears the burden of proving due execution.
This section also specifies the order of proof when two wills are offered and the later will purports to revoke the earlier. Proof of the later will is considered first, and an earlier will cannot be probated unless the later will is found to be invalid.

Section 62-3-408. A final order of a court of another state determining testacy, or the validity or construction of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons, must be accepted as determinative by the courts of this State if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

REPORTER'S COMMENT
This section makes it incumbent upon the local court to give full faith and credit to final orders of courts in another jurisdiction in the United States determining testacy or the validity or construction of a will regardless of whether the parties before the local court were personally before the foreign court. However, the foreign proceeding must have provided the requisite notice and opportunity for contest or construction for the resulting order to be binding locally.
This section does not apply unless the foreign proceeding has been previously concluded. If a local proceeding is concluded before completion of the foreign formal proceedings, local law will control.
If there is a contest concerning the decedent's domicile in formal proceedings commenced in different jurisdictions, Section 62-3-202 applies.
Local courts are bound by the foreign court's determination of the validity or construction of the will so long as this determination is part of a final order.

Section 62-3-409. Upon proof of service of the summons and petition, and after any hearing and notice that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by Section 62-3-108, it shall determine the decedent's domicile at death, his heirs (regardless of whether the decedent died intestate and determined as if

the decedent died intestate), and his state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 62-3-612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will is not ineligible for probate under the law of the other place.

REPORTER'S COMMENT
This section governs the scope and content of the formal testacy order. Every order must contain the court's findings regarding whether the alleged decedent is dead, the decedent's domicile at death, whether venue is proper, and whether the proceeding is a timely one. Regardless of whether the decedent is alleged to have died intestate, the order must contain a determination of heirs and testacy. If the court is not convinced of the alleged decedent's death, the court may dismiss the proceeding or it may permit amendment of the proceeding so as to make it a proceeding to protect the estate of a missing and therefore 'disabled' person under Article 5. Provision is made for proof of a will from a foreign jurisdiction which does not provide for probate of wills.

The 2010 amendment revised this section to delete 'After the time required for any notice has expired, upon' at the beginning and replace it with 'Upon' proof of 'service of the summons and petition' and also included the notice requirement for any hearing. The foregoing amendment was intended to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-3-410. (A) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any

provisions of a particular instrument are affected by the other instrument.

(B) After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of Section 62-3-412.

REPORTER'S COMMENT

An order in a formal testacy proceeding ends the time within which it is possible to probate after-discovered wills, though subject to the provisions for vacation or modification of that order under Sections 62-3-412 and 62-3-413. While a determination of heirs is not barred by the ten year limitation under Section 62-3-108, a judicial determination of heirs in a final order is conclusive unless the order is vacated or modified.

Under this section the court may admit more than one will to probate if the court in the exercise of its sound discretion determines that the instruments can be construed together.

Section 62-3-411. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

Section 62-3-412. Subject to appeal and subject to vacation as provided herein and in Section 62-3-413, a formal testacy order under Sections 62-3-409 through 62-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship

to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate.

(ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 62-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(iii) Twelve months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 62-3-403(b) was made. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

REPORTER'S COMMENT

This section establishes the exceptions to the res judicata effect of a formal testacy order. If a decedent's will has been probated and a final order issued, the court may modify or vacate the order only if: (1) the proponents of a later-offered will had no knowledge of the existence of the will at the time of the proceeding; or (2) the proponents of the later will did not have actual knowledge of the earlier proceeding and were given no notice of it other than by publication. If the final order determined that all or a part of the estate was intestate, that order may be vacated or modified only if the petitioner can establish: (1) that one or more heirs were omitted and (2) that the omitted heir or heirs had no knowledge of their status as an heir, that they were unaware the

decedent had died, or that they were given no notice of the proceeding other than by publication.
Section 62-3-412(3) prescribes the time limits for filing a petition for vacation under this section. The petition must be filed prior to the earlier of the following: (1) in an estate where a personal representative has been appointed, the entry of an order approving final distribution; (2) the ten-year ultimate time limit under Section 62-3-108; or (3) twelve months from the entry of the formal testacy order. The individual submitting a petition for vacation bears the burden of proving that modification or vacation of the order is 'appropriate under the circumstances.'
This section also specifies the procedure to be followed when an alleged decedent is discovered to be alive subsequent to a final order finding the fact of death. In such a situation, the alleged decedent may recover assets retained by the personal representative. The heirs and distributees may be required to restore the 'estate or its proceeds' if it is 'equitable in view of all the circumstances.'

Section 62-3-413. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

REPORTER'S COMMENT
This section deals with the modification or vacation of an order during the pendency of an appeal or within the time allowed for appeal. Broadly speaking, the power to vacate or modify an order under Section 62-3-412 provides the court with a means of dealing with facts not before the court during the proceeding. Section 62-3-413 gives the court the option of reconsidering its decision although it has no new evidence before it.

Section 62-3-414. (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative, or of one who previously has been appointed a personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 62-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 62-3-301(a)(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as

any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After service of the summons and petition to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under Section 62-3-203, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 62-3-611.

REPORTER'S COMMENT

If there is a question concerning the priority or qualifications of a personal representative, the issue may be combined with a request for the determination of testacy in a petition for a formal testacy proceeding. However, the formal appointment of a personal representative can be considered alone. If the proceeding under this section is combined with a formal testacy proceeding, the petition must not only comply with the requirements of a petition for formal testacy, but must also describe the issue regarding appointment. Once a proceeding has been initiated under this section alone, the court must receive a petition which complies with the requirements of Section 62-3-402 and describes the issue regarding appointment. Once initiated, a proceeding under this section stays any pending informal appointment proceedings. If a representative had been appointed prior to this proceeding, the filing of a petition under this section automatically restraints all of the representative's powers which are not necessary to preserve the estate. Under this section, service of the summons and petition must be given to all interested persons as defined in subparagraph (b).

Formal proceedings concerning appointment should be distinguished from administration under Part 5. The former includes any proceeding after notice involving a request for an appointment. Administration under Part 5 begins with a formal proceeding and may be requested in addition to a ruling concerning testacy or appointment, but it is descriptive of a special proceeding with a different scope and purpose than those concerned merely with establishing the bases for an administration. A personal representative appointed in a formal

proceeding may or may not be subject to administration under Part 5. Procedures for securing the appointment of a new personal representative after a previous assumption as to testacy under Section 62-3-612 may be informal or related to pending formal proceedings concerning testacy.

When an order authorizing appointment is issued, the personal representative must then comply with Section 62-3-601 et seq., concerning bond requirements.

The 2010 amendment revised subsection (b) to delete 'notice' and replace it with 'service of the summons and petition' to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding concerning appointment of a personal representative as referred to in this section. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Part 5

Administration Under Part 5

Section 62-3-501. Administration under Part 5 [Sections 62-3-501 et seq.] is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A personal representative under Part 5 [Sections 62-3-501 et seq.] is responsible to the court, as well as to the interested persons, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a personal representative under Part 5 [Sections 62-3-501 et seq.] has the same duties and powers as a personal representative who is not subject to administration under Part 5 [Sections 62-3-501 et seq.].

REPORTER'S COMMENT

This section and the following sections of this part describe an optional procedure for settling an estate in one continuous proceeding in the court. The proceeding is a single 'in rem' action designed to secure complete administration and settlement of a decedent's estate when it is desired to make sure that every step in probate is adjudicated with notice and hearing. If administration under Part 5 is not requested or

ordered, there may be no compelling reason to employ all the available formal proceedings in the administration of an estate.

Section 62-3-502. A petition for administration under Part 5 [Sections 62-3-501 et seq.] may be filed by any interested person or by a personal representative at any time, a prayer for administration under Part 5 [Sections 62-3-501 et seq.] may be joined with a petition in a testacy or appointment proceeding, or the court may order administration under Part 5 [Sections 62-3-501 et seq.] on its own motion. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for administration under Part 5 [Sections 62-3-501 et seq.] shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for administration under Part 5 [Sections 62-3-501 et seq.], even though the request for administration under Part 5 [Sections 62-3-501 et seq.] may be denied. After service of the summons and petition and upon notice to interested persons, the court shall order administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate: (1) if the decedent's will directs administration under Part 5 [Sections 62-3-501 et seq.], it shall be ordered unless the court finds that circumstances bearing on the need for administration under Part 5 [Sections 62-3-501 et seq.] have changed since the execution of the will and that there is no necessity for administration under Part 5 [Sections 62-3-501 et seq.]; (2) if the decedent's will directs no administration under Part 5 [Sections 62-3-501 et seq.], then administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that administration under Part 5 [Sections 62-3-501 et seq.] is necessary under the circumstances.

REPORTER'S COMMENT
Under this section any 'interested person' or the personal representative may request administration under Part 5, or the probate court may order it on its own motion. If the decedent's will directs such administration it must be ordered unless the court finds circumstances have changed since execution of the will. Likewise, where the will directs no such administration, it will be ordered only if the court finds it is necessary for protection of interested persons.

Even though it is possible that a request for administration under Part 5 may be made after a determination of testacy has been made, this section requires the petition for such administration to include matters necessary to put the issue of testacy before the court. The result is that the question of testacy will be adjudicated.

While administration under Part 5 compels a judicial settlement of an estate there are other sections which grant a judicial review and settlement. This fact leads to the conclusion that administration under Part 5 will be valuable primarily when there is some advantage in a single judicial proceeding which will adjudicate all major points involved in an estate settlement.

The 2010 amendment revised this section to add 'service of the summons and petition and upon' in the fourth sentence to clarify that a summons and petition and notice of any hearing are required for a formal proceeding for administration under Part 5. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-3-503. (a) The pendency of a proceeding for administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.] is as provided for formal testacy proceedings by Section 62-3-401.

(c) After service of the summons and petition upon the personal representative and notice of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.], a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

REPORTER'S COMMENT

This section deals with the effect of administration under Part 5 on other proceedings. Primarily pendency of such administration does two things: (1) it stays action on any informal proceedings and (2) it prohibits the personal representative from exercising his power to distribute the estate. However, the filing of the petition does not otherwise affect the powers and duties of the personal representative unless the court restricts the exercise of such power.

In regard to the effect of such action on the personal representative's ability to create good title in a purchaser of estate assets, it should be noted that such a power is not hampered by the fact that the personal representative may breach a duty created by statute or otherwise. However, the personal representative may be held for contempt of court. In any event, the pendency of the proceeding could be recorded as is usual under a lis pendens.

The 2010 amendment deleted 'he has received' and added 'service of the summons and petition upon the personal representative and' to the first sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding under Part 5. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-3-504. Unless restricted by the court, a personal representative under Part 5 [Sections 62-3-501 et seq.] has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and any court certification thereof, and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.

REPORTER'S COMMENT
This section acknowledges that the powers of a personal representative in an administration under Part 5 are the same as in any other administration unless restricted by the court and endorsed on the letters of appointment. If not so endorsed, the restrictions are ineffective as to persons dealing with the estate in good faith. The practical effect of this provision is to require persons dealing with the personal representative to examine the representative's letters.

Section 62-3-505. Unless otherwise ordered by the court, administration under Part 5 [Sections 62-3-501 et seq.] is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under Section 62-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of an

administration under Part 5 [Sections 62-3-501 et seq.] on the application of the personal representative or any interested person.

REPORTER'S COMMENT
This section requires additional notice for a closing order. The requirement for notice of interim orders is left to the discretion of the court except to the extent such notice is required by other sections, see e.g. Section 62-3-204, which entitles any interested person to notice of any interim order.

Part 6

Personal Representative; Appointment, Control, and Termination of Authority

Section 62-3-601. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

REPORTER'S COMMENT
This and related sections of this part describe details and conditions of appointment which apply to all personal representatives without regard to whether the appointment proceeding involved is formal or informal, or whether the personal representative is subject to administration under Part 5. Section 62-1-305 authorizes issuance of copies of letters and prescribes their content. The section should be read with Section 62-3-504 which directs endorsement on letters and any court certification of any restrictions of powers of an administrator under Part 5.
No formal oath is required of a personal representative.

Section 62-3-602. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

REPORTER'S COMMENT
Except for personal representatives appointed pursuant to Section 62-3-502, appointees are not deemed to be officers of the appointing court or to be parties in one continuous judicial proceeding that extends until final settlement. See Section 62-3-107.
In order to prevent a personal representative who might make himself unavailable to service within the State from affecting the power of the appointing court to enter valid orders affecting him, each appointee is required to consent in advance to the personal jurisdiction of the court in any proceeding relating to the estate that may be instituted against him. The section requires that he be given notice of any such proceeding, which, when considered in the light of the responsibility he has undertaken, should make the procedure sufficient to meet the requirements of due process.

Section 62-3-603. (A) Except as may be required pursuant to Section 62-3-605 or upon the appointment of a special administrator, a personal representative is not required to file a bond if:

(1) all heirs and devisees agree to waive the bond requirement;

(2) the personal representative is the sole heir or devisee;

(3) the personal representative is a state agency, bank, or trust company, unless the will expressly requires a bond; or

(4) the personal representative is named in the will, unless the will expressly requires a bond.

If, pursuant to Section 62-3-203(a), the court appoints as personal representative a nominee of a personal representative named in a will, the court may in its discretion decide not to require bond.

(B) Where a bond is required of the personal representative or administrator of an estate by law or by the will, it may be waived under the following conditions:

(1) the personal representative or administrator by affidavit at the time of applying for appointment as such certifies to the court that the gross value of the estate will be less than twenty thousand dollars, that the assets of the probate estate are sufficient to pay all claims against the estate, and that the personal representative or administrator agrees to be personally liable to any beneficiary or other person having an interest in the estate for any negligence or intentional misconduct in the performance of his duties as personal representative or administrator; and

(2) all known beneficiaries and other persons having an interest in the estate execute a written statement on a form prescribed by the court that they agree to the bond being waived. This form must be

filed with the court simultaneously with the affidavit required by item (1) above. A creditor for purposes of this item (2) is not considered a person having an interest in the estate.

The provisions of this subsection (B) are supplemental and in addition to any other provisions of law permitting the waiving or reducing of a bond. Any bond required by Section 62-3-605 may not be waived under the provisions of this section.

REPORTER'S COMMENT

A bond is required of any personal representative who is not named in a will, including an administrator in intestacy and a special administrator, whether in probate or in intestacy, whether resident or nonresident, but excluding corporate fiduciaries not required to be bonded. However, bond is not required for a personal representative who is the sole heir or devisee. Moreover, all heirs and devisees can agree to waive any bond requirement. A bond is not required of any personal representative who is named in a will, unless appointed as a special administrator or unless the will or some interested person under Section 62-3-605, requires a bond.

Section 62-3-604. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 62-6-101) in a manner that prevents their unauthorized disposition. Upon application by the personal representative or another interested person or upon the court's own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, permit the substitution of another bond with the same or different sureties or dispense with the bond.

REPORTER'S COMMENT
This section permits estimates of value needed to fix the amount of any required bond. A consequence of this procedure is that estimates of value of estates are not required to appear in the petition and applications which will attend every administered estate. Hence, a measure of privacy that is not possible under most existing procedures may be achieved.
Release of sureties was formerly interpreted to mean that the probate court might release a surety if he petitioned for relief and established that he reasonably believes himself to be in danger of suffering a loss on account of his suretyship. See Bellinger v. United States Fidelity Co., 115 S.C. 469, 106 S.E. 470 (1921); and McKay v. Donald, 8 Rich. 311 (42 S.C.L. 331) (1855). Section 62-3-604 is more flexible and should not be construed so narrowly as to permit release of sureties only on the limited basis available at prior law.

The 2010 amendment deleted 'On petition of' at the beginning of the last sentence and added 'Upon application by' to allow the personal representative or another interested person to make application to the probate court regarding bond matters as outlined in this section. Unlike a petition, an application does not require a summons or petition. See §62-1-201(1). The 2010 amendment also added 'upon the court's own motion' in the last sentence.

Section 62-3-605. Any person apparently having an interest in the estate worth in excess of five thousand dollars, or any creditor having a claim in excess of five thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required in an amount determined by the court as sufficient to protect the interest of the person or creditor demanding bond, but the requirement ceases if the person or creditor demanding bond ceases to have an interest in the estate worth in excess of five thousand dollars or a claim in excess of five thousand dollars. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate or to pay the person or creditor demanding bond. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative unless good cause is shown for the delay.

REPORTER'S COMMENT
The demand for bond described in this section may be made in a petition or application for appointment of a personal representative, or may be made after a personal representative has been appointed. The mechanism for compelling bond is designed to function without unnecessary judicial involvement. If demand for bond is made in a formal proceeding, the judge can determine the amount of bond to be required with due consideration for all circumstances. If demand is not made in formal proceedings, methods for computing the amount of bond are provided by statute so that demand can be complied with without resort to judicial proceedings. The information which a personal representative is required by Section 62-3-705 to give each beneficiary includes a statement concerning whether bond has been required. Section 62-3-605 is consistent with the general policy of this Code to minimize the formalities of estate administration unless interested parties ask for specific protection.

Section 62-3-606. (a) The following requirements and provisions apply to any bond required by this part:

(1) Bonds shall name the judge of the court as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

REPORTER'S COMMENT

This section provides for the terms and conditions of bonds to be furnished by personal representatives. It provides that the judge of the court is the obligee of the bond and that the sureties are jointly and severally liable if they consent to the jurisdiction of the court by executing the bond.

Section 62-3-607. (a) Upon application of any interested person, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within ten days or at such other times as the parties may agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the application.

REPORTER'S COMMENT

This section provides that a person who appears to have an interest in an estate may petition the court for an order to restrain a personal representative from performing acts of administration if it appears to the court that the personal representative may take some action which would jeopardize the interest of the applicant or some other interested person. The matter must be set for hearing on the restraining order within ten days or at such other time as the parties may agree. There is also a provision for notice which must be given to the personal representative, his attorney, and to any other parties named defendant in the petition.

The 2010 amendment deleted 'On petition' at the beginning of this section and replaced it with 'Upon application' so that any person who

appears to have an interest in the estate can make application to the probate court to restrain a personal representative. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201(1).

Section 62-3-608. Termination of appointment of a personal representative occurs as indicated in Sections 62-3-609 to 62-3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

REPORTER'S COMMENT
'Termination,' as defined by this Section and Sections 62-3-609 through 62-3-612 provide definiteness respecting when the rights and powers of a personal representative (who may or may not be discharged of duty and liability by court order) terminate. An order of the court entered under Sections 62-3-1001 may terminate the appointment of and discharge a personal representative.
It is to be noted that this section does not relate to jurisdiction over the estate in proceedings which may have been commenced against the personal representative prior to termination. In such cases, a substitution of successor or special representative should occur if the plaintiff desires to maintain his action against the estate.

Section 62-3-609. The death of a personal representative or the appointment of a conservator or guardian for the person of a personal representative terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver

the estate assets to a successor or special personal representative upon his appointment and qualification.

REPORTER'S COMMENT
This section deals with the termination of a representative by death or disability. The personal representative of the disabled or deceased representative will sometimes succeed to the duties and powers of the office.

Section 62-3-610. (a) Unless otherwise provided, an order closing an estate as provided in Section 62-3-1001 terminates an appointment of a personal representative and relieves the personal representative's attorney of record of any further duties to the court.

(b) A personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. When the resignation is effective, the personal representative's attorney of record shall be relieved of any further duties to the court.

REPORTER'S COMMENT
Under subparagraph (a) a formal closing immediately terminates the authority of a personal representative. Subparagraph (b) allows resignation of a personal representative.
The more informal process for resignation coupled with the comparative ease of securing appointment of a successor, see Sections 62-3-613 through 62-3-618, infra, facilitates the substitution of personal representatives.

Section 62-3-611. (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate.

If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

(c) The termination of appointment under this section shall relieve the personal representative's attorney of record of any further duties to the court.

REPORTER'S COMMENT

This section deals with the termination of a personal representative by removal for cause. Any interested person may petition the court for the removal of a representative although notice and hearing are required.

The 2010 amendment added 'service of the summons and petition upon the personal representative and' in the fourth sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding to remove a personal representative. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Section 62-3-612. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 62-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration

of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

REPORTER'S COMMENT
This section and Section 62-3-401 describe the relationship between formal or informal proceedings. The basic assumption of both sections is that an appointment, with attendant powers of management, is separable from the basis of appointment; i.e., intestate or testate?; what will is the last will? Hence, a previously appointed personal representative continues in spite of formal or informal probate that may give another a prior right to serve as personal representative. But, if the testacy status is changed in formal proceedings, the petitioner also may request appointment of the person who would be entitled to serve if his assumption concerning the decedent's will prevails. Provision is made for a situation where all interested persons are content to allow a previously appointed personal representative to continue to serve even though another has a prior right because of a change relating to the decedent's will. It is not necessary for the continuing representative to seek a reappointment under the new assumption for Section 62-3-703 is broad enough to require him to administer the estate as intestate, or under the later probated will, if either status is established after he was appointed. Under Section 62-3-403, notice of a formal testacy proceeding is required to be given to any previously appointed personal representative. Hence, the testacy status cannot be changed without notice to a previously appointed personal representative.

Section 62-3-613. Parts 3 and 4 of this article [Sections 62-3-301 et seq. and Sections 62-3-401 et seq.] govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration

which the former personal representative would have had if his appointment had not been terminated.

REPORTER'S COMMENT
This section provides that all powers and authority of the initial representative pass to the successor personal representative unless the court provides otherwise.

Section 62-3-614. A special administrator may be appointed:

(1) informally by the court on the application of an interested person when necessary:

(a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62-3-609;

(b) for a creditor of the decedent's estate to institute any proceeding under Section 62-3-803; or

(c) to take appropriate actions involving estate assets;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

REPORTER'S COMMENT
Appointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of conflict of interest. If a need arises because of temporary absence or anticipated incapacity for delegation of the authority of a personal representative, the problem may be handled without judicial intervention by use of the delegation powers granted to personal representatives by Section 62-3-715(19).

Section 62-3-615. (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

REPORTER'S COMMENT
In some areas of the country, particularly where wills cannot be probated without full notice and hearing, appointment of special administrators pending probate is sought almost routinely. The objective of this section is to reduce the likelihood that contestants will be encouraged to file contests as early as possible simply to gain some advantage via having a person who is sympathetic to their cause appointed special administrator. Hence, it seems reasonable to prefer the named executor as special administrator where he is otherwise qualified.

Section 62-3-616. A special administrator appointed by the court in informal proceedings pursuant to Section 62-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under this Code necessary to perform his duties.

REPORTER'S COMMENT
Duties of the special administrator are provided throughout this particular section, although the power to distribute assets is specifically omitted.

Section 62-3-617. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

REPORTER'S COMMENT
In formal proceedings in which a special administrator is appointed, the powers of a special administrator are the same as those of a personal representative except in the instance where the powers are limited by the court.

Section 62-3-618. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections 62-3-608 through 62-3-611.

REPORTER'S COMMENT
Appointment of a special administrator would terminate according to the provisions of the order of appointment.

Section 62-3-619. Any person who obtains, receives, or possesses property of whatever kind, belonging to the decedent, by means of fraud or without paying valuable consideration equivalent to the value of the property, shall be charged and chargeable as executor of his own wrong (executor de son tort) with respect to the goods and debts. The value of the property is charged to the executor de son tort. Likewise, the value of the property shall be deducted from any distribution or payment of any claim or commission to which the executor de son tort is entitled from the estate.

REPORTER'S COMMENT
This section defines as an executor de son tort any person who by fraud or without valuable consideration obtains assets of a decedent without appointment as his personal representative, charging him with liability therefor.

Section 62-3-620. Acting sua sponte or upon the petition of any interested person, the probate judge of the county in which a deceased person was domiciled at the time of his death may order the executor de son tort to account for the property in his possession. Upon a finding that the property has been converted, wasted or otherwise damaged through improper interference, the court may assess damages including attorney's fees and costs in the amount determined by the court not to exceed the value of the property charged to the executor de son tort.

REPORTER'S COMMENT
This section provides that the probate judge may cite before him the executor de son tort and require him to account for the deceased's property. It also enables the probate judge to enter a decree against the executor de son tort for any property of the deceased that he has wasted or has lost by his illegal interference.

Section 62-3-621. The rights of the probate court and interested parties set forth in Section 62-3-620 shall survive the death of the executor de son tort.

REPORTER'S COMMENT
This section provides that the estate of an executor de son tort may be liable for the waste or conversion committed by the executor de son tort.

Part 7

Duties and Powers of Personal Representatives

Section 62-3-701. The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named personal representative in a will may protect property of the decedent's estate and carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

REPORTER'S COMMENT
The authority of a personal representative relates back to death upon appointment and stems from his appointment. The personal representative may ratify acts done by others prior to appointment.

Section 62-3-702. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

REPORTER'S COMMENT
This section provides that a person to whom letters are issued has exclusive authority until the appointment is terminated or modified. It also allows the personal representative to recover any property in the hands of a second erroneously appointed representative.

Section 62-3-703. (a) A personal representative is a fiduciary who shall observe the standards of care described by Section 62-7-804. A

personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. Upon expiration of the relevant claim period, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative has not received actual notice of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a proceeding for administration under Part 5. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this Code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

REPORTER'S COMMENT

This section is especially important because it states the basic theory underlying the duties and powers of the personal representative. The personal representative is classified as a fiduciary and must adhere to the 'prudent person' rule provided for trustees by Section 62-7-804. In general the personal representative is required to settle and distribute the estate as fast and efficiently as possible for the best interest of the estate. The section holds the power of distribution as the most significant power the personal representative performs. Finally, the section grants a personal representative the same standing to sue and be sued in the courts of this State and any other jurisdiction as the

decedent had immediately prior to his death, except as to proceedings which do not survive the decedent's death.

The 2010 amendment, in subsection (a), changed the reference from Section 62-7-933 to Section 62-7-804, which was made necessary by the adoption of the South Carolina Trust Code.

Section 62-3-704. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate under the supervision of the court, as follows:

(a) Immediately after his appointment he shall publish the notice to creditors required by Section 62-3-801.

(b) Within ninety days after his appointment he shall file with the court the inventory and appraisement required by Section 62-3-706.

(c) Upon the expiration of the relevant period, as set forth in Section 62-3-807, the personal representative shall proceed to allow or disallow claims and pay the claims allowed against the estate, as provided in Section 62-3-807.

(d) Upon the expiration of the relevant period, as set forth in Section 62-3-1001, the personal representative shall file the accounting, proposal for distribution, petition for settlement of the estate, proofs required by Section 62-3-1001, and proof of publication of notice to creditors.

(e) Within the time set forth in Section 62-3-806(a), serve upon all claimants a notice stating that their claim has been allowed or disallowed pursuant to that section.

(f) The time periods stated herein for completing the above requirements are not intended to supplant any other time periods stated elsewhere in this Code. The court may on its own motion, or on the motion of the personal representative or of any interested person, extend the time for completing any of the requirements of administration contained in Article 3 [Section 62-3-1001, et seq.] including any of the above requirements, and especially including the requirement to account, under Section 62-3-1001, in cases of estates which remain significantly unadministered as of the expiration of the relevant time period, either as to the marshalling of assets or as to the allowance of claims.

(g) If a personal representative or trustee neglects or refuses to comply with any provision of Section 62-3-706 he is subject to the contempt power of the court. The probate court, after a hearing and any notice the court may require, may issue its order imposing the sentence, fine, or penalty as it sees fit and remove the personal representative and appoint another personal representative.

REPORTER'S COMMENT
This section requires the personal representative to proceed expeditiously with the settlement and distribution of the estate. It further provides that the settlement and distribution are under the court's supervision. Where informal procedures are in effect, the section does not impose any burdens on the personal representative other than those of Part 5 and of any other pertinent provision of Article 3, requiring or permitting such direct court supervision.

Section 62-3-705. Not later than thirty days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

REPORTER'S COMMENT
This section requires the personal representative to inform of his appointment those persons who appear to have an interest in the estate as it is being administered. Such notice must be given within thirty days of his appointment. The notice may be sent through ordinary mail. The notice must include the personal representative's name and address, indicate that the information is being sent to all those who might have an interest in the estate and whether a bond was required

and where the papers relating to the estate are filed. The notice should not be confused with the notice requirements relating to litigation.

Section 62-3-706. (A) Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall:

(1) prepare an inventory and appraisement of probate property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item;

(2) file the original of the inventory and appraisement with the court; and

(3) mail a copy of the filed inventory and appraisement to interested persons who have filed a demand for notice of the filing of the inventory pursuant to Section 62-3-204.

(B) Within ninety days of a demand by an interested person for an inventory of nonprobate property, the personal representative shall:

(1) prepare a list of the property owned by the decedent at the time of his death that is not probate property, so far as is known to the personal representative which may, at the discretion of the personal representative, include the value and nature of the decedent's interest in the property on the date of the decedent's death;

(2) mail a copy of the list to each interested person who has requested the list; and

(3) file proof of the mailing with the probate court.

(C) The court, upon application of the personal representative, may extend the time for filing or making either the inventory and appraisement or list of nonprobate property provided for in this section.

REPORTER'S COMMENT

This section requires the personal representative within ninety days after his appointment to file an inventory and appraisement listing the fair market value of each probate asset as of the decedent's date of death. He must list the type and amount of any encumbrances. He is also required to mail copies to interested persons who request it.

The 2013 amendment requires the personal representative to provide a list of nonprobate property to any interested person who claims it. The list of nonprobate property does not have to include information about the value and nature of the property, although the personal

representative at his discretion may include information about the value and nature of the property.
The court may upon application extend the time for filing.

Section 62-3-707. The personal representative may obtain a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory and appraisement or by supplemental inventory and appraisement with the item or items he appraised. On application of any interested person, the court may require that one or more qualified appraisers be appointed to ascertain the fair market value of all or any part of the estate or may approve one or more qualified appraisers.

REPORTER'S COMMENT
This section allows the personal representative to employ expert appraisers and also authorizes the court to require the appointment of expert appraisers upon application by any interested person.

Section 62-3-708. If any property not included in the original inventory and appraisement comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall submit a supplementary, amended or corrected inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, the appraisers or other data relied upon, if any, and restating the unchanged information from the original inventory and appraisement and furnish copies to persons who receive the original inventory, and to interested persons who have requested or demanded the new information.

Section 62-3-709. Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an

heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

REPORTER'S COMMENT
Section 62-3-101 provides that title to real and personal property devolves on death or thereafter to heirs or devisees 'subject ... to administration.' Section 62-3-711 vests in the personal representative a power over title to real and personal property during administration. This section deals with the personal representative's duty and right to possess assets, real and personal. It proceeds from the assumption that it is desirable wherever possible to avoid disruption of the possession of the decedent's assets by his heirs or devisees. But if the personal representative considers it advisable he may take possession and his judgment is made conclusive. It is likely that the personal representative's judgment could be questioned in a later action but this possibility should not interfere with the personal representative's administrative authority as it relates to possession of the estate.

Section 62-3-710. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

REPORTER'S COMMENT
This section authorizes the personal representative to recover any property transferred by the decedent in a transaction which would be void or voidable against creditors.

Section 62-3-711. (a) Until termination of his appointment or unless otherwise provided in Section 62-3-910, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. Except as otherwise provided in subsection (b), this power may be exercised without notice, hearing, or order of court.

(b) Except where the will of the decedent authorizes to the contrary, a personal representative may not sell real property of the estate except as authorized pursuant to the procedures described in Sections 62-3-911 or Sections 62-3-1301 et seq. and shall refrain from selling tangible or intangible personal property of the estate (other than securities regularly traded on national or regional exchanges and produce, grain, fiber, tobacco, or other merchandise of the estate for which market values are readily ascertainable) having an aggregate value of ten thousand dollars or more without prior order of the court which may be issued upon application of the personal representative and after notice or consent as the court deems appropriate.

(c) If the will of a decedent devises real property to a personal representative or authorizes a personal representative to sell real property (the title to which was not devised to the personal representative), then subject to Section 62-3-713, the personal representative, acting in trust for the benefit of the creditors and other interested persons in the estate, may execute a deed in favor of a purchaser for value, who takes title to the real property in accordance with the provisions of Section 62-3-910(B).

REPORTER'S COMMENT

This section grants a personal representative the same power over title to property that an absolute owner would have, in trust, however, for the benefit of creditors and others interested in the estate. This power over title is limited in two respects. First, except where the will provides to the contrary, an order from the probate court must be obtained before personal property having an aggregate value in excess of ten thousand dollars may be sold. Secondly, and again except where the will provides to the contrary, the representative cannot exercise the power to sell real property unless he follows the mechanism of Section 62-3-911 or Section 62-3-1301 et seq.

Under this section, Section 62-3-101, and Section 62-3-709, title to personal property (as well as real property) devolves at or soon after death to heirs and devisees, and not to the personal representative. Further, the representative can exercise power over the title to real property (as well as personal property) subject to limitations.

Section 62-3-712. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and

others dealing with a personal representative shall be determined as provided in Sections 62-3-713 and 62-3-714.

REPORTER'S COMMENT
This section provides that the personal representative is liable for his acts and omissions and for any breach of duty to the same extent as the trustee of an express trust. The rights of purchasers and others dealing with the personal representative are governed by the next two sections. Additionally, this section should be read in conjunction with Sections 62-3-607 and 62-3-611, the first of which deals with an interested party obtaining an order restraining the personal representative from performing a specified act or exercising a specified power and the second of which deals with the right of an interested party to petition for the removal of the personal representative.

Section 62-3-713. Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

REPORTER'S COMMENT
This section provides that certain actions of a personal representative are voidable. Exceptions to the general rule are provided in the event the will or a contract entered into by the decedent expressly authorizes the transaction or if the transaction is approved by the probate court after notice to interested parties. Presumptively, a broad authorization in the will of a decedent for his personal representative to deal with himself in both a fiduciary and an individual capacity would not fall under the first exception which is limited to 'the transaction' and must, therefore, be held to require authorization for a specific transaction.
The general principles of law pertaining to a bona fide purchaser for value will protect the title to property in the hands of such a purchaser who obtained it without notice of the conflict of interest or act of self-dealing.

Section 62-3-714. A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of personal representatives under Part 5 [Sections 62-3-501 et seq.] which are endorsed on letters as provided in Section 62-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

REPORTER'S COMMENT
This section is designed to provide protection to persons who deal with a personal representative. Persons dealing with representatives generally are not charged with the duty to inquire into any restrictions pertaining to the exercise of powers by such personal representative. Any person dealing with a representative under Part 5 will be charged with knowledge of the restrictions upon exercise of power set forth in the letters.
For example, a bona fide purchaser for value dealing with a representative will be completely protected with respect to claims by interested parties. However, the personal representative will be liable to persons interested in the estate if his dealings with such bona fide purchaser were inconsistent with directions set forth in the will or other restrictions imposed by order of the probate court. However, if such a purchaser had actual knowledge of any such restrictions, then this section will not provide protection to such purchaser; instead, he is subject to having title to the property acquired from the personal representative declared void upon the petition of some interested party.

Section 62-3-715. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the restrictions imposed in Section 62-3-711(b) and to the priorities stated

in Section 62-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

Execution and delivery of a deed pursuant to this subsection affects title to the subject real property to the same extent as execution and delivery of a deed by the personal representative in other cases authorized by this Code;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including monies received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) subject to the restrictions imposed in Section 62-3-711(b), acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing, or erect new party walls or buildings;

(8) satisfy and settle claims and distribute the estate as provided in this Code;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, but not for a term extending beyond the period of administration and, with respect to a lease with option to purchase, subject to the restrictions imposed in Section 62-3-711(b);

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) vote stocks or other securities in person or by general or limited proxy;

(12) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(13) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(14) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(15) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, lien, or other security interest upon property of another persons, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(16) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(17) sell, or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(18) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(19) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(20) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(21) subject to the restrictions imposed in Section 62-3-711(b), sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(22) continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will; (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(23) make payment in cash or in kind, or partly in cash and partly in kind, upon any division or distribution of the estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and value and appraise any asset and distribute such asset in kind at its appraised value;

(24) with the approval of the probate court or the circuit court, compromise and settle claims and actions for wrongful death, pain and suffering or both, and all claims and actions based on causes of actions surviving, to personal representatives, arising, asserted, or brought under or by virtue of any statute or act of this State, any state of the United States, the United States, or any foreign country;

(25) donate a qualified conservation easement or fee simple gift of land for conservation on any real property of the decedent in order to obtain the benefit of the estate tax exclusion allowed under Internal Revenue Code Section 2031(c) as defined in Section 12-6-40(A), and the state income tax credit allowed under Section 12-6-3515, if the personal representative has the written consent of all of the heirs, beneficiaries, and devisees whose interests are affected by the donation. Upon petition of the personal representative, the probate court may consent on behalf of any unborn, unascertained, or incapacitated heirs, beneficiaries, or devisees whose interests are affected by the donation after determining that the donation of the

qualified real property interest shall not adversely affect them or would most likely be agreed to by them if they were before the court and capable of consenting. A guardian ad litem must be appointed to represent the interest of any unborn, unascertained, or incapacitated persons. Similarly, and for the same purposes and under the same conditions, mutatis mutandis, a trustee may make such a donation for the settlor;

(26) the personal representative has the power to access the decedent's files and accounts in electronic format, including the power to obtain the decedent's user names and passwords.

REPORTER'S COMMENT
The purpose of this section is to grant personal representatives a broad array of powers reasonably necessary for the proper administration of an estate. The purpose of this section is to set forth in some detail the powers which a personal representative may exercise with respect to the estate and without the necessity of obtaining an order from the probate court in order to do so. Note the introductory provision that the representative may exercise his powers, including the power of sale, only within the restrictions of Section 62-3-711(b) (see the comments to that section, supra.).

Section 62-3-716. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

REPORTER'S COMMENT
This section provides that a successor personal representative has the same powers and duties imposed upon the original personal representative except any such powers or duties which are expressly made personal to the original personal representative named in the will.

Section 62-3-717. If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate. When a corepresentative has been delegated to act for the

others, written notice of the delegation signed by the others and setting forth the duties delegated must be filed with the court. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the persons with whom they dealt had been the sole personal representative.

REPORTER'S COMMENT

This section provides that all corepresentatives are required to unanimously consent to any matter pertaining to the administration and distribution of the estate except when any corepresentative receives and receipts for property due the estate, when an emergency arises and action is necessary in order to preserve the estate or when the corepresentatives have delegated the right to act to one or more of their number.

This section absolves any person dealing with one corepresentative for any excesses committed by such corepresentative in the exercise of his duty to the extent that such person dealing with the corepresentative is unaware that the existence of other corepresentatives or has been advised by such corepresentative that he has the authority to so act. The thrust of this section is to protect such a person dealing with a corepresentative and to eliminate the need for such person to inquire into the validity of the actions taken by such corepresentative. However, the rules pertaining to administration under Part 5 would have the effect of at least requiring a person dealing with a personal representative to determine whether or not the letters granted by the probate court restrict the actions of the representative. That being the case, it would seem that a person exercising due diligence in determining whether or not there is an administration under Part 5 would necessarily come across the fact that more than one representative has been appointed by the probate court to represent the estate. That leads to the inescapable fact that a person dealing with the representative of an estate who exercises due diligence would necessarily come across the existence of additional corepresentatives and would, therefore, not be able to rely upon the protections purportedly granted to him as stated above, unless such corepresentative represents in some fashion that he has the authority to act for all other corepresentatives. See the third sentence of Section 62-3-714 in connection with the purchaser's implicit duty to inquire into the authority of a representative to act on behalf of the estate.

Section 62-3-718. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated and, if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

REPORTER'S COMMENT
This section merely provides that remaining corepresentatives will have full authority to act if one or more of their number loses the capacity to so act by reason of death or other termination of appointment as a personal representative.

Section 62-3-719. (a) Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

(b) Additionally, a personal representative may receive not more than five percent of the income earned by the probate estate in which he acts as fiduciary. No such additional commission is payable by an estate if the probate judge determines that a personal representative has acted unreasonably in the accomplishment of the assigned duties, or that unreasonable delay has been encountered.

(c) The provisions of this section do not apply in a case where there is a contract providing for the compensation to be paid for such services, or where the will otherwise directs, or where the personal representative qualified to act before June 28, 1984.

(d) A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(e) If more than one personal representative is serving an estate, the court in its discretion shall apportion the compensation among the personal representatives, but the total compensation for all personal representatives of an estate must not exceed the maximum compensation allowable under subsections (a) and (b) for an estate with a sole personal representative.

(f) For purposes of this section, 'probate estate' means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy. This subsection is intended to be declaratory of the law and governs the compensation of personal representatives currently serving and personal representatives serving at a later time.

REPORTER'S COMMENT
Unless provided otherwise by contract, by the will or by the personal representative's renunciation, his compensation is limited to sums equal to five percent of personal property and five percent of sold real property, in the normal course, plus five percent of income on invested monies, unless the probate court disapproves. The probate court may set fees for less than the stated limits. The probate court may set fees higher than the stated limits if the court determines the personal representative provided extraordinary service.

Section 62-3-720. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

REPORTER'S COMMENT
If any personal representative in good faith prosecutes or defends an action, he is entitled to reimbursement from the estate for reasonable expenses as well as reasonable attorney fees.

Section 62-3-721. (a) After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is under Part 5 [Sections 62-3-501 et seq.], the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

(b) Upon the settlement of their accounts by personal representatives the court shall allow each appraiser appointed by the court a reasonable daily fee for each day spent on appraising the

property of the estate and also mileage at the same rate that members of state boards, commissions, and committees receive for each mile actually traveled in going to and from the place where the property ordered to be appraised is situated. In determining the reasonableness of the fee to each appraiser the court shall consider the value of the estate, the actual time consumed by the appraisers in the performance of their duties, and other such circumstances and conditions surrounding the appraisal as the court deems appropriate.

REPORTER'S COMMENT
This section allows a personal representative to seek prior approval of the probate court before an agent or advisor is hired.

Part 8

Creditors' Claims

Section 62-3-801. (a) Unless notice has already been given under this section, a personal representative upon his appointment must publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within eight months after the date of the first publication of the notice or be forever barred.

(b) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within one year of the decedent's death, or within sixty days from the mailing or other delivery of such notice, whichever is earlier, or be forever barred. Written notice is the notice described in (a) above or a similar notice.

(c) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

(d) Notwithstanding subsections (a) and (b), notice to creditors under this section is not required if a personal representative is not appointed to administer the decedent's estate during the one year period following the death of the decedent.

REPORTER'S COMMENT
This section provides for the publication of notice and for the delivery of notice to creditors at the discretion of the personal representative. The notice is published once a week for three successive weeks in a

paper of general circulation in the county. There is no requirement that demands be duly attested.

Section 62-3-802. (a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(b) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the eight months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(c) For purposes of any statute of limitations, the proper presentation of a claim under Section 62-3-804 is equivalent to commencement of a proceeding on the claim.

REPORTER'S COMMENT

This section provides for waiver of and the suspension of the running of any statute of limitations, measured from some event other than death and notice to creditors, during the eight months following the decedent's death, resuming thereafter.

Section 62-3-803. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following:

(1) one year after the decedent's death; or

(2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication.

(b) A claim described in subsection (a) which is barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.

(c) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent,

liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative within eight months after performance by the personal representative is due; or

(2) any other claim, within the later of eight months after it arises, or the time specified in subsection (a)(1).

(d) Nothing in this section shall be construed as placing a limitation on the time for:

(1) commencing a proceeding to enforce a mortgage, pledge, lien, or other security interest upon property of the estate;

(2) to the limits of the insurance protection only, commencing a proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(3) collecting compensation for services rendered to the estate or reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

REPORTER'S COMMENT

Under this section, claims encompass those that are due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis. The claims are then divided into those which arose before the death of the decedent and those which arise at or after the death of the decedent.

Claims arising before death, unless barred by other statutes of limitation, are barred unless presented as follows: (1) for those creditors not barred by publication within the earlier of one year following date of death or sixty days from any actual notice; and (2) for those creditors barred by publication within the earlier of one year from date of death or eight months from any publication. Also, if a claim is barred by the nonclaim statute of the decedent's domicile before the first publication for claims in this State, it is also barred in this State.

Claims arising at or after death must be presented as follows: (1) if against the personal representative, within eight months after his performance is due; (2) otherwise, within eight months after the claim arises.

The limitations of Section 62-3-803 do not apply to proceedings to enforce mortgages, pledges, or other liens upon property of the estate, or proceedings to establish liability of the decedent or the personal representative for which there is liability insurance.

Section 62-3-804. Claims against a decedent's estate must be presented as follows:

(1)(a) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the probate court in which the decedent's estate is under administration. The claim is considered presented upon the filing of the statement of claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe fully the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) In addition to the requirements in subsection (1)(a), a creditor seeking appointment as personal representative pursuant to Section 62-3-203(a)(6) must attach the written statement of the claim to the application or petition for appointment. For purposes of Section 62-3-803, the claim is considered to be presented when the application or petition for appointment is filed with the written statement of the claim attached.

(2) Subject to subsection (5), once a claim is presented in accordance with subsection (1), a claimant may at any time thereafter commence a legal proceeding against the personal representative by the filing of a summons and petition for allowance of claim or complaint in any court where the personal representative may be subjected to jurisdiction, seeking payment of the claim by the decedent's estate, and serving the same upon the personal representative. If the legal proceeding is not commenced in the probate court, the claimant must provide written notice to the probate court in which the decedent's estate is under administration that a legal proceeding has commenced for allowance of the claim, setting forth the court in which the legal proceeding is pending. Thereafter, the probate court shall not authorize the closing of the decedent's estate until the legal proceeding has ended.

(3) In lieu of the procedure provided in subsections (1) and (2), and subject to subsection (6), a claimant may commence a legal proceeding against the personal representative, by the filing of a summons and petition for allowance of claim or complaint in any court where the personal representative may be subjected to jurisdiction, seeking payment of his claim by the estate, and serving the same upon the

personal representative. The commencement of the legal proceeding under this subsection must occur within the time limit for presenting the claim as set forth in Section 62-3-803. If the legal proceeding is not commenced in the probate court, the claimant must file a written statement of the claim with the probate court in which the decedent's estate is under administration providing substantially the same information as the statement in subsection (1), along with a statement that a legal proceeding to enforce the claim has commenced, and identifying the court where the proceeding is pending. Thereafter, the probate court shall not permit the closing of the decedent's estate until the legal proceeding has ended.

(4) Notwithstanding any other provision of this section, no presentation of a claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent's death.

(5) Notwithstanding any other provision of this section, no proceeding for enforcement or allowance of a claim or collection of a debt may be commenced more than thirty days after the personal representative has mailed a notice of disallowance or partial disallowance of the claim in accordance with the provisions of Section 62-3-806. However, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the thirty day period, or to avoid injustice the court, on petition presented to the court prior to the expiration of the thirty-day period, may order an extension of the thirty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

(6) Notwithstanding any other provision of this section, no claim against a decedent's estate may be presented or legal action commenced against a decedent's estate prior to the appointment of a personal representative to administer the decedent's estate.

(7)(a) A legal proceeding pending on the date of a decedent's death in which the decedent was a necessary party shall be suspended until a personal representative is appointed to administer the decedent's estate, unless a court otherwise orders.

(b) Pursuant to Section 62-3-104, this subsection does not apply to a proceeding by a secured creditor of a decedent to enforce the secured creditor's right to its security. It does apply to a proceeding for a deficiency judgment against a decedent or the estate of a decedent.

REPORTER'S COMMENTS
This section establishes the mechanism for presenting claims. The claim may be delivered to the personal representative and must be filed with the court. Certain information must be included for claims not yet due, contingent, unliquidated, and secured claims. In lieu of presenting a claim, a proceeding may be commenced against a personal representative in any appropriate court, but the commencement must occur within the time for presenting claims. No claim is required in matters which were pending at the time of decedent's death. Actions on claims must be commenced within the thirty days after the personal representative has mailed a notice of disallowance, but the personal representative or the court may consent prior to the expiration of the thirty-day period to extensions that do not run beyond the applicable statute of limitations. The 2013 amendment requires a creditor seeking appointment to attach a written statement of its claim to the application or petition for appointment. Allowing a creditor to present a claim in this manner creates an exception to the general rule of Section 62-3-104 and Section 62-3-804(6), otherwise precluding the presentation of a claim prior to the appointment of a personal representative. The 2013 amendment further clarifies that, as earlier stated in Section 62-3-104, an *in rem* proceeding by a secured creditor is not suspended until a personal representative is appointed, unless that proceeding includes an action for a deficiency judgment against a decedent or his estate.

Section 62-3-805. (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses;

(2) debts and taxes with preference under federal law;

(3) reasonable and necessary medical expenses, hospital expenses, and personal care expenses of the last illness of the decedent, including compensation of persons attending the decedent prior to death;

(4) debts and taxes with preference under other laws of this State, in the order of their priority, including medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;

(5) all other claims.

(b) Except as is provided under subsection (a)(4), no preference shall be given in the payment of any claim over any other claim of the

same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) Any person advancing or lending money to a decedent's estate for the payment of a specific claim shall, to the extent of the loan, have the same priority for payment as the claimant paid with the proceeds of the loan.

REPORTER'S COMMENT
This section sets up the classification of claims where the assets of the estate are insufficient to pay all claims in full. Claims due and payable are not entitled to a preference over claims not due.

Section 62-3-806. (a) As to claims presented in the manner described in Section 62-3-804(1) within the time limit prescribed in Section 62-3-803, within sixty days after the presentment of the claim, or within fourteen months after the death of the decedent, whichever is later, the personal representative must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part. Service of such notice shall be by United States mail, personal service, or otherwise as permitted by rule and a copy of the notice shall be filed with the probate court along with proof of delivery setting forth the date of mailing or other service on the claimant. A notice of disallowance or partial disallowance of a claim must contain a warning that the claim will be barred to the extent disallowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) not later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the personal representative. For good cause shown, the court may reasonably extend the time for filing the notice of allowance or disallowance of a properly filed claim.

(b) The personal representative of a decedent's estate may commence a proceeding to obtain probate court approval of the allowance, in whole or part, of any claim or claims presented in the manner described in Section 62-3-804(1), within the time limit prescribed in Section 62-3-803, and not barred by subsection (a). The proceeding may be commenced by the filing of a summons and petition with the probate court, and service of the same upon the claimant or

claimants whose claims are in issue; and such other interested parties as the probate court may direct by order entered at the time the proceeding is commenced. Notice of hearing on the petition shall be given to interested parties in accordance with Section 62-1-401.

(c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim. Upon obtaining such a judgment a claimant must file a certified copy of its judgment with the probate court in which the decedent's estate is being administered.

(d) Unless otherwise provided in any judgment in another court entered against the personal representative and except for claims under 62-3-803, allowed claims bear interest at the legal rate (as determined according to Section 34-31-20(A)) for the period commencing upon the later of fourteen months after the date of the decedent's death or the last date upon which the claim could have been properly presented under Section 62-3-803, unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with the terms of the contract.

(e) Allowance of a claim is evidence the personal representative accepts the claim as a valid debt of the decedent's estate. Allowance of a claim may not be construed to imply the estate will have sufficient assets with which to pay the claim.

REPORTER'S COMMENT

This section provides the procedure by which the personal representative acts on claims and claimants react to disallowed claims. Within thirty days after the mailing of notice of disallowance, if the notice warns of the impending bar, a claimant must commence a proceeding against the personal representative. This relates to claims allowed in whole or in part. A claimant has thirty days to react to a disallowed claim. A judgment in a proceeding in another court to enforce a claim constitutes an allowance of a claim.

Unless otherwise provided, or unless interest is based upon contract, allowed claims bear interest at the legal rate commencing thirty days after the time for original presentation of the claims has expired.

The personal representative or the claimant may begin an action in the court for allowance of the claim. This gives the court jurisdiction over any claim or claims presented to the personal representative or filed with the court.

The 2010 amendment added 'service of' and 'summons and' in the first sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for

allowance of claims. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP. The 2010 amendment also added 'of hearing' after 'Notice' in the last sentence to clarify the notice of hearing requirements referred to in §62-1-401.

The 2013 amendment defines allowance and imposes an affirmative duty on the personal representative to either allow or disallow a claim within time frames imposed by the code.

Under the 2013 amendment, unless the court approves an extension of time, the personal representative must either allow or disallow all properly presented claims and serve notice of the allowance or disallowance of the claim on the claimant within the later of sixty days from the presentment of the claim and fourteen months from the date of the decedent's death.

Service of the notice of allowance or disallowance can be made by mail or some other form of delivery. If a notice of disallowance is sent by mail, the thirty day period for filing a petition for allowance of claim, starts to run on the date of mailing.

A claim can be allowed, disallowed, or allowed in part and disallowed in part. The code does not establish a penalty for failure of the personal representative to comply with the requirement to notify the claimant, but instead relies on the authority of the probate court to remove a personal representative for failure to perform his duties under the code.

The 2013 amendment imposes on a person obtaining a judgment against an estate in a court other than the probate court an obligation to provide the probate court with a certified copy of the judgment.

The 2013 amendment modifies the interest rules in regard to the properly presented claims against the decedent's estate. Interest on a claim begins to run upon the later of fourteen months after the decedent's death or the last day upon which the claim could be properly presented, unless the claim is based on a contract providing for interest.

The 2013 amendment requires that interested persons be notified of hearings on petitions for allowance of claim.

Section 62-3-807. (a) Prior to the closing of the estate and no later than fourteen months after the decedent's death, the personal representative must proceed to pay the claims allowed against the estate in the order of priority prescribed, and after making provision for the homestead, for exempt property under Section 62-2-401, for claims already presented which have not been allowed or whose disallowance

is the subject of a legal proceeding, or the time to file such a proceeding has not expired, and for unbarred claims which may yet be presented, including costs and expenses of administration. Upon application of the personal representative and for good cause shown, the probate court may extend the time for payment of creditor claims.

(b) Upon the expiration of the applicable time limitation provided in Section 62-3-803 for the presentation of claims, any claimant whose claim has been allowed, or partially allowed, under Section 62-3-806 may petition the probate court, or file an appropriate motion if the administration is under Part 5, for an order directing the personal representative to pay the claim, to the extent allowed, and to the extent assets of the estate are available for payment without impairing the ability of the personal representative to fulfill the other obligations of the decedent's estate.

(c) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(1) the payment was made before the expiration of the time limit set forth in Section 62-3-803 for the presentation of a claim, and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) the payment was made, due to the negligence or wilful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

REPORTER'S COMMENT

This provides a remedy for a claimant whose claim has been allowed but has not been paid. Under Section 62-3-807(c), a personal representative is liable for claims paid out of order.

Section 62-3-808. (a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity or identify the estate in the contract.

(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

REPORTER'S COMMENT

This section clarifies that the personal representative is not individually liable for contracts properly entered into in his fiduciary capacity on obligations arising from ownership or control of the estate. He is liable for torts committed in the course of his administration only if he is personally at fault.

It also provides for a variety of appropriate proceedings to determine the issues of liability between the estate and the personal representative.

Section 62-3-809. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise, payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, upon the amount of the claim allowed less the fair market value of the security as agreed by the parties, or as determined by the court; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

REPORTER'S COMMENT

This provides for payment of allowed secured claims in full if the security is surrendered by the creditor.

Where the creditor exhausts his security before receiving payment, he receives the claim allowed less the fair market value of security as agreed or determined by the court.

If the security has not been exhausted, the creditor is paid the amount of the claim less the value of the security if covered.

Section 62-3-810. (a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage or other security interest, obtaining a bond or security from a distributee, or otherwise.

REPORTER'S COMMENT
This provides various arrangements by which the personal representative can secure future payment of claims which are not due, contingent, or unliquidated.

Section 62-3-811. In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims allowed and, if such counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

REPORTER'S COMMENT
This provides for the reduction of a claim against the estate by any counterclaim, liquidated or unliquidated.

Section 62-3-812. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, liens, or

other security interests upon real or personal property in an appropriate proceeding.

REPORTER'S COMMENT
This prohibits executions and levies against property of the estate under judgments against the decedent or the personal representative, but excepts enforcement of mortgages, pledges, and liens in appropriate proceedings.

Section 62-3-813. When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

REPORTER'S COMMENT
This section gives the personal representative the authority to compromise claims in the best interests of the estate. The consent of the probate judge is not necessary.

Section 62-3-814. If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew, or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

REPORTER'S COMMENT
This gives the personal representative essential authority to deal with encumbered assets.

Section 62-3-815. (a) All assets of estates being administered in this State are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(b) If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of

which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent's last domicile, the claims allowed in this State shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets shall be marshaled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

REPORTER'S COMMENT

This section deals with various matters related to the payment of claims where there is administration in more than one state. As to the order of priorities of payment of claims, local creditors are not preferred over creditors in the decedent's domicile.

Section 62-3-816. The estate of a nonresident decedent being administered by a personal representative appointed in this State shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless: (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent's domicile; (2) the personal representative of this State, after reasonable inquiry is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under Section 62-3-1001 or incident to the closing of an administration under Part 5 [Sections 62-3-501 et seq.]. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article [Sections 62-3-101 et seq.].

REPORTER'S COMMENT
The estate of a nonresident decedent being administered in this State is, upon conclusion of the local administration, paid over to the domiciliary personal representative.

Part 9

Special Provisions Relating to Distribution

Section 62-3-901. In the absence of administration, the devisees are entitled to the estate in accordance with the terms of a probated will and the heirs in accordance with the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and subject to the rights of others resulting from abatement, retainer, advancement, ademption, and elective share.

REPORTER'S COMMENT
This section governs the rights of heirs and devisees when the administrator of an estate is not able to proceed for one reason or another or in the absence of administration. This section provides that in the absence of administration the rights of the heirs or devisees will be established by the laws of intestate succession or by the terms of a probated will. Without an administration, heirs and devisees take the property subject to charges, such as charges incident to administration and creditors' claims. In addition, successors in title are 'subject to the rights of others' which may result from 'abatement, retainer, advancement, ademption and elective share.'

Section 62-3-902. (a) Except as provided in subsection (b), and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the

failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), as, for instance, in case the will was executed before the effective date of this Code, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

REPORTER'S COMMENT

The purpose of Section 62-3-902 is to provide a defined order in which assets of an estate are used or applied for the payment of debts, in the absence of intent by the testator that an alternate order of abatement be used. The design of this section is to insure that the testator's intent, whether expressed or implied by the terms of the will, would be given first priority in the order of abatement. The section is to be used only to resolve doubts as to the testator's intent, rather than defeating his purpose.

Under this section, there is no distinction made with regard to the character of the assets. A devise encompasses any testamentary passage of property, whether real estate or personalty. Within classifications, abatement will be prorata.

Section 62-3-903. The amount of a liquidated indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

REPORTER'S COMMENT

This section provides that if the amount of liquidated indebtedness of a successor to the estate is due, then the personal representative is to offset any devise to that successor by the amount of the liquidated indebtedness. In the event the indebtedness is liquidated but not yet due, the representative can use the present value of the indebtedness to offset that amount against the devise to the successor.

Section 62-3-905. A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Section 62-3-906. (a) Unless a contrary intention is indicated by the will, such as the grant to the personal representative of a power of sale, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 62-2-401 shall receive the items selected.

(2) Any devise payable in money may be satisfied by value in kind provided:

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under item (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The personal property of the residuary estate must be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. Subject to the provisions of Section 62-3-711(b), in other cases, personal property of the residuary estate may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution, notifying such persons of the pending termination of the right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

(c) When a personal representative or a trustee is empowered under the will or trust of a decedent to satisfy a pecuniary devise or transfer in trust, in kind with assets at their value for federal estate tax purposes, the fiduciary, in order to implement the devise or transfer in trust, shall, unless the governing instrument provides otherwise, distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property thus available for distribution in satisfaction of the pecuniary devise or transfer.

(d) Personal representatives and trustees are authorized to enter into agreements with beneficiaries and with governmental authorities, agreeing to make distribution in accordance with the terms of Section 62-3-906 for any purpose which they consider to be in the best interests of the estate, including the purpose of protecting and preserving the federal estate tax marital deduction as applicable to the estate, and the guardian or conservator of a surviving beneficiary or the personal representative of a deceased beneficiary is empowered to enter into such agreements for and on behalf of the beneficiary or the deceased beneficiary.

(e) The provisions of Section 62-3-906 are not intended to change the present laws applicable to fiduciaries, but are statements of the fiduciary principles applicable to these fiduciaries and are declaratory of these laws.

REPORTER'S COMMENT

Section 62-3-906(a) establishes a preference for distributions 'in kind.'

Section 62-3-906(a) sets out the rights of the three classes of successors specific devisees (62-3-906(a)(1)), general pecuniary devisees (62-3-906(a)(2)), and residuary devisees (62-3-906(a)(3)).

As to specific devisees, Section 62-3-906(a)(1) provides that the specific devisee is entitled to the thing devised to him.

Section 62-3-906(a)(2) authorizes the personal representative to make 'in kind' distributions to satisfy devises payable in money (general pecuniary devises) provided (1) the devisee has not demanded payment

in cash, (2) the property is fairly valued as of the date of distribution under Section 62-3-906(a)(3) and, (3) a residuary devisee has not requested that the asset remain part of the residue estate.
Residuary devisees are to receive 'in kind' distribution provided (1) there is no objection to the proposed distribution and (2) it is practicable to distribute undivided interests.
Section 62-3-906(b) provides that the personal representative may submit a proposal for distribution to all parties in interest. This section effectively eliminates the interested party's right to object to the distribution if he fails to object to the plan in writing within thirty days from receipt of the proposal.

The 2013 amendment added to 62-3-906(b) the requirement of notice of deadline to object to proposed distribution.

Section 62-3-907. (A) If distribution in kind is made, the personal representative must execute a deed of distribution with respect to real property and such other necessary or appropriate instrument of conveyance with respect to personal property, assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

(B) If the decedent dies intestate or devises real property to a distributee, the personal representative's execution of a deed of distribution of real property constitutes a release of the personal representative's power over the title to the real property, which power is equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a). The deed of distribution affords the distributee and his purchasers or encumbrancers the protection provided in Sections 62-3-908 and 62-3-910.

(C) If the decedent devises real property to a personal representative, either in a specific or residuary devise, the personal representative's execution of a deed of distribution of the real property constitutes a transfer of the title to the real property from the personal representative to the distributee, as well as a release of the personal representative's power over the title to the real property, which power is equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a). The deed of distribution affords the distributee, and his purchasers or encumbrancers, the protection provided in Sections 62-3-908 and 62-3-910.

(D) The personal representative's execution of an instrument or deed of distribution of personal property constitutes a transfer of the

title to the personal property from the personal representative to the distributee, as well as a release of the personal representative's power over the title to the personal property, which power is equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62-3-711(a).

REPORTER'S COMMENT
This section provides that evidence of distribution 'in kind' will be in the form of an instrument or deed of distribution which the personal representative will give to the distributees. This instrument serves as a transfer of the interest an estate had in an asset or assets. Sections 62-3-907 should be read in conjunction with Sections 62-3-908 through 62-3-910 to determine rights of distributees and purchasers therefrom. In addition the personal representative may use this instrument as a release under Section 62-3-709 where the representative determines that certain assets of the decedent's estate should be left in the possession of the party who would ultimately receive these assets by way of distribution 'in kind.'

The 2013 amendments revised subsection (a) to provide that, while a deed of distribution is required for real property, with respect to personal property the personal representative may execute an appropriate instrument evidencing the conveyance of title.

Section 62-3-908. Proof that a distributee has received an instrument or deed of distribution of assets in kind whether real or personal property, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper. An improper distribution includes, but is not limited to, those instances where the instrument or deed of distribution is found to be inconsistent with the provisions of the will or statutes governing intestacy.

REPORTER'S COMMENT
Section 62-3-908 contemplates that all actions for overpayment to a devisee be funneled through the personal representative.

Section 62-3-909. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly

received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

REPORTER'S COMMENT
This section provides that an innocent distributee does not have the protection of a bona fide purchaser. The purpose of Section 62-3-909 is to shift questions concerning propriety of distribution from fiduciary to distributees. It should be remembered that a distribution under Section 62-3-703 may be 'authorized at the time' but may still be improper under this section.
The provisions of Sections 62-3-909 and 62-3-910 establish the proposition that liability follows the property.

Section 62-3-910. (A) If property distributed in kind (whether real or personal property) or a mortgage or other security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested persons, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any instrument described in this section on which the deed recording fee prescribed by Chapter 24, Title 12, has been paid, and which has been recorded is prima facie evidence that the sale was made for value.

(B) If a will devises real property to a personal representative or authorizes a personal representative to sell real property (the title to which was not devised to the personal representative), a purchaser for value who receives a deed from the personal representative takes title to the real property free of rights of any heirs or devisees or other

interested person in the estate and incurs no personal liability to the estate or to any heir or devisee or other interested person in the estate. The purchaser is protected whether or not the sale was proper and regardless of whether the heirs or devisees to whom title devolved pursuant to Section 62-3-101 executed or consented to the deed; however, creditors, and others interested in the estate have a right of recourse against the personal representative under Section 62-3-712 if the sale constitutes a breach of the personal representative's fiduciary duty. This section protects a purchaser of real property from a personal representative who has title to the real property or who has sold real property to the purchaser pursuant to an authorization in the will. To be protected under this provision, a purchaser need not inquire whether a personal representative acted properly in making the sale, even if the personal representative and the purchaser are the same person, or whether the authority of the personal representative had terminated before the sale. Any instrument described in this section on which the deed recording fee prescribed by Chapter 24, Title 12 has been paid, and which has been recorded is prima facie evidence that the sale was made for value.

REPORTER'S COMMENT
Section 62-3-910 provides that an instrument of distribution (as defined in Section 62-3-907) is an essential element in the chain of title to ensure that purchasers or lenders from or to a distributee would have good title.

Section 62-3-911. For purposes of this section, 'interested heirs or devisees' means those heirs or devisees who are entitled to an interest in the real or personal property that is subject to partition pursuant to this section. When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the personal representative or one or more of the interested heirs or devisees may petition the court prior to the closing of the estate, to make partition. After service of summons and petition and after notice to the interested heirs or devisees, the court shall partition the property in the manner provided in this section.

(1) The court shall partition the property in kind if it can be fairly and equitably partitioned in kind.

(2) If the property cannot be fairly and equitably partitioned in kind, the court shall direct the personal representative to sell the property and distribute the proceeds subject to the following provisions of this item.

(a) The court shall provide for the nonpetitioning interested heirs or devisees who wish to purchase the property to notify the court of that interest no later than ten days prior to the date set for a hearing on the partition. The nonpetitioning interested heirs or devisees shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

(b) In the circumstances described in subitem (a) of this section, and in the event the interested heirs or devisees cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the heirs or devisees in the property described in the petition for partition.

(c) In the event that the interested heirs or devisees object to the value of the property interests as determined by the appointed appraisers, those heirs or devisees shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value of the interest or interests. An evidentiary hearing limited to the proposed valuation of the property interests of the interested heirs or devisees shall be conducted, and an order as to the valuation of the interests of the interested heirs and devisees shall be issued.

(d) After the valuation of the interests in the property is completed as provided in subitems (b) or (c) of this item, the interested heirs or devisees seeking to purchase the interests of the other interested heirs or devisees shall have forty-five days to pay the price set as the value of those interests to be purchased, in such shares and proportions, and in such manner, as the court shall determine. Upon the payment, the court shall direct the personal representative to execute and deliver the proper instruments transferring title to the purchasers.

(e) In the event that the interested heirs or devisees seeking to purchase the partitioned property fail to pay the purchase price as provided in subitem (d) of this item, the court shall proceed according to the traditional practices of circuit courts in partition sales.

REPORTER'S COMMENT
This section makes provision for the probate court to partition personal property.

The 2010 amendment added 'service of summons and petition and after' in the second sentence to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for purpose of distribution and to make partition. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

Under the 2013 amendment Section 62-3-911 has been rewritten to provide a method of partition in probate court comparable to the procedure in circuit court pursuant to Section 15-61-25.

Section 62-3-912. Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

REPORTER'S COMMENT
Section 62-3-912 sanctions settlement agreements among successors allowing them to vary the distributions of an estate, whether testate or intestate, without the necessity of seeking court approval.

Section 62-3-913. (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 62-7-813.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).

REPORTER'S COMMENT
This section gives the right to the personal representative to require a trustee to register where the state law allows for registration. In addition this section permits the representative to require that a trustee post a bond unless the trust document provides otherwise.
This section grants powers to the representative to withhold distributions to a trust where the representative feels that the beneficiaries may not be informed of the existence of the trust or when the representative has doubts as to the capability and competency of the trustee or of the trustee's intention to hold the funds without profit to himself.
Under this section, testamentary trustees would enjoy the status of a devisee, distributee, and successor.

Section 62-3-914. (a) If after the expiration of eight months from the appointment of the personal representative of a decedent it appears to the satisfaction of the court by whom the appointment was granted that the personal representative of the estate is unable to ascertain the whereabouts of a person entitled to be heir or devisee of the estate or whether a person who, if living, would be entitled as heir or devisee of this estate is dead or alive, the court may issue a notice addressed to all persons interested in the estate as heirs or devisees calling on the person whose whereabouts or the fact of whose death is unknown, his personal representatives, or heirs or devisees, to appear before the court on a certain day and hour as specified in this notice and to show cause why the personal representative should not be ordered to distribute the estate as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent, and notifying all persons entitled to the estate as heir or devisee, or otherwise, to appear on a designated day and time before the court to intervene for their interest in the estate. The day fixed in the notice, on which cause must be shown, must not be less than one month after the date of the first publication of the notice.

(b) The notice must be published once a week for three successive weeks in a newspaper published in the county in which the court is held. The court has the right, in its discretion, to order the notice to be published once a week for three successive weeks in one other

newspaper published in another place most likely to give notice to interested persons.

(c) The publication of the notice as prescribed in subsection (b) must be proved by filing with the court copies of the newspapers containing the publication of the notice or the affidavit of the publishers or printers of the respective newspapers.

(d) At the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if no person appears as required, the court must decree distribution of the estate to be made as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent. Distribution by the personal representative is a full and complete discharge to the personal representative.

(e) At the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if the person whose whereabouts or the fact of whose death was unknown appears, all further proceedings must be discharged.

(f) If the identity of the person appearing is disputed by the personal representative, an heir or devisee of the decedent or the legal representatives of an heir or devisee, the court must proceed to hear and determine the controversy. If the controversy is determined against the person appearing, distribution of the estate must be made as prescribed in subsection (d); but if the controversy is determined in favor of the party appearing, he is considered to be the person whose whereabouts or the fact of whose death was unknown. The determination in either case is subject to appeal as provided in Section 62-1-308.

(g) At the expiration of the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if a person appears claiming to be heir, devisee, or personal representative of the person whose whereabouts or the fact of whose death is unknown or to be otherwise entitled to his estate and claiming a distributive share in the decedent's estate, the court shall proceed to hear and determine whether the person whose whereabouts or the fact of whose death is unknown died before or after the decedent, and if the determination is that the person whose whereabouts or the fact of whose death is unknown died before the decedent, distribution of the decedent's estate must be made accordingly; but if the court determines that the person whose whereabouts or the fact of whose death is unknown died after the death of the decedent, the distributive share of the person must be paid and delivered by the personal representative to the person legally entitled to

receive it, the determination in either case, is subject to appeal as provided in Section 62-1-308.

(h) Instead of the procedure required in this section, an unclaimed devise or intestate share of five thousand dollars or less may be paid or transferred by the personal representative to the South Carolina State Treasurer.

REPORTER'S COMMENT
Section 62-3-914 provides that the distributive share to a missing heir, devisee, or claimant must be paid to the conservator of the missing person or, if there is no conservator, to the State Treasurer, to become part of the escheat fund. This section sets aside the assets belonging to a missing person.

The 2013 amendment revised subsection (c) to permit proof of publication by either filing with the court copies of the newspaper itself or an affidavit of the publisher or printer of the newspaper. The de minimus amount in subsection (h) now includes an intestate share and has been increased to $5000.

Section 62-3-915. A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.

REPORTER'S COMMENT
Section 62-3-915 provides that the personal representative will be absolved if he distributes to a conservator of a disabled or incompetent distributee.

Section 62-3-916. (a) For purposes of this section:

(1) 'Estate' means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.

(2) 'Person' means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(3) 'Persons interested in the estate' means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

(4) 'State' means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) 'Tax' means the federal estate tax and the basic and any additional estate tax imposed by the State of South Carolina and interest and penalties imposed in addition to the tax.

(6) 'Fiduciary' means personal representative or trustee.

(b)(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly.

(2) Any portion of an estate tax not apportioned pursuant to item (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this item:

(A) a trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) Any tax not apportioned in items (1) or (2) shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If pursuant to items (1) and (2) the decedent's will or revocable trust directs a method of apportionment of tax different from the method described in this Code, the method described in the will or revocable trust controls.

(c)(1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence

of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code, the determination of the court in respect thereto shall be prima facie correct.

(5) The expenses reasonably incurred by the fiduciary and by any other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in subsection (b) and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in subsection (b), it may direct apportionment thereof equitably.

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interest includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

REPORTER'S COMMENT
Section 62-3-916(b) establishes a true apportionment of estate taxes among all takers, whether they be probate or nonprobate, unless a will or revocable trust states otherwise.

The 2013 amendment incorporates into the South Carolina Probate Code the Uniform Estate Tax Apportionment Act as revised in 2003 (UETAA or new UETAA). The new UETAA replaces the Uniform Probate Code's former estate tax apportionment provision (Section 3-916), which incorporated into the Uniform Probate Code the former UETAA. The new UPC apportionment statute is actually 15 sections (although a couple are blank, marked 'reserved') and with comments extending for more than 20 pages.

Before the 2013 amendment, this statute did not specifically allow a variance from the statutory apportionment by revocable trust, only by will. The 2013 amendment requires a specific and unambiguous direction for the payment and allows it in a will or in a revocable trust. Per the UPC comments, a general direction to pay debts from the residue does not meet this standard.

Part 10

Closing Estates

Section 62-3-1001. (a) Within the later of: (i) the expiration of the applicable time limitation for any creditor to commence a proceeding contesting a disallowance of a claim pursuant to Section 62-3-806(a); (ii) the time when all legal proceedings commenced for allowance of a claim have ended in accordance with Sections 62-3-804 and 62-3-806; and (iii) if a state or federal estate tax return was filed, within ninety days after the receipt or a state or federal estate tax closing letter, whichever is later, a personal representative shall file with the court:

(1) a full accounting in writing of his administration, unless the accounting is waived pursuant to subsection (e);

(2) a proposal for distribution of assets not yet distributed, unless the proposal for distribution of assets is waived pursuant to subsection (e);

(3) an application for settlement of the estate to consider the final accounting or approve an accounting and distribution and adjudicate the final settlement and distribution of the estate; and

(4) proof that a notice of right to demand hearing and copies of the accounting, the proposal for distribution, and the application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, unless the notice of right to demand hearing is waived pursuant to subsection (e).

(b) If the personal representative does not timely perform his duties pursuant to subsection (a), and all interested persons have not waived the requirement pursuant to subsection (e), an interested person may petition for an order compelling the personal representative to perform his duties pursuant to subsection (a). After notice and hearing in accordance with Section 62-1-401, the court may issue an order requiring the personal representative to perform his duties pursuant to subsection (a).

(c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to the notice pursuant to subsection (a), or at any time after the filing of the application of settlement if notice of right to demand hearing has been waived pursuant to subsection (e), the court may enter an order or orders approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person. However, if an interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to the notice pursuant to subsection (a), the court may enter its order or orders only after notice to all interested persons in accordance with Section 62-1-401 and hearing.

(d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate pursuant to this section, and after notice of hearing to the omitted

or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of a will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

(e) Notwithstanding the provisions of this section, a personal representative shall not be required to file an accounting in writing of his administration, a proposal for distribution of assets not yet distributed, or a notice of right to demand hearing if and to the extent these filings are waived by all interested persons.

REPORTER'S COMMENT

Section 62-3-1001 describes procedures for obtaining orders of complete settlement of an estate.

The closing process under Section 62-3-1001(a) requires notice to all interested parties including unpaid creditors. The court upon application may order or approve an accounting, may interpret the terms of the will, direct or approve distribution of estate assets, discharge the personal representative, and close the estate. Such a discharge of the personal representative terminates his authority. The personal representative or any other interested person may petition for an order of complete settlement under this section after the claim period has expired, but a devisee may not seek such an order until a year has elapsed from the issuance of the appointment of the representative.

The 2010 amendment revised subsections (3) and (4) to conform to current practice allowing the personal representative to pursue informal proceedings to close the estate by filing an application rather than a petition. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in S.C. Code §62-1-201(1). The 2010 amendment also revised subsection (4)(c) to delete 'on appropriate conditions, determining testacy, determining the persons entitled to distribution of the estate, and, as circumstances require,' and adding 'in accordance with Section 62-1-401 in the last sentence to clarify procedure. The 2010 amendment added 'of hearing' in subsection (d) to clarify the notice of hearing requirements referred to in §62-1-401.

The 2013 amendment clarifies that all interested persons may waive the filings otherwise required by Section 62-3-1001(a)(1), (2), or (4).

Section 62-3-1002. No final accounting of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of such court finds, that all taxes imposed by the provisions of Chapter 6, Title 12 upon such fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the South Carolina Department of Revenue and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of such certificate.

REPORTER'S COMMENT
Section 62-3-1002 precludes the court's approval of a final accounting by a fiduciary without a finding that the taxes imposed by Chapter 6, Title 12, have been paid.

Section 62-3-1003. No final accounting of a personal representative in any probate proceeding who is required to file a federal estate tax return may be allowed and approved by the court before whom the proceeding is pending unless the court finds that any tax imposed on the property by Chapter 16, Title 12, including applicable interest, has been paid in full or that no such tax is due.

REPORTER'S COMMENT
Section 62-3-1002 precludes the court's approval of a final accounting by a fiduciary without a finding that the taxes imposed by Chapter 16, Title 12, have been paid.

Section 62-3-1004. After assets of an estate have been distributed and subject to Section 62-3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

REPORTER'S COMMENT
Section 62-3-1004 allows a creditor of an estate to pursue assets distributed against one or more distributees. A distributee's liability to a claimant is for amounts received as distributions in excess of exempt property but no more than the value of the property received, valued as of the time of the distribution.
A distributee has a right of contribution against other distributees if he gives timely notice to the distributees so that they can participate in the proceedings under which the claimant is asserting his claim.

Section 62-3-1005. Unless previously barred by adjudication and except as provided in any accounting, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the application for settlement of the estate, required by Section 62-3-1001. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

REPORTER'S COMMENT
The 2013 amendment conforms this section to changes to 3-1001, allowing waiver of accounting and proposal for distribution.

Section 62-3-1006. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent's death, and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent's death or one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

REPORTER'S COMMENT
Section 62-3-1006 creates a statute of limitations for claims against distributees by creditors or other persons claiming to be entitled to distribution from the estate. The time limitation provided for heirs and

devisees or claimants other than creditors is three years after the decedent's death or, for creditors, one year after the time of the distribution thereof.

As in Section 62-3-1005, this section does not create a time bar for any action to recover property received as a result of fraud.

Section 62-3-1007. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

REPORTER'S COMMENT
Under Section 62-3-1007, after termination of the personal representative's appointment, and upon the filing of an application showing that no action is pending concerning the estate, the personal representative or his sureties may obtain from the court a certificate to the effect that the personal representative appears to have fully administered the estate. A certificate issued by the court affects a release of any security given in connection with the personal representative's bond, but does not prevent an action against the personal representative or his surety.

Section 62-3-1008. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

REPORTER'S COMMENT
Section 62-3-1008 provides a procedure for reopening an estate following discharge of the personal representative. Such a supplemental or subsequent administration of a decedent's estate would

be required if other property of the estate is discovered after the personal representative's discharge. Upon petition of an interested party and upon notice as required by the court, the court may reappoint the former personal representative or a different person to administer the subsequently discovered assets.

In administering the subsequently discovered assets, the procedure of this Code would apply as appropriate, except that previously barred claims could not be asserted in the subsequent administration.

The 2010 amendment deleted 'petition' and replaced it with 'application' to allow any interested person to make application for a subsequent administration. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201.

Part 11

Compromise of Controversies

Section 62-3-1101. A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved by the court after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62-5-433.

REPORTER'S COMMENT

Section 62-3-1101 provides that compromises of controversies regarding estates can be made binding on interested parties by court confirmation.

Such controversies would include disagreements regarding the admission to probate of and instrument as the will of the decedent, the construction, validity, and effect of a probated will, the rights of successors to decedent's estate, and the personal representative's administration of the estate.

Approval of the compromise agreement is by order of the probate court following a formal proceeding. The order confirming the agreement is

binding upon parties to the proceeding, and is binding upon unborn or unascertained persons and upon persons who could not be located.
After court confirmation, the agreement is binding even though the agreement affects a trust contained in an instrument separate from decedent's will, and even though it affects an unalienable right.
The agreement as confirmed by the court is not binding on creditors of the estate or trust estate, or on taxing authorities, unless they are parties to the agreement.

The 2010 amendment deleted 'in a formal proceeding in' and replaced the foregoing with 'by' and deleted 'for that purpose' and replaced it with 'after hearing.' The intention of the amendment was to require court approval in an informal proceeding after hearing. See § 62-3-1102 regarding application procedure for approval of compromise and certain agreements.

Section 62-3-1102. The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

REPORTER'S COMMENT

Section 62-3-1102 provides the procedure by which agreements for compromise of estate controversies are confirmed by the probate court.

Subsection (1) requires the agreement be in written form setting forth all of the terms of the compromise. The agreement must be signed by all persons having a beneficial interest in or claim against the estate, whose interest or claim is affected by the agreement. If an interested party is a minor, the agreement may be executed on his behalf by his parent.

Execution of the agreement is not required by unknown parties or by parties whose whereabouts are unknown or cannot reasonably be ascertained. The agreement should clearly specify the effect of the compromise on the minors, on unknown parties, and on unlocated parties. Subsection (2) would imply that the agreement is not to be signed by the personal representative or trustees of the affected testamentary trust prior to submission of the agreement to the probate court, but the agreement should specify the proposed effect on the personal representative and affected trusts.

Subsection (2) requires submission of the agreement to the probate court for approval. The application for approval may be made by an interested party or by the personal representative. The application would request approval of the agreement and would request an order directing or permitting the personal representative and the trustee of an affected testamentary trust to execute the agreement.

Pursuant to subsection (3), a hearing after notice to all interested parties is conducted by the probate judge. In addition to parties to the agreement, the personal representative and trustees of affected trusts must be notified of the hearing.

The advocates of the agreement must prove to the court that a controversy existed in good faith among the interested parties. This requirement is to avoid sham arrangements designed to prejudice unknown parties or parties whose addresses are unknown but would be bound by an order confirming the agreement.

The advocates of the agreement must prove that the effect of the agreement on persons, including minors and incompetents represented by fiduciaries or other representatives, is fair, equitable, and reasonable.

Upon such proof to the court, the court will by order approve the agreement and will direct the personal representative and all fiduciaries subject to the court's jurisdiction to execute the agreement.

The agreement as confirmed by the court will govern further disposition of the decedent's estate in accordance with the terms of the

agreement. Subsection (3) further provides that minor children who are represented only by their parents may be bound only if their parents executed the agreement with other competent persons. In the event this requirement cannot be met, execution of the agreement on behalf of the minor could be made binding if by a court appointed guardian.

The 2010 amendment revised subsection (3) to delete 'After' at the beginning and replaces it with 'Upon application to the court and after' to allow application to the probate court to secure court approval of a compromise. Unlike a petition, an application does not require a summons or petition. See 2010 amendments to certain definitions in §62-1-201.

Part 12

Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates

Section 62-3-1201. (a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument evidencing the debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. Before this affidavit may be presented to collect the decedent's personal property, it must:

(1) state that the value of the entire probate estate (the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy), wherever located, less liens and encumbrances, does not exceed twenty-five thousand dollars;

(2) state that thirty days have elapsed since the death of the decedent;

(3) state that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) state that the claiming successor, which for the purposes of this section includes a person who remitted payment for reasonable funeral expenses, is entitled to payment or delivery of the property;

(5) be approved and countersigned by the probate judge of the county of the decedent's domicile at the time of his death, or if the decedent was not domiciled in this State, in the county in which the property of the decedent is located, and only upon the judge's

satisfaction that the successor is entitled to payment or delivery of the property; and

(6) be filed in the probate court for the county of the decedent's domicile at the time of his death, or, if the decedent was not domiciled in this State, in the county in which property of the decedent is located.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

REPORTER'S COMMENT

Section 62-3-1201 provides for a simplified handling of small estates of twenty-five thousand dollars or less through the use of an affidavit. The small estate affidavit may be used starting thirty days after the death of the decedent if the entire estate of the decedent, wherever located, after deduction of liens and encumbrances, does not exceed twenty-five thousand dollars. The affiant must state that the value of the estate does not exceed twenty-five thousand dollars, that thirty days have elapsed since the decedent's death, that no person has applied for appointment as, or has been appointed as, personal representative in any jurisdiction, and that the affiant as successor to the decedent is entitled to payment or delivery of the property.

Upon presentment of such an affidavit, holders of property of the decedent, or persons obligated to the decedent, must transfer the property, or discharge their debt, to the successor. Stock transfer agents in subparagraph (6) are directed to transfer stock based on such affidavits.

The small estate affidavit cannot be used to transfer title to real estate and it cannot be used by creditors of the estate to reach assets of the estate.

The 2013 amendment increases the size of the estate in which a small estate affidavit can be utilized to twenty-five thousand dollars, establishes that a person who advances reasonable funeral expenses is a successor for purposes of this section regardless of his status as an heir or devisee, and clarifies which probate court must approve and record the affidavit.

Section 62-3-1202. The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire

into the truth of any statement in the affidavit. Any person who receives or is presented with a valid affidavit executed pursuant to Section 62-3-1201 and who has not received actual written notice of its revocation or termination must not fail to deliver the property identified in the affidavit, provided it contains the following provision: 'No person who may act in reliance on this affidavit shall incur any liability to the estate of the decedent.' Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

REPORTER'S COMMENT

Section 62-3-1202 discharges and releases any person who transfers personal property of a decedent or who pays his debt to the decedent pursuant to the small estate affidavit pursuant to Section 62-3-1201 to the same extent he would have been released from liability had he dealt with a court-appointed personal representative of the decedent. The person so released is not required to inquire into the accuracy of the affidavit nor to insure the proper application of the personal property by the successor.

This section creates a liability in the recipient of property through the use of an affidavit to any personal representative of the estate and to any person having a superior right, including creditors of the decedent or of the estate, or other successors of the decedent.

The 2013 amendment requires the person receiving or presented with the affidavit to deliver the property identified in the affidavit if the affidavit contains the quoted language, unless that person has received actual written notice of the affidavit's revocation or termination.

Section 62-3-1203. (a) If it appears from the inventory and appraisal that the value of the entire probate estate (the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy), less liens and encumbrances, does not exceed twenty-five thousand dollars and exempt property, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, after publishing notice to creditors pursuant to Section 62-3-801, but without giving additional notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62-3-1204.

(b) If it appears from an appointment proceeding that (1) the appointed personal representative, individually or in the capacity of a fiduciary, is either the sole devisee under the probated will of a testate decedent or the sole heir of an intestate decedent, or (2) the appointed personal representatives, individually or in their capacity as a fiduciary, are the sole devisees under the probated will of a testate decedent or the sole heirs of an intestate decedent, the personal representative, after publishing notice to creditors as under Section 62-3-801, but without giving additional notice to creditors may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62-3-1204.

REPORTER'S COMMENT
Sections 62-3-1203 and 62-3-1204 provide for an expedited administration by a personal representative. Under Section 62-3-1203, if the personal representative determines after inventory and appraisal that: (1) the estate assets, after deduction of liens and encumbrances, do not exceed the total of twenty-five thousand dollars, plus exempt property, plus costs and expenses of administration, reasonable funeral expenses, and medical and hospital expenses of the decedent's last illness, or (2) that the sole personal representative is also the sole heir or devisee of the decedent or that corepresentatives are all of the only heirs or devisees of the decedent, then the personal representative may immediately pay the administration, funeral, medical, and hospital expenses and distribute the balance to distributees. Other than the publication of notice under Section 62-3-801, additional notice to creditors of this election is not required. Following the disbursement of the assets, the personal representative would file the closing statement required by Section 62-3-1204.

Section 62-3-1204. (a) Unless prohibited by order of the court and except for estates being administered under Part 5 (Sections 62-3-501 et seq.), after filing an inventory with the court, and paying any court fees due, the personal representative may close an estate administered under the summary procedures of Section 62-3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) either

(i) to the best knowledge of the personal representative, the value of the entire probate estate (the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy), less liens and encumbrances, did not exceed twenty-five

thousand dollars and exempt property, costs, and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent; or

(ii) the estate qualifies for summary administration according to the provisions of subsection (b) of Section 62-3-1203;

(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto;

(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware and whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(b) If no unresolved claims, actions or proceedings involving the personal representative are pending in any court one year after the date of the decedent's death, the appointment of the personal representative terminates.

REPORTER'S COMMENT

Section 62-3-1204 provides the procedure for closing the estate following the disbursement and distribution of assets pursuant to Section 62-3-1203. The procedure would not be used if prohibited by the probate court or if the estate was in administration under Part 5.

The personal representative would file with the probate court his verified statement stating that: (1) to the best of his knowledge the estate assets do not exceed the limitations in or would qualify as a summary administrator according to the requirements described in Section 62-3-1203; (2) he has disbursed and distributed the assets to the proper persons, he has sent a copy of the closing statement to the distributees, unpaid creditors, and claimants whose claims are not barred, and he has sent to all distributees a written account of his administration of the estate.

If no action regarding the estate is pending one year after the date of the decedent's death, the court will terminate the appointment of the personal representative who filed the closing statement.

Part 13

Sale of Real Estate by Probate Court

Section 62-3-1301. The provisions of this Part are hereby declared to be the only procedure for the sale of lands by the court, except where the will of the decedent authorizes to the contrary.

Section 62-3-1302. The court may, as herein provided, authorize the sale of the real property of a decedent.

REPORTER'S COMMENT
Section 62-3-1302 establishes the circumstances under which the probate court has the power to sell the land of the decedent.

Section 62-3-1303. At any time after the qualification of the personal representative, on petition to the court by an interested person requesting the sale of real property of the decedent, a summons shall be issued to the personal representative (if not the petitioner), the heirs at law of the decedent (if the decedent died intestate or the time to challenge a will admitted to probate has not expired), the devisees under the decedent's will (if any), any person who has properly presented a claim against the estate which remains unresolved, any interested person effected by the proceeding, and any other person as required by the court in its discretion.

REPORTER'S COMMENT
Section 62-3-1303 specifies the process by which an action for the sale of real estate is commenced. The action is commenced by a petition filed after qualification of the personal representative. The petition may be filed by an interested person.
Upon filing of the petition, Section 62-3-1303 provides that a summons will be issued to the specified interested persons.

Section 62-3-1304. The form of such summons must be in like form as summonses for civil actions in the circuit courts.

Section 62-3-1305. To such summons a copy of the petition must be attached and copies of the summons and petition served on the personal representative (if not the petitioner), the heirs at law of the decedent (if the decedent died intestate or the time to challenge a will admitted to probate has not expired), the devisees under the decedent's

will (if any), any person who has properly presented a claim against the estate which remains unresolved, any interested person effected by the proceeding, and any other interested person as required by the court in its discretion, in like manner as summonses and complaints are served in civil actions in the circuit courts. If there are minors the court shall appoint guardians ad litem who must be served with copies of the summons and petition and the appointment, and who must acknowledge acceptance of their appointment as guardians ad litem to the probate court prior to being served with the summons and petition. Nothing herein precludes the parties interested in the proceeding from accepting service of the summons and petition and consenting to the sale as prayed for in the petition.

REPORTER'S COMMENT
This section provides for the manner of service of the summons and petition and incorporates by reference the methods of service of summons and complaints in civil actions in the circuit courts. This section further provides for appointment of guardian ad litem to represent minors and specifies that the guardian ad litem will be served with copies of the summons and petition. A copy of the order appointing the guardian ad litem and a statement of the guardian to serve must be endorsed on the petition. This section further provides that any of the parties may accept service of the summons and petition and may also consent to the sale prayed for in the petition.

Section 62-3-1306. The sheriffs of the several counties in this State are required to serve all processes which may be issued, if so ordered by the court under the provisions of this Part, for which they shall receive the same fees as are allowed them by law for similar services, which must be paid from the proceeds of sale or by the petitioner.

REPORTER'S COMMENT
Section 62-3-1306 provides for service of the summons and petition within the State of South Carolina by the sheriffs of the various counties in which interested parties are located. This section specifies that the sheriffs' fees for service shall be as in other circumstances and are to be paid by the petitioner or from the proceeds of the sale.

Section 62-3-1307. If there is any party who resides beyond the limits of this State or whose residence is unknown and who does not consent in writing to the sale, the court may authorize publication of

the summons as provided by this Code and if such party does not appear and show sufficient cause within the time named in the summons the court shall enter of record his consent as confessed and proceed with the sale.

REPORTER'S COMMENT
This section provides for service of the summons and petition by publication on interested parties who are not residents of South Carolina or whose addresses are unknown. If the party consented to the sale, service would not be required. If the party after such service did not appear or answer, the probate judge will enter of record his consent by default.

Section 62-3-1308. Upon the filing of the petition, the petitioner shall file in the office of the clerk of the circuit court a notice of pendency of action authorized by Sections 15-11-10 to 15-11-50 and upon the filing of such notice it has the same force and effect as notice of pendency of action filed in an action in the circuit court.

REPORTER'S COMMENT
This section prescribes the filing of a notice of pendency of action, or lis pendens, by the probate judge in the office of the clerk of court for the county in which the land is located, at the time the petition is filed, pursuant to Sections 15-11-10 to 15-11-50. Such filing will eliminate from consideration by the court any party who acquires subsequent to the filing of the notice a lien upon or an interest for value in the land.

Section 62-3-1309. The time to answer a summons and petition for sale of real property of a decedent is the same as the time to answer in any civil litigation case. Interested persons who wish to file an answer or return to the petition must do so in writing in the same manner as an answer to a complaint in other civil litigation cases. In addition the court may hear motions and accept such subsequent pleadings as would be heard or accepted in other civil litigation cases. After the filing and service of the summons and petition and the time for filing responsive pleadings has elapsed, the court will convene a hearing on the merits of the petition. If based on the evidence presented at the hearing the court finds the real property should be sold it shall then, in its discretion, either (a) order the personal representative to sell the same at private sale upon such terms and conditions as the court may impose; or (b) proceed to sell the same upon the next or some subsequent convenient sales day after publishing a notice of such sale three weeks prior

thereto in some paper published in the county. Upon the sale being made, after the payment of the costs and expenses thereof, the proceeds of the sale will be paid over to the personal representative. The personal representative shall administer such proceeds in like manner as proceeds of personal property coming into his hands. Nothing in this part may be construed to abridge homestead exemptions. Notice of hearings in regard to the petition will be provided to interested persons in accordance with Section 62-1-401.

REPORTER'S COMMENT

Section 62-3-1309 incorporates the rules of civil litigation to determine the time limits to file an answer or return to the petition. Following this period, the probate judge would schedule a hearing of the case.

If the probate judge determines that the land should be sold in accordance with the petition, he would either order a private sale or schedule a public auction of the land. The notice of the sale must be published once a week for three weeks during the three weeks preceding the sale in a newspaper published in the county of the probate court.

Following the sale, the net proceeds of the sale will be paid over to the personal representative for distribution in accordance with law as if it were personal property originally belonging to the estate.

Section 62-3-1309 further provides that the proceedings are not to abridge the rights of homestead exemption in the land.

The 2010 amendment revised this section to delete 'for return' in the first sentence and replace it with 'to answer or otherwise respond by motion to the summons and petition, delete 'make a return' and replace it with 'answer or otherwise respond by motion,' add 'subsequent pleadings,' and delete 'return' and replace it with 'motions' in the second sentence The foregoing 2010 amendment is intended to clarify that an answer or other response to a summons and petition must be served in an action to sell real estate, which is a formal proceeding as referred to in §62-1-201(17).

The amendments to this section in 2013 were largely clarifying revisions, and did not change substantive law. All answers to the petition must be in writing and served on the petitioner and other parties in the same manner as an answer to a complaint in circuit court, and within the same time limits as would apply in circuit court. Further, the same rules apply as to motions in the case of a petition for sale of real property of a decedent as apply in circuit court to answers. Consequently, as in circuit court, answers may not be due while certain

motions are pending, and the same rules for amending petitions and answers would apply.

The 2013 amendments added the requirement that all interested persons be served with notice of hearings regarding a petition to sell real property of a decedent in accordance with Section 62-1-401.

Section 62-3-1310. The regular bond of the personal representative must protect the creditors, heirs, devisees, or other interested persons, if any, in the handling of the proceeds of sale by the personal representative, but in case no such bond has been given, the court may require the giving of a bond by such personal representative as provided in Sections 62-3-603, 62-3-604, and 62-3-605.

REPORTER'S COMMENT
Section 62-3-1310 provides that the regular bond of the personal representative protects claimants to the proceeds of the sale. If no bond has been filed previously, the personal representative may be required to file one pursuant to Sections 62-3-603 and 62-3-605. If a bond has previously been filed, the personal representative may be required to increase the amount of the bond.

The 2013 amendment gives the court discretion to require bond.

Section 62-3-1311. The court shall file and keep the original petition with due proof of service thereon and all original papers connected with the sale and shall require from such personal representative his final account showing the distribution of the funds received by him.

REPORTER'S COMMENT
Section 62-3-1311 requires the filing and preserving in the probate court of all original documents relating to the action for the sale of the land including the petition, proofs of service, and order.
This section further requires the personal representative file a final accounting to document the distribution of the proceeds of sale of the land.

Section 62-3-1312. In case any lands of the deceased subject to the lien of any judgment, mortgage, or other lien is sold under the provisions of this Part the court may enter a release of the lands so sold upon the records in the office of the clerk of court or register of deeds of the county from the lien of such judgment, mortgage, or other lien and in case such mortgage, judgment, or other lien debt has been paid

in full out of the proceeds of the sale of such lands the court may have cancellation of the same entered on the record thereof. The foregoing does not relieve any judgment, mortgage, or other lien creditor of the duty, as provided otherwise by law, of releasing or canceling such liens. Each release satisfaction or cancellation provided for herein must refer by proper notation to the file number of such estate in the court. The provisions of this section do not apply when the order of sale directs the sale of any lands which must be sold subject to any existing mortgage, judgment, or other lien, but only when such lands are sold freed and discharged from all such liens.

REPORTER'S COMMENT
This section provides that the probate judge must file in the offices of the clerk of court and of the register of mesne conveyances releases of the land sold from the lien of any mortgage, judgment, or other lien on said land. If the lien claim is paid in full from the proceeds of sale, the probate judge will file a cancellation of the lien. Such filing of releases by the probate judge will not be required if such releases are timely filed by the lien claimants. Such releases by the probate judge must make reference to the probate court file number for the estate.

This section specifies that releases must also be filed by the lien claimants even if a release has been filed by the probate judge.
This section further provides that the probate judge may sell the land subject to any existing lien on the land, and, in which case, no release from the lien would be required.

Article 4

Local and Foreign Personal Representatives; Ancillary Administration

Part 1

Definitions

Section 62-4-101. In this article [Sections 62-4-101 et seq.]:

(1) 'Local administration' means administration by a personal representative appointed in this State pursuant to appointment proceedings described in Article 3 [Sections 62-3-101 et seq.].

(2) 'Local personal representative' includes any personal representative appointed in this State pursuant to appointment proceedings described in Article 3 [Sections 62-3-101 et seq.] and

excludes foreign personal representatives who acquire the power of a local personal representative pursuant to Section 62-4-205.

(3) 'Resident creditor' means a person domiciled in, or doing business in, this State who is, or could be, a claimant against an estate of a nonresident decedent.

REPORTER'S COMMENT
Section 62-4-101 defines 'local administration' and 'local personal representative' in order to distinguish 'local' matters from that matter covered by Article 4, the 'foreign personal representative' and his administrative acts in South Carolina undertaken on the strength of his 'foreign administration,' without his appointment in South Carolina pursuant to Article 3 of this Code. Section 62-1-201 includes definitions of 'foreign personal representative', 'personal representative', and 'non-resident decedent'.

Part 2

Powers of Foreign Personal Representatives

Section 62-4-201. At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this State;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

REPORTER'S COMMENT
Sections 62-4-201, 62-4-202, and 62-4-203 must be read, together with Section 62-4-206, as providing a means, less cumbersome than those provided by Sections 62-4-204 and 62-4-205 and by Section 62-4-207, for the unification and simplification of the administration of multi-state estates in the hands of the domiciliary foreign personal

representatives of nonresident decedents. These sections allow the domiciliary foreign personal representative to collect estate assets in South Carolina without requiring local appointment (Section 62-4-201), while protecting debtors of the estate against double payment (Section 62-4-202) and also protecting resident creditors of the estate from nonpayment (Section 62-4-203). See Section 62-5-431 for a provision similarly allowing the collection of the assets of a nonresident protected person by his domiciliary foreign conservator.

Sections 62-4-201 and 62-4-202 preserve the domiciliary foreign personal representative's power to collect estate assets in South Carolina from debtors willing to make voluntary payment on the strength of his foreign appointment, and also preserve the corresponding effect, the full discharge of the debtor, resulting from the payment.

These sections by their terms apply only to estates of nonresident decedents and allow for payment only to the domiciliary, not to any ancillary, foreign personal representative. Presumably, an ancillary personal representative is empowered to collect assets only in the state of his appointment. The debtor's good faith reliance on the foreign personal representative's proof of appointment and affidavit, inaccurately showing that the decedent was a nonresident of South Carolina and that the personal representative was appointed as a domiciliary personal representative, should protect the debtor under Section 62-4-202. These sections apply even if local administration is actually pending or applied for, as long as the foreign personal representative supplies the documentation detailed in Section 62-4-201 and the debtor has no actual notice of the pending local administration. Section 62-4-202 requires only good faith of the debtor who receives that documentation; his release then depends solely on his making payment to the foreign personal representative. See Section 62-4-206.

These sections apply even though interested persons, including estate creditors, are domiciled in, or doing business in, South Carolina. Such creditors are protected under Section 62-4-203.

These sections apply to the collection of all debts owed to and tangible and intangible personal property owned by the estate. Section 62-3-201(d) refers to the location of tangible personal property and intangible personal property which may be evidenced by an instrument. Transfers of securities are covered by these sections as well as by Sections 35-7-10, et seq. the Uniform Act for Simplification of Fiduciary Security Transfers.

Section 62-4-201 provides for a waiting period of sixty days from the death of the decedent before payment can be made with the expectation

of an immediate discharge of the debtor. Presumably, having made payment before the expiration of the period, a debtor will be discharged at the expiration of the period if he would have been discharged had he then paid, but, for example, not if, in the meantime, a local administration has come to the attention of the debtor.
See Section 12-16-1150 for estate tax duties and liabilities imposed on personal representatives.

Section 62-4-202. Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property or of the instrument evidencing a debt, obligation, stock, or chose in action to the same extent as if payment or delivery had been made to a local personal representative.

REPORTER'S COMMENT
See Comment to Section 62-4-201.

Section 62-4-203. Payment or delivery under Section 62-4-201 may not be made if a resident creditor of the nonresident decedent has given written notice to the debtor of the nonresident decedent or the person having possession of the personal property or of the instrument evidencing a debt, obligation, stock, or chose in action belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

REPORTER'S COMMENT
For the context of Section 62-4-203, see comment to Section 62-4-201. Section 62-4-203 provides a means by which a resident creditor of the decedent can attempt to protect himself from nonpayment of his debt, resulting from assets of the estate being removed from South Carolina by a domiciliary foreign personal representative. The creditor simply notifies the debtors of the decedent not to pay their debts under Sections 62-4-201 and 62-4-202. The notice must be in writing, thereby excluding constructive notice. Section 62-4-203 provides for a mechanism protective of resident creditors, while Section 62-4-202 deprives of such protection resident creditors who fail to give notice under Section 62-4-203.

Section 62-4-204. If no local administration or application or petition therefor is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which

property belonging to the decedent is located, authenticated copies of his appointment and of the will, if any. The filing of a bond shall not be required unless the court in its discretion orders it.

REPORTER'S COMMENT
Sections 62-4-204 and 62-4-205 must be read, together with Section 62-4-206, as providing a means, additional to those of Sections 62-4-201 through 62-4-203 and of Section 62-4-207, for the unification and simplification of the administration of multi-state estates, without requiring the local appointment of a personal representative. Predicated on no local administration having been instituted, the domiciliary foreign personal representative, who files with the court the documents required by Section 62-4-204, obtains under Section 62-4-205 all of the powers of a local personal representative. See Article 3 for the powers of local personal representatives.

Section 62-4-205. A domiciliary foreign personal representative who has complied with Section 62-4-204 may exercise as to assets (including real and personal property) in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.

REPORTER'S COMMENT
See comment to Section 62-4-204.

Section 62-4-206. The power of a domiciliary foreign personal representative under Section 62-4-201 or 62-4-205 shall be exercised only if there is no administration or application therefor pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 62-4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this State.

REPORTER'S COMMENT
Section 62-4-206 limits the powers of foreign personal representatives, under both Sections 62-4-201, et seq., and 62-4-204, et seq., to cases in which no local administration is pending, with provision, however, for court approved exercise of limited powers to preserve the estate, for protection of any person acting in reliance upon these sections and without actual notice of a pending local administration, and for subjection of the local personal representative to the obligations accrued by the foreign personal representative under these sections. See Article 3 for provisions concerning local administration.

Section 62-4-207. In respect to a nonresident decedent, the provisions of Article 3 [Sections 62-3-101 et seq.] govern (1) proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration. The initiation of a proceeding under Article 3 (Sections 62-3-101 et seq.) is the appropriate procedure for an ancillary administration relating to the real property of a nonresident decedent located in this State and is an alternative to the procedures available to a foreign personal representative under Sections 62-4-201 through 62-4-206.

REPORTER'S COMMENT
The purpose of this section is to direct attention to Article 3 for sections controlling ancillary, i.e., local administration of estates of nonresident decedents. See in particular Sections 62-3-101, 62-3-201, 62-3-202, 62-3-203, 62-3-307(a), 62-3-308, 62-3-611(b), 62-3-803(a), 62-3-815, and 62-3-816. Section 62-4-207 and Article 3 must be read as providing an alternative to the procedures available to a foreign personal representative under Sections 62-4-201 through 62-4-206.

Part 3

Jurisdiction Over Foreign Personal Representatives

Section 62-4-301. A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in Section 62-4-204, (2) receiving

payment of money or taking delivery of personal property under Section 62-4-201, or (3) doing any act as a personal representative in this State which would have given the State jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

REPORTER'S COMMENT
Sections 62-4-301 and 62-4-302 assert the South Carolina courts' jurisdiction over foreign personal representatives, not appointed in South Carolina pursuant to Article 3. Jurisdiction is asserted in the circumstances, under Section 62-4-301, of the foreign personal representative's acting (1) under Section 62-4-204 of this Code, (2) under Section 62-4-201 of this Code, or (3) within the state in a manner which would have subjected him, as an individual, to the state's jurisdiction, and, under Section 62-4-302, (4) of the decedent's having been subject to the courts' jurisdiction immediately prior to his death. The words 'courts of this state' are sufficient under federal legislation to include a federal court having jurisdiction in South Carolina.
A foreign personal representative appointed at the decedent's domicile has priority for appointment in any local administration. See Section 62-3-203(g). Once appointed as local personal representative, he remains subject to the jurisdiction of the appointing court under Section 62-3-602.

Section 62-4-302. In addition to jurisdiction conferred by Section 62-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that his decedent was subject to jurisdiction immediately prior to death.

REPORTER'S COMMENT
For the context of Section 62-4-302, see comment to Section 62-4-301. Section 62-4-302 subjects the foreign personal representative to jurisdiction on the basis of his decedent's immediate pre-death condition or activities, whether the decedent was domiciled, doing business, or maintaining his principal place of business in South Carolina (see Section 36-2-802 Code) of the 1976 Code or engaged in conduct encompassed in South Carolina's 'long-arm' statutes (see Sections 36-2-803, 15-5-130, 15-5-140, and 15-9-350, et seq.). As to survival of causes of action, see Sections 15-5-90, 15-51-10, et seq., and 35-1-1520 of the 1976 Code.
Uniform Commercial Code Section 36-2-801 might be read to subject a personal representative 'whether or not a citizen or domiciliary of this

State,' including a foreign personal representative, to the jurisdiction of the South Carolina courts. Section 62-4-302 settles any doubt as to the foreign personal representative's immunity from suit.
Section 62-4-302 should be read with Sections 15-5-130 and 15-5-140 as augmenting and simplifying the process available to persons involved in South Carolina in automobile accidents also involving deceased nonresident motorists. Section 62-4-302 allows for suit directly against the foreign personal representative.

Section 62-4-303. (a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this State on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed thirty days within which to appear or respond.

REPORTER'S COMMENT
Section 62-4-303 provides for service of process upon a foreign personal representative, first, either by registered or by certified mail, with return receipt requested, if available under postal regulations; second, by ordinary first class mail, where registered or certified mail is unavailable; and, third, by any means available under other laws of South Carolina for service on the decedent (or on the foreign personal representative himself) immediately prior to the decedent's death. For service on the decedent, see Sections 36-2-804, et seq., for service of process in support of personal jurisdiction under the 'long-arm' provisions of the Uniform Commercial Code, Sections 36-2-801, et seq. See Sections 15-9-350, et seq., for substituted service of process in South Carolina on the statutorily designated agents of nonresident motorists, motor carriers, aircraft operators, vessel operators, certain traveling shows, nonresident directors of domestic corporations, nonresident trustees of inter vivos trusts, and nonresident individual fiduciaries.
See Sections 62-1-401 through 62-1-403 of this Code for the general notice provisions of this Code.

Part 4

Judgments and Personal Representatives

Section 62-4-401. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication; provided, however, that notice and the opportunity to defend must be given to the local representative in order that the judgment be collectible.

REPORTER'S COMMENT
For the determinative effect of domiciliary foreign orders determining testacy or the validity of a will and of domiciliary certificates of the efficacy of a will, see Section 62-3-408 and 62-3-409."

Articles 6 and 7 revised

SECTION 2. Articles 6 and 7 of the 1976 Code are amended to read:

"Article 6

Nonprobate Transfers

Part 1

Definitions and General Provisions

Section 62-6-101. In this subpart:

(1) 'Account' means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements.

(2) 'Agent' means a person authorized to make account transactions for a party.

(3) 'Beneficiary' means a person named as one to whom sums on deposit in an account are payable on request after the death of all parties or for whom a party is named as the trustee.

(4) 'Financial institution' means any organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) 'Multiple-Party account' means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned including, but not limited to, joint accounts or POD accounts.

(6) 'Net contribution of a party' means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(7) 'Party' means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(8) 'Payment' of sums on deposit includes withdrawal, payment to a party, or third person pursuant to a check or other request, and a pledge of sums on deposit by a party, or a set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.

(9) 'Proof of death' includes a death certificate or record or report which is prima facie proof of death under Section 62-1-507.

(10) 'P.O.D. designation' means the designation of: (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(11) 'Receive' as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(12) 'Request' means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution. However, for purposes of this subpart, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(13) 'Sums on deposit' means the balance payable on an account including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) 'Terms of the account' includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

REPORTER'S COMMENT

This and the sections that follow are designed to reduce certain questions concerning many forms of multiple-person accounts. A 'payable on death' designation and an 'agency' designation are also authorized for both single-party and multiple-party accounts. An agent (paragraph (2)) may not be a party. The agency designation must be signed by all parties, and the agent is the agent of all parties. See Section 62-6-105 (designation of agent).

A 'beneficiary' of a party (paragraph (3)) may be a POD beneficiary. See paragraph (10) ('POD designation' defined). The definition of 'beneficiary' refers to a 'person,' who may be an individual, corporation, organization, or other legal entity Thus, a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

The term 'multiple-party account' (paragraph 5) is used in this part in a broad sense to include any account having more than one owner with a present interest in the account. Thus, an account may be a 'multiple-party account' within the meaning of this part regardless of whether the terms of the account refer to it as 'joint tenancy' or as 'tenancy in common,' regardless of whether the parties named are coupled by 'or' or 'and,' and regardless of whether any reference is made to survivorship rights, whether expressly or by abbreviation such as JTWROS or JT TEN. Survivorship rights in a multiple-party account are determined by the terms of the account, by statute and by the intent of the party, and survivorship is not a necessary incident of a multiple-party account. See Section 62-6-202 (rights at death).

'Net contribution' as defined in paragraph (6) has no application to the financial institution-depositor relationship. Rather, it is relevant only to controversies that may arise between parties to a multiple-party account. See Section 62-6-201 (ownership during lifetime).

Under paragraph (7), a 'party' is a person with a present right to payment from an account. Therefore, present owners of a multiple-party account are parties, as is the present owner of an account with a POD designation. The beneficiary of an account with a POD designation is not a party, but is entitled to payment only on the death

of all parties. An agent with the right of withdrawal on behalf of a party is not itself a party. A person claiming on behalf of a party such as a guardian or conservator, or claiming the interest of a party such as a creditor, is not itself a party, and the right of such a person to payment is governed by general law other than this part.
Various signature requirements may be involved in order to meet the payment requirements of the account. A 'request' (paragraph (12)) involves compliance with these requirements. A party is one to whom an account is presently payable without regard to whose signature may be required for a 'request.'

Section 62-6-102. This article does not apply to: (i) an account established for a partnership, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

REPORTER'S COMMENT
The reference to a fiduciary or trust account in item (iii) includes a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, and a fiduciary account arising from a fiduciary relation such as attorney-client.

Section 62-6-103. (a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Section 62-6-202(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established after January 1, 2014, whether in the form prescribed in Section 62-6-104 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of this subpart, and is governed by this article.

REPORTER'S COMMENT
In the case of an account established after the effective date of this part that is not in substantially the form provided in Section 62-6-104, the account is governed by the provisions of this part applicable to the type

of account that most nearly conforms to the depositor's intent. See Section 62-6-104 (forms).
Thus, a tenancy in common account established before or after the effective date of this part would be classified as a 'multiple-party account' for purposes of this part. See Section 62-6-101(5) ('multiple-party account' defined). On death of a party there would not be a right of survivorship since the tenancy in common title would be treated as a multiple-party account without right of survivorship. See Section 62-6-202(c). It should be noted that a POD designation may not be made in a multiple-party account without right of survivorship. See Sections 62-6-101(10) ('POD designation' defined), 62-6-104 (forms), and 62-6-202 (rights at death).

Section 62-6-104. (a) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this subpart applicable to an account of that type:

'UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

_____ _____

OWNERSHIP [Select One And Initial]:

__SINGLE-PARTY ACCOUNT

__MULTIPLE-PARTY ACCOUNT
Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One And Initial]:

If Single-Party Account is chosen above, choose one of following:

__SINGLE-PARTY ACCOUNT
At death of party, ownership passes as part of party's estate.

__SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION
[Name One Or More Beneficiaries]:

_____ _____

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

If Multiple-Party Account is chosen above, choose one of following:

__MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties. The last surviving party owns the entire account. (Note: This can be overridden by clear and convincing evidence of a contrary intent.)

__MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION
[Name One Or More Beneficiaries]:

_____ _____

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

__MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP
At death of party, deceased party's ownership passes as part of deceased party's estate.

DESIGNATION OF AGENT FOR ACCOUNT [Optional]
Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.
[To Add Agency Designation To Account, Name One Or More Agents]:

_____ _____

[Select One And Initial]:
_____AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

_____AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES'

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) is governed by the provisions of this article applicable to the type of account that most nearly conforms to the depositor's intent.

REPORTER'S COMMENT
This section provides short forms for single- and multiple-party accounts which, if used, bring the accounts within the terms of this part. A financial institution that uses the statutory form language in its accounts is protected in acting in reliance on the form of the account. See also Section 62-6-306 (discharge).
The forms provided in this section enable a person establishing a multiple-party account to state expressly in the account whether there are to be survivorship rights between the parties. The account forms permit greater flexibility than traditional account designations.
An account that is not substantially in the form provided in this section is nonetheless governed by this part. See Section 62-6-103 (types of account; existing accounts).

Section 62-6-105. By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party. Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated. Death of the sole party or last surviving party terminates the authority of an agent. The designated agent on an account is authorized to make all transactions on the account that the party can make, including, but not limited to, closing the account. An agent serving under a durable power of attorney can change, modify, or revoke an agent designated on an account.

REPORTER'S COMMENT
An agent has no beneficial interest in the account. See Section 62-6-201 (ownership during lifetime). The agency relationship is

governed by the general law of agency of the state, except to the extent this part provides express rules, including the rule that the agency survives the disability or incapacity of a party.

A financial institution may make payments at the direction of an agent notwithstanding disability, incapacity, or death of the party, subject to receipt of a stop notice. Section 62-6-306 (discharge); see also Section 62-6-304 (payment to designated agent).

The rule of subsection (b) applies to agency designations on all types of accounts, including nonsurvivorship as well as survivorship forms of multiple-party accounts.

Section 62-6-106. The provisions of Part 2 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. Part 3 governs the liability and set-off rights of financial institutions that make payments pursuant to it.

Part 2

Ownership as Between Parties and Others

Section 62-6-201. (A) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(B) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(C) An agent in an account with an agency designation has no beneficial right to sums on deposit.

REPORTER'S COMMENT

This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the person usually intends no present change of beneficial ownership. The section permits parties to accounts to be as definite, or as indefinite, as they wish in respect to the matter of how beneficial ownership should be apportioned between them.

The assumption that no present change of beneficial ownership is intended may be disproved by showing that a gift was intended. For

example, under subsection (b) it is presumed that the beneficiary of a POD designation has no present ownership interest during lifetime. However, it is possible that in the case of a POD designation in trust form an irrevocable gift was intended.

It is important to note that the section is limited to ownership of an account while parties are alive. Section 62-6-202 prescribes what happens to beneficial ownership on the death of a party.

The section does not undertake to describe the situation between parties if one party withdraws more than that party is then entitled to as against the other party. Sections 62-6-301 and 62-6-306 protect a financial institution in that circumstance without reference to whether a withdrawing party may be entitled to less than that party withdraws as against another party. Rights between parties in this situation are governed by general law other than this part.

The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals, and not equal and undivided ownership that would be an incident of joint tenancy.

Section 62-6-202. (a) Except as otherwise provided in this subpart, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 62-6-201 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 62-6-201 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 62-6-201, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) on death of one of two or more parties, the rights in sums on deposit are governed by subsection (a);

(2) on death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under Section 62-6-201 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

REPORTER'S COMMENT
The effect of subsection (a) is to make an account payable to one or more of two or more parties a survivorship arrangement unless a nonsurvivorship arrangement is specified in the terms of the account.
The account characteristics described in this section must be determined by reference to the form of the account and the impact of Sections 62-6-103 and 62-6-104 on the admissibility of extrinsic evidence tending to confirm or contradict intention as signaled by the form.

Section 62-6-203. (a) Rights at death of a party under Section 62-6-202 are determined by the terms of the account at the death of the party. A party may alter the terms of the account by a notice signed by the party and given to the financial institution to change the terms of the account or to stop or vary payment under the terms of the account. To be effective the notice must be received by the financial institution during the party's lifetime.

(b) A right of survivorship arising from the express terms of the account under Section 62-6-202 may be altered by clear and convincing evidence, including but not limited to express provisions in a will.

(c) A multiple-party account of husband and wife is presumed to be joint with right of survivorship unless clear and convincing evidence shows survivorship was not the intent of the party.

REPORTER'S COMMENT
Under this section, rights of parties and beneficiaries are determined by the type of account at the time of death. It is to be noted that only a 'party' may give notice blocking the provisions of Section 62-6-202 (rights at death). 'Party' is defined by Section 62-6-101(7). Thus, if there is an account with a POD designation in the name of A and B with C as beneficiary, C cannot change the right of survivorship because C has no present right to payment and hence is not a party.

Section 62-6-204. A transfer resulting from the application of Section 62-6-202 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Articles 1 through 4 (estate administration) unless there is clear and convincing evidence that the deceased party did not intend for the account to be joint with right of survivorship.

REPORTER'S COMMENT
The purpose of classifying the transactions contemplated by this part as nontestamentary is to bolster the explicit statement that their validity as effective modes of transfers on death is not to be determined by the requirements for wills.

Section 62-6-205. Subject to the provisions contained in Section 62-3-916, no multiple-party account is effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, if other assets of the estate are insufficient. A surviving party or beneficiary who receives payment from a multiple-party account after the death of a deceased party is liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability may be commenced unless the personal representative has received a written demand by a creditor of the decedent, and no proceeding may be commenced later than one year following the death of the decedent. Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the right of a financial institution to make payment on multiple-party accounts according to the terms of the account or make it liable to the estate of a deceased party unless, before

payment, the institution has been served with an order of the probate court.

REPORTER'S COMMENT
Section 62-6-205, in derogation of the survivorship rights established in Sections 62-6-202 through 62-6-204, establishes in the estate of a deceased party a limited beneficial ownership of the funds on deposit in a multiple-party account, limited, however, to the payment of debts, taxes, and the expenses of administration of the estate of the deceased party, and existing only if other assets of that estate are insufficient to that purpose, only up to the amount to which the deceased party was beneficially entitled prior to death, and only if a creditor's claim proceeding is brought within one year of the deceased party's death.

Part 3

Protection of Financial Institutions

Section 62-6-301. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

REPORTER'S COMMENT
Section 62-6-301 is substantially the same as prior law under former S.C. Code Section 62-6-108, with the additional reference to POD and agency designations. The provisions governing payment on request of one or more parties, previously covered in former S.C. Code Section 62-6-108, is now found in S.C. Code Section 62-6-302.
The provisions of this subpart relate only to protection of a financial institution that makes payment as provided in the subpart. Nothing in this subpart affects the beneficial rights of persons to sums on deposit or paid out. Ownership as between parties, and others, is governed by Subpart 2. See Section 62-6-106 (applicability of subpart).

Section 62-6-302. A financial institution, on request, may pay sums on deposit in a multiple-party account:

(1) to one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party;

(2) to the personal representative of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under Section 62-6-202; or

(3) in accordance with a court order directing the payment of the sums on deposit.

REPORTER'S COMMENT

Section 62-6-302 expands upon former 62-6-108 and recognizes multiple party accounts may be paid on request to one or more parties. Subsection (2) is a departure from prior law in that it does not contain the former provision providing for payment to heirs or devisees if there is no personal representative. Now, in such a circumstance, Subsection (3) allows for payment in accordance with a court order. Section 62-6-302 is consistent with the result of Trotter v. First Federal Sav. and Loan Ass'n, 298 S.C. 85, 378 S.E.2d 267 (Ct. App. 1989), which recognized that a bank was authorized to make a payment from a joint account to satisfy the debt of one of the signatories, even though the other (non-consenting) signatory had contributed the funds to the account.

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. Section 62-6-306 (discharge). Paragraph (1) applies to both a multiple-party account with right of survivorship and a multiple-party account without right of survivorship (including an account in tenancy in common form). Paragraph (2) is limited to a multiple-party account with right of survivorship; payment to the personal representative or heirs or devisees of a deceased party to an account without right of survivorship is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

Section 62-6-303. A financial institution, on request, may pay sums on deposit in an account with a POD designation:

(1) to one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) to the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties;

(3) to the personal representative of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary; or

(4) in accordance with a court order directing the payment of the sums on deposit.

REPORTER'S COMMENT

Section 62-6-303 is substantially the same as prior 62-6-110, with the addition of Subsection (4) which allows payment in accordance with a court order.

A financial institution that makes payment on proper request under this section is protected unless the financial institution has received written notice not to. See Section 62-6-306 (discharge). Payment to the personal representative of a deceased beneficiary who would be entitled to payment under paragraph (2) is governed by the general law of the state relating to the authority of such persons to collect assets alleged to belong to a decedent.

Section 62-6-304. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

REPORTER'S COMMENT

Section 62-6-304 is new and recognizes the ability to pay to an agent under an agency designation. Designation of an agent is governed by S.C. Code Section 62-6-105 and this section is in accordance with the concept of adding a non-party agent to an account, as commonly provided in account agreements. Section 62-6-304 is consistent with former S.C. Code Section 62-6-111 governing payments of a trust account to a trustee, though this section is broader in that the definition of agent under S.C. Code Section 62-2-101(2) includes any 'person authorized to make account transactions for a party.'

This section is intended to protect a financial institution that makes a payment pursuant to an account with an agency designation even though the agency may have terminated at the time of the payment due

to disability, incapacity, or death of the principal. The protection does not apply if the financial institution has received notice under Section 62-6-306 not to make payment or notice that the agency has terminated. This section applies whether or not the agency survives the party's disability or incapacity under Section 62- 6-105 (designation of agent).

Section 62-6-305. If a financial institution is required or permitted to make payment pursuant to this part to a minor designated as a beneficiary, payment shall be made as ordered by the court or may be made in accordance with Section 62-5-103.

SOUTH CAROLINA COMMENTS
Section 62-6-305 is intended to avoid the need for a guardianship or other protective proceeding in situations where the Uniform Gifts to Minors Act may be used.

Section 62-6-306. (a) Payment made pursuant to this subpart in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from an agent under a durable power of attorney or a conservator for a party, or from the personal representative of a deceased party, or surviving spouse of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process or a court order in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to

the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

REPORTER'S COMMENT

The provision of subsection (a) protecting a financial institution for payments made after the death, disability, or incapacity of a party is a specific elaboration of the general protective provisions of this section and is drawn from Uniform Commercial Code Section 4-405.

Knowledge of disability, incapacity, or death of a party does not affect payment on request of an agent, whether or not the agent's authority survives disability or incapacity. See Section 62-6-304 (payment to designated agent). But under subsection (b), the financial institution may not make payments on request of an agent after it has received written notice not to, whether because the agency has terminated or otherwise.

Section 62-6-307. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

REPORTER'S COMMENT

Section 62-6-307 is substantially similar to former S.C. Code §62-6-113. As with former Section 62-6-113, Section 62-6-307 allows the financial institution, as creditor of a party, to set off in its own favor an amount from a multiple party account to cover the indebtedness of that party. This Section is in addition to any other statutory, common law, or contractual remedies, liens or rights of set-off.

Article 7

South Carolina Trust Code

Part 1

General Provisions and Definitions

GENERAL COMMENT

The South Carolina version of the Uniform Trust Code is referred to as the South Carolina Trust Code or sometimes the SCTC or sometimes the Code throughout this Article. The Uniform Trust Code is sometimes referred to as the UTC. The South Carolina Probate Code, South Carolina Code Ann. Section 62-1-100 et seq., is sometimes referred to as the SCPC. The sections of the South Carolina Trust Code are codified at Title 62, Article 7 and consequently are a part of the comprehensive South Carolina Probate Code. Depending on context, general references to "Article" in the UTC Comments may correlate to "Part" in the SCTC.

As with the UTC, the SCTC is primarily a default statute. Most of the Code's provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 62-7-105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

The remainder of the article specifies the scope of the Code (Section 62-7-102), provides definitions (Section 62-7-103), and collects provisions of importance not amenable to codification elsewhere in the SCTC. Sections 62-7-106 and 62-7-107 focus on the sources of law that will govern a trust. Section 62-7-106 clarifies that despite the Code's comprehensive scope, not all aspects of the law of trusts have been codified. The SCTC is supplemented by the common law of trusts and principles of equity. Section 62-7 107 addresses selection of the jurisdiction or jurisdictions whose laws will govern the trust. A settlor, absent overriding public policy concerns, is free to select the law that will determine the meaning and effect of a trust's terms.

Changing a trust's principal place of administration is sometimes desirable, particularly to lower a trust's state income tax. Such transfers are authorized in Section 62-7-108. The trustee, following notice to the "qualified beneficiaries," defined in Section 62-7-103(12), may without approval of court transfer the principal place of administration to another State or country if a qualified beneficiary does not object and if the transfer is consistent with the trustee's duty to administer the trust at a place appropriate to its purposes, its

administration, and the interests of the beneficiaries. The settlor, if minimum contacts are present, may also designate the trust's principal place of administration.

Sections 62-7-104 and 62-7-109 through 62-7-111 address procedural issues. Section 62-7-104 specifies when persons, particularly persons who work in organizations, are deemed to have acquired knowledge of a fact. Section 62-7-109 specifies the methods for giving notice and excludes from the Code's notice requirements persons whose identity or location is unknown and not reasonably ascertainable. Section 62-7-110 allows beneficiaries with remote interests to request notice of actions, such as notice of a trustee resignation, which are normally given only to the qualified beneficiaries.

Section 62-7-111 ratifies the use of nonjudicial settlement agreements. While the judicial settlement procedures may be used in all court proceedings relating to the trust, the nonjudicial settlement procedures will not always be available. The terms of the trust may direct that the procedures not be used, or settlors may negate or modify them by specifying their own methods for obtaining consents. Also, a nonjudicial settlement may include only terms and conditions a court could properly approve.

Section 62-7-112 provides that South Carolina's specific rules on construction of wills, whatever they may be, also apply to the construction of trusts.

Section 62-7-101. This article may be cited as the South Carolina Trust Code. In this article, unless the context clearly indicates otherwise, 'Code' means the South Carolina Trust Code.

Section 62-7-102. This article applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. The term 'express trust' includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the probate court, and includes, but is not limited to, all trusts defined in Section 62-1-201(49). This article does not apply to constructive trusts, resulting trusts, conservatorships administered by conservators as defined in Section 62-1-201(6), administration of decedent's estates, all multiple party accounts referred to in Section 62-6-101 et seq., custodial arrangements, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the

primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

REPORTER'S COMMENT

This section provides a concise statement of the positive inclusion of express trusts within the scope of the SCTC.

South Carolina has another comprehensive statement of the scope of applicable South Carolina trust law, contained in the definition paragraph of the South Carolina Probate Code Section 62-1-201(49), which contains an expanded statement of the inclusion of express trusts and further contains detailed statements of the trusts and trust type arrangements that are excluded from the scope. This statement is now included in Section 62-7-102 with reference to Section 62-1-201(49). Former Section 62-7-702(1), in the South Carolina Uniform Trustee's Powers Act, which was repealed by the SCTC, also contained a comprehensive statement of applicable South Carolina trust law.

Excluded from the Code's coverage are resulting and constructive trusts, which are not express trusts but remedial devices imposed by law. For the requirements for creating an express trust and the methods by which express trusts are created, see Sections 62-7-401 and 62-7-402. The Code does not attempt to distinguish express trusts from other legal relationships with respect to property, such as agencies and contracts for the benefit of third parties. For the distinctions, see Restatement (Third) of Trusts Sections 2, 5 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 2, 5-16C (1959).

The SCTC is directed primarily at trusts that arise in an estate planning or other donative context, but express trusts can arise in other contexts. For example, a trust created pursuant to a divorce action would be included, even though such a trust is not donative but is created pursuant to a bargained-for exchange. Commercial trusts come in numerous forms, including trusts created pursuant to a state business trust act and trusts created to administer specified funds, such as to pay a pension or to manage pooled investments. Commercial trusts are often subject to special-purpose legislation and case law, which in some respects displace the usual rules stated in this Code. *See* John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce,* 107 Yale L.J. 165 (1997).

Express trusts also may be created by means of court judgment or decree. Examples include trusts created to hold the proceeds of

personal injury recoveries and trusts created to hold the assets of a protected person in a conservatorship proceeding.

Section 62-7-103. In this article:

(1) 'Action,' with respect to an act of a trustee, includes a failure to act.

(2) 'Beneficiary' means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property; or

(C) In the case of a charitable trust, has the authority to enforce the terms of the Trust.

(3) 'Charitable trust' means a trust, or portion of a trust, created for a charitable purpose described in Section 62-7-405(a).

(4) 'Conservator' means a person appointed by the court to administer the estate of a protected person.

(5) 'Environmental law' means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) 'Guardian' means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem or a statutory guardian.

(7) 'Interests of the beneficiaries' means the beneficial interests provided in the terms of the trust.

(8) 'Jurisdiction', with respect to a geographic area, includes a State or country.

(9) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(10) 'Power of withdrawal' means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard, or which is exercisable by another person only upon consent of the trustee or the person holding an adverse interest.

(11) 'Property' means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(12) 'Qualified beneficiary' means a living beneficiary who, on the date the beneficiary's qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date, but the termination of those interests would not cause the trust to terminate; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(13) 'Revocable', as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(14) 'Settlor' means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion. Neither the possession of, nor the lapse, release, or waiver of a power of withdrawal shall cause a holder of the power to be deemed to be a settlor of the trust, and property subject to such power is not susceptible to the power holder's creditors.

(15) 'Spendthrift provision' means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(16) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

(17) 'Terms of a trust' means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(18) 'Trust instrument' means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(19) 'Trustee' includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

(20) 'Ascertainable standard' means an ascertainable standard relating to a trustee's individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, as amended.

(21) 'Distributee' means any person who receives property of a trust from a trustee, other than as creditor or purchaser.

(22) 'Interested person' or 'interested party' means any person or party deemed to be a necessary or proper party under Rule 19 of the South Carolina Rules of Civil Procedure.

(23) 'Internal Revenue Code' means the Internal Revenue Code, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor or amendment thereto.

(24) 'Serious breach of trust' means either: a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together.

(25) 'Permissible distributee' means any person who or which on the date of qualification as a beneficiary is eligible to receive current distributions of property of a trust from a trustee, other than as a creditor or purchaser.

(26) 'Trust investment advisor' is a person, committee of persons, or entity who is or who are given authority by the terms of a trust instrument to direct, consent to or disapprove a trustee's actual or proposed investment decisions.

(27) 'Trust protector' is a person, committee of persons or entity who is or who are designated as a trust protector whose appointment is provided for in the trust instrument.

The terms and definitions contained in the South Carolina Probate Code that do not conflict with the terms defined in this section shall remain in effect for the South Carolina Trust Code.

REPORTER'S COMMENT

There are a number of definitions in Section 62-7-103 referred to throughout the South Carolina Trust Code that have no equivalent in other portions of the South Carolina Code. These include "Action," "Charitable trust," "Environmental law," "Interests of the beneficiaries," "Jurisdiction," "Power of withdrawal," "Qualified beneficiary," "Revocable," "Settlor," "Spendthrift provision," "Terms of a trust," and "Trust instrument." In the interest of uniformity, such terms are included in the South Carolina Trust Code except as noted below.

A definition of "action" (paragraph (1)) is included for drafting convenience, to avoid having to clarify in the numerous places in the SCTC where reference is made to an "action" by the trustee that the term includes a failure to act.

"Beneficiary" (paragraph (2)) refers only to a beneficiary of a trust as defined in the SCTC. In addition to living and ascertained

individuals, beneficiaries may be unborn or unascertained. Pursuant to Section 62-7-402(c), a trust is valid only if a beneficiary can be ascertained now or in the future. The term "beneficiary" includes not only beneficiaries who received their interests under the terms of the trust but also beneficiaries who received their interests by other means, including by assignment, exercise of a power of appointment, resulting trust upon the failure of an interest, gap in a disposition, operation of an antilapse statute upon the predecease of a named beneficiary, or upon termination of the trust. The fact that a person incidentally benefits from the trust does not mean that the person is a beneficiary. For example, neither a trustee nor persons hired by the trustee become beneficiaries merely because they receive compensation from the trust. *See* Restatement (Third) of Trusts Section 48 cmt. c (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 126 cmt. c (1959).

While the holder of a power of appointment is not necessarily considered a trust beneficiary under the common law of trusts, holders of powers are classified as beneficiaries under the SCTC. Holders of powers are included on the assumption that their interests are significant enough that they should be afforded the rights of beneficiaries. A power of appointment as used in state trust law and this Code is as defined in state property law and not federal tax law although there is considerable overlap between the two definitions.

A power of appointment is authority to designate the recipients of beneficial interests in property. *See* Restatement (Second) of Property: Donative Transfers Section 11.1 (1986). A power is either general or nongeneral and either presently exercisable or not presently exercisable. A general power of appointment is a power exercisable in favor of the holder of the power, the power holder's creditors, the power holder's estate, or the creditors of the power holder's estate. *See* Restatement (Second) of Property: Donative Transfers Section 11.4 (1986). All other powers are nongeneral. A power is presently exercisable if the power holder can currently create an interest, present or future, in an object of the power. A power of appointment is not presently exercisable if exercisable only by the power holder's will or if its exercise is not effective for a specified period of time or until occurrence of some event. *See* Restatement (Second) of Property: Donative Transfers Section 11.5 (1986). Powers of appointment may be held in either a fiduciary or nonfiduciary capacity. The definition of "beneficiary" excludes powers held by a trustee but not powers held by others in a fiduciary capacity.

Under Section 62-7-302, the holder of a testamentary general power of appointment may represent and bind persons whose interests are subject to the power.

The definition of "beneficiary" includes only those who hold beneficial interests in the trust. Because a charitable trust is not created to benefit ascertainable beneficiaries but to benefit the community at large *(see* Section 62-7-405(a)), persons receiving distributions from a charitable trust are not beneficiaries as that term is defined in this Code. However, pursuant to Section 62-7-110(b), charitable organizations expressly designated to receive distributions under the terms of a charitable trust, even though not beneficiaries as defined, are granted the rights of qualified beneficiaries under the Code.

The SCTC leaves certain issues concerning beneficiaries to the common law. Any person with capacity to take and hold legal title to intended trust property has capacity to be a beneficiary. *See* Restatement (Third) of Trusts Section 43 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 116-119 (1959). Except as limited by public policy, the extent of a beneficiary's interest is determined solely by the settlor's intent. *See* Restatement (Third) of Trusts Section 49 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 127-128 (1959). While most beneficial interests terminate upon a beneficiary's death, the interest of a beneficiary may devolve by will or intestate succession the same as a corresponding legal interest. *See* Restatement (Third) of Trusts Section 55(1) (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 140, 142 (1959).

Under the SCTC, when a trust has both charitable and noncharitable beneficiaries only the charitable portion qualifies as a "charitable trust" (paragraph (3)). The great majority of the Code's provisions apply to both charitable and noncharitable trusts without distinction. The distinctions between the two types of trusts are found in the requirements relating to trust creation and modification. Pursuant to Sections 62-7-405 and 62-7-413 of the SCTC, a charitable trust must have a charitable purpose and charitable trusts may be modified or terminated under the doctrine of equitable deviation. Although South Carolina courts have previously refused to recognize the doctrine of cy pres (see Section 62-7-413 comment), a charitable trust in South Carolina could be modified or terminated under the doctrine of equitable deviation. Also, Section 62-7-411 allows a noncharitable trust to, in certain instances, be terminated by its beneficiaries while charitable trusts do not have beneficiaries in the usual sense. To the extent of these distinctions, a split-interest trust is subject to two sets of

provisions, one applicable to the charitable interests, the other the noncharitable.

Subsection (4) reflects the definition of "conservator" contained in South Carolina Probate Code Section 62-1-201(6).See the definition of "guardian" (paragraph (6)).

To encourage trustees to accept and administer trusts containing real property, the SCTC contains several provisions designed to limit exposure to possible liability for violation of "environmental law" (paragraph (5)). Section 62-7-701(c)(2) authorizes a nominated trustee to investigate trust property to determine potential liability for violation of environmental law or other law without accepting the trusteeship. Section 62-7-816(13) grants a trustee comprehensive and detailed powers to deal with property involving environmental risks. Section 62-7-1010(b) immunizes a trustee from personal liability for violation of environmental law arising from the ownership and control of trust property.

Under the SCTC, a "guardian" (paragraph (6)) makes decisions with respect to personal care; a "conservator" (paragraph (4)) manages property. The terminology used in the SCTC is that employed in Article V of the South Carolina Probate Code. Further, the South Carolina Probate Code (Section 62-1-201(18)) specifically excludes "a statutory guardian" and this modification was incorporated into the SCTC definition.

The phrase "interests of the beneficiaries" (paragraph (7)) is used with some frequency in the SCTC. The definition clarifies that the interests are as provided in the terms of the trust and not as determined by the beneficiaries. Section 62-7-108 dictates that a trustee is under a continuing duty to administer the trust at a place appropriate to the interests of the beneficiaries. Section 62-7-706(b) conditions certain of the grounds for removing a trustee on the court's finding that removal of the trustee will best serve the interests of the beneficiaries. Section 62-7-801 requires the trustee to administer the trust in the interests of the beneficiaries, and Section 62-7-802 makes clear that a trustee may not place its own interests above those of the beneficiaries. Section 62-7-808(d) requires the holder of a power to direct who is subject to a fiduciary obligation to act with regard to the interests of the beneficiaries. Section 62-7-1002(b) may impose greater liability on a cotrustee who commits a breach of trust with reckless indifference to the interests of the beneficiaries. Section 62-7-1008 invalidates an exculpatory term to the extent it relieves a trustee of liability for breach of trust committed with reckless indifference to the interests of the beneficiaries.

"Jurisdiction" (paragraph (8)), when used with reference to a geographic area, includes a state or country but is not necessarily so limited. Its precise scope will depend on the context in which it is used. "Jurisdiction" is used in Sections 62-7-107 and 62-7-403 to refer to the place whose law will govern the trust. The term is used in Section 62-7-108 to refer to the trust's principal place of administration. The term is used in Section 62-7-816 to refer to the place where the trustee may appoint an ancillary trustee and to the place in whose courts the trustee can bring and defend legal proceedings.

The definition of "property" (paragraph (11)) is intended to be as expansive as possible and to encompass anything that may be the subject of ownership. Included are choses in action, claims, and interests created by beneficiary designations under policies of insurance, financial instruments, and deferred compensation and other retirement arrangements, whether revocable or irrevocable. Any such property interest is sufficient to support creation of a trust. *See* Section 62-7-401 comment.

Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the SCTC uses the concept of "qualified beneficiary" (paragraph (12)) to limit the class of beneficiaries to whom certain notices must be given or consents received. The definition of qualified beneficiaries is used in Section 62-7-705 to define the class to whom notice must be given of a trustee resignation. The term is used in Section 62-7-813 to define the class to be kept informed of the trust's administration. Section 62-7-417 requires that notice be given to the qualified beneficiaries before a trust may be combined or divided. Actions which may be accomplished by the consent of the qualified beneficiaries include the appointment of a successor trustee as provided in Section 62-7-704. Prior to transferring a trust's principal place of administration, SCTC Section 62-7-108(e) (UTC Section 108(d)) requires that the trustee give at least 60 days notice to the qualified beneficiaries.

The qualified beneficiaries consist of the beneficiaries currently receiving a distribution from the trust together with those who might be termed the first-line remaindermen. These are the beneficiaries who would receive distributions were the event triggering the termination of a beneficiary's interest or of the trust itself to occur on the date in question. Such a terminating event will typically be the death or deaths of the beneficiaries currently eligible to receive the income. Should a qualified beneficiary be a minor, incapacitated, or unknown, or a

beneficiary whose identity or location is not reasonably ascertainable, the representation and virtual representation principles of Part 3 may be employed, including the possible appointment by the court of a representative to represent the beneficiary's interest.

The qualified beneficiaries who take upon termination of the beneficiary's interest or of the trust can include takers in default of the exercise of a power of appointment. The term can also include the persons entitled to receive the trust property pursuant to the exercise of a power of appointment. Because the exercise of a testamentary power of appointment is not effective until the testator's death and probate of the will, the qualified beneficiaries do not include appointees under the will of a living person. Nor would the term include the objects of an unexercised inter vivos power.

Charitable trusts and trusts for a valid noncharitable purpose do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. Section 62-7-110 expands the definition of qualified beneficiaries to encompass this wider group. UTC Section 110 grants the rights of qualified beneficiaries to the attorney general of the state and charitable organizations expressly designated to receive distributions under the terms of a charitable trust; SCTC Section 62-7-110 grants the rights of qualified beneficiaries only to charitable organizations expressly designated to receive distributions under the terms of a charitable trust. Section 62-7-110 also grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other noncharitable purpose.

The definition of "revocable" (paragraph (13)) clarifies that revocable trusts include only trusts whose revocation is substantially within the settlor's control. The consequences of classifying a trust as revocable are many. The SCTC contains provisions relating to liability of a revocable trust for payment of the settlor's debts (Section 62-7-505), the standard of capacity for creating a revocable trust (Section 62-7-601), the procedure for revocation (Section 62-7-602), the subjecting of the beneficiaries' rights to the settlor's control (Section 62-7-603), the period for contesting a revocable trust (Section 62-7-604), the power of the settlor of a revocable trust to direct the actions of a trustee (Section 62-7-808(a)), notice to the qualified beneficiaries upon the settlor's death (Section 62-7-813(b)), and the liability of a trustee of a revocable trust for the obligations of a partnership of which the trustee is a general partner (Section 62-7-1011(d)).

The definition of "settlor" (paragraph (14)) refers to the person who creates, or contributes property to, a trust, whether by will, self-declaration, transfer of property to another person as trustee, or exercise of a power of appointment. For the requirements for creating a trust, see Section 62-7-401. Determining the identity of the "settlor" is usually not an issue. The same person will both sign the trust instrument and fund the trust. Ascertaining the identity of the settlor becomes more difficult when more than one person signs the trust instrument or funds the trust. The fact that a person is designated as the "settlor" by the terms of the trust is not necessarily determinative. For example, the person who executes the trust instrument may be acting as the agent for the person who will be funding the trust. In that case, the person funding the trust, and not the person signing the trust instrument, will be the settlor. Should more than one person contribute to a trust, all of the contributors will ordinarily be treated as settlors in proportion to their respective contributions, regardless of which one signed the trust instrument. *See* Section 62-7-602(b).

In the case of a revocable trust employed as a will substitute, gifts to the trust's creator are sometimes made by placing the gifted property directly into the trust. To recognize that such a donor is not intended to be treated as a settlor, the definition of "settlor" excludes a contributor to a trust that is revocable by another person or over which another person has a power of withdrawal. Thus, a parent who contributes to a child's revocable trust would not be treated as one of the trust's settlors. The definition of settlor would treat the child as the sole settlor of the trust to the extent of the child's proportionate contribution

Ascertaining the identity of the settlor is important for a variety of reasons. It is important for determining rights in revocable trusts. *See* Sections 62-7-505(a)(1), (3) (creditor claims against settlor of revocable trust), 62-7-602 (revocation or modification of revocable trust), and 62-7-604 (limitation on contest of revocable trust). It is also important for determining rights of creditors in irrevocable trusts. *See* Section 62-7-505(a)(2) (creditors of settlor can reach maximum amount trustee can distribute to settlor). While the settlor of an irrevocable trust traditionally has no continuing rights over the trust except for the right under Section 62-7-411 to terminate the trust with the beneficiaries' consent, the SCTC also authorizes the settlor of an irrevocable trust to petition for removal of the trustee and to enforce or modify a charitable trust. *See* Sections 62-7-405(c) (standing to enforce charitable trust), 62-7-413 (South Carolina, doctrine of equitable deviation), and 62-7-706 (removal of trustee).

"Spendthrift provision" (paragraph (15)) means a term of a trust which restrains the transfer of a beneficiary's interest, whether by a voluntary act of the beneficiary or by an action of a beneficiary's creditor or assignee, which at least as far as the beneficiary is concerned, would be involuntary. A spendthrift provision is valid under the SCTC only if it restrains both voluntary and involuntary transfer. For a discussion of this requirement and the effect of a spendthrift provision in general, see Section 62-7-502. The insertion of a spendthrift provision in the terms of the trust may also constitute a material purpose sufficient to prevent termination of the trust by agreement of the beneficiaries under Section 62-7-411, although the Code does not presume this result.

"Terms of a trust" (paragraph (17)) is a defined term used frequently in the SCTC. While the wording of a written trust instrument is almost always the most important determinant of a trust's terms, the definition is not so limited. Oral statements, the situation of the beneficiaries, the purposes of the trust, the circumstances under which the trust is to be administered, and, to the extent the settlor was otherwise silent, rules of construction, all may have a bearing on determining a trust's meaning. *See* Restatement (Third) of Trusts Section 4 cmt. a (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 4 cmt. a (1959). If a trust established by order of court is to be administered as an express trust, the terms of the trust are determined from the court order as interpreted in light of the general rules governing interpretation of judgments. *See* Restatement (Third) of Trusts Section 4 cmt. f (Tentative Draft No. 1, approved 1996).

A manifestation of a settlor's intention does not constitute evidence of a trust's terms if it would be inadmissible in a judicial proceeding in which the trust's terms are in question. *See* Restatement (Third) of Trusts Section 4 cmt. b (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 4 cmt. b (1959). *See also* Restatement (Third) Property: Donative Transfers Sections 10.2, 11.1-11.3 (Tentative Draft No. 1, approved 1995). For example, South Carolina has chosen to recognize the creation of an oral trust, Section 62-7-407. Evidence otherwise relevant to determining the terms of a trust may also be excluded under other principles of law, such as the parol evidence rule.

"Trust instrument" (paragraph (18)) is a subset of the definition of "terms of a trust" (paragraph (17)), referring to only such terms as are found in an instrument executed by the settlor. Section 62-7-403 provides that a trust is validly created if created in compliance with the law of the place where the trust instrument was executed. Pursuant to

Section 62-7-604(a)(2), the contest period for a revocable trust can be shortened by providing the potential contestant with a copy of the trust instrument plus other information. UTC Section 813(b)(1) and SCTC Section 62-7-813(b) requires that the trustee upon request furnish a beneficiary with a copy of the trust instrument. To allow a trustee to administer a trust with some dispatch without concern about liability if the terms of a trust instrument are contradicted by evidence outside of the instrument, Section 62-7-1006 protects a trustee from liability to the extent a breach of trust resulted from reasonable reliance on those terms. Section 62-7-1013 allows a trustee to substitute a certification of trust in lieu of providing a third person with a copy of the trust instrument. Section 62-7-1106(a)(4) provides that unless there is a clear indication of a contrary intent, rules of construction and presumptions provided in the SCTC apply to trust instruments executed before the effective date of the Code.

The definition of "trustee" (paragraph (19)) includes not only the original trustee but also an additional and successor trustee as well as a cotrustee. Section 62-1-201 of the South Carolina Probate Code contains the language "whether or not appointed or confirmed by court" and the South Carolina Trust Code retains that language. Because the definition of trustee includes trustees of all types, any trustee, whether original or succeeding, single or cotrustee, has the powers of a trustee and is subject to the duties imposed on trustees under the SCTC. Any natural person, including a settlor or beneficiary, has capacity to act as trustee if the person has capacity to hold title to property free of trust. *See* Restatement (Third) of Trusts Section 32 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 89 (1959). State banking statutes normally impose additional requirements before a corporation can act as trustee.

Subsections (21) (defining "distributee"), (25) (defining "permissible distributee"), (26) (defining "Trust Investment Advisor"), and (27) (defining "Trust Protector") are South Carolina additions to the UTC.

The South Carolina version of Section 62-7-103 expresses the intent that the definitions contained in the South Carolina Probate Code that are not otherwise defined within the South Carolina Trust Code and that do not conflict with the definitions contained in the South Carolina Trust Code shall continue to apply to the law governing trusts in South Carolina.

Section 62-7-104. (a) Subject to subsection (b), a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

REPORTER'S COMMENT

This section specifies when a person is deemed to know a fact. Subsection (a) states the general rule. Subsection (b) provides a special rule dealing with notice to organizations. Pursuant to subsection (a), a fact is known to a person if the person had actual knowledge of the fact, received notification of it, or had reason to know of the fact's existence based on all of the circumstances and other facts known to the person at the time. Under subsection (b), notice to an organization is not necessarily achieved by giving notice to a branch office. Nor does the organization necessarily acquire knowledge at the moment the notice arrives in the organization's mailroom. Rather, the organization has notice or knowledge of a fact only when the information is received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention had the organization exercised reasonable diligence.

"Know" is used in its defined sense in Sections 62-7-109 (methods and waiver of notice), 62-7-305 (appointment of representative), 62-7-604(b) (limitation on contest of revocable trust), 62-7-1009 (nonliability of trustee upon beneficiary's consent, release, or ratification), and 62-7-1012 (protection of person dealing with trustee). But as to certain actions, a person is charged with knowledge of facts the person would have discovered upon reasonable inquiry. *See* Section 62-7-1005 (limitation of action against trustee following report of trustee).

This section is based on Uniform Commercial Code Section 1-202 (2000 Annual Meeting Draft).

Section 62-7-105. (a) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this article except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;

(4) the power of the court to modify or terminate a trust under Sections 62-7-410 through 62-7-416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Part 5;

(6) the limitations on the ability of a settlor's agent under a power of attorney to revoke, amend, or make distributions from a revocable trust pursuant to Section 62-7-602A;

(7) the power of the court under Section 62-7-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under Section 62-7-1008;

(9) the rights under Sections 62-7-1010 through 62-7-1013 of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 62-7-201 and 62-7-204.

REPORTER'S COMMENT

Section 62-7-105(a) begins with the premise that the provisions of the South Carolina Trust Code govern trusts when the terms of a trust do not otherwise direct. While this Code provides numerous procedural rules on which a settlor may wish to rely, the settlor is generally free to override these rules and to prescribe the conditions under which the trust is to be administered. However, subsection (b) lists eleven

separate requirements that may not be waived and will be controlled by the terms of the SCTC irrespective of the terms of the trust.

With only limited exceptions, the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary are as specified in the terms of the trust.

Subsection (b) lists the items not subject to override in the terms of the trust.

Subsection (b)(1) confirms that the requirements for a trust's creation, such as the necessary level of capacity and the requirement that a trust have a legal purpose, are controlled by statute and common law, not by the settlor. For the requirements for creating a trust, see Sections 62-7-401 through 409. Subsection (b)(10) makes clear that the settlor may not reduce any otherwise applicable period of limitations for commencing a judicial proceeding. *See* Sections 62-7-604 (period of limitations for contesting validity of revocable trust), and 62-7-1005 (period of limitation on action for breach of trust). Similarly, a settlor may not so negate the responsibilities of a trustee that the trustee would no longer be acting in a fiduciary capacity. Subsection (b)(2) provides that the terms may not eliminate a trustee's duty to act in good faith and in accordance with the purposes of the trust. Subsection (b)(3) provides that the terms may not eliminate the requirement that a trust and its terms must be for the benefit of the beneficiaries. Subsection (b)(3) also provides that the terms may not eliminate the requirement that the trust have a purpose that is lawful and possible to achieve. Subsection (b)(2)-(3) are echoed in Sections 62-7-404 (trust and its terms must be for benefit of beneficiaries; trust must have a purpose that is lawful and possible to achieve), 62-7-801 (trustee must administer trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries), 62-7-802(a) (trustee must administer trust solely in interests of the beneficiaries), 62-7-814 (trustee must exercise discretionary power in good faith and in accordance with its terms and purposes and the interests of the beneficiaries), and 62-7-1008 (exculpatory term unenforceable to extent it relieves trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust and the interests of the beneficiaries). SCTC Section 62-7-404 does not include the words "not contrary to public policy," found in UTC Section 404, recognizing that existing South Carolina law would invalidate trusts that are contrary to public policy.

The UTC provides that the terms of a trust may not deny a court authority to take such action as necessary in the interests of justice,

including requiring that a trustee furnish bond. UTC Subsections (b)(6), (13). The SCTC does not include the UTC version of subsection 105(b)(6). Section 62-7-702 of the South Carolina Trust Code provides the situations for which the trustee must provide bond.

UTC subsection (b)(14) and SCTC subsection (b)(12) similarly provides that such provisions cannot be altered in the terms of the trust. The power of the court to modify or terminate a trust under Sections 62-7-410 through 62-7-416 is not subject to variation in the terms of the trust. Subsection (b)(4). However, all of these Code sections involve situations which the settlor could have addressed had the settlor had sufficient foresight. These include situations where the purpose of the trust has been achieved, a mistake was made in the trust's creation, or circumstances have arisen that were not anticipated by the settlor.

Section 62-7-813 imposes a general obligation to keep the beneficiaries informed as well as several specific notice requirements. UTC Subsections (b)(8) and (b)(9) specify limits on the settlor's ability to waive these information requirements. The South Carolina Trust Code does not include the UTC version of subsections 105(b)(8)-(9).

In conformity with traditional doctrine, the SCTC limits the ability of a settlor to exculpate a trustee from liability for breach of trust. The limits are specified in Section 62-7-1008. UTC Subsection (b)(10) and SCTC Subsection (b)(8) of this section provide a cross-reference. Similarly, subsection (b)(7) provides a cross-reference to Section 708(b), which limits the binding effect of a provision specifying the trustee's compensation.

Finally, UTC subsection (b)(11) and SCTC subsection (b)(9) clarify that a settlor is not free to limit the rights of third persons, such as purchasers of trust property. Subsection (b)(5) clarifies that a settlor may not restrict the rights of a beneficiary's creditors except to the extent a spendthrift restriction is allowed as provided in Part 5.

2001 Amendment. By amendment in 2001, subsection (b)(3), (8) and (9) were revised to read as above. The language in subsection (b)(3) "that the trust have a purpose that is lawful and possible to achieve" is new. This addition clarifies that the settlor may not waive this common law requirement, which is codified in the Code at Section 62-7-404. SCTC Section 62-7-404 does not include the words "not contrary to public policy," found in UTC Section 404, recognizing that existing South Carolina law would invalidate trusts that are contrary to public policy. As a result, SCTC subsection (b)(3) does not include the words "not contrary to public policy."

The SCTC does not include the UTC version of Subsections 105 (b)(8) - (9) thus the 2001 Amendment which applies to Subsections 105 (b)(8)-(9) is not applicable.

2010 Amendment to the SCTC. The 2010 amendment added subsection (b)(6) relating to limitations on a settlor's agent; and redesignated former subsections (b)(6) through (b)(11) as subsections (b)(7) through (b)(12), respectively.

Section 62-7-106. The common law of trusts and principles of equity supplement this article, except to the extent modified by this article or another statute of this State.

REPORTER'S COMMENT

The SCTC codifies those portions of the law of express trusts that are most amenable to codification. The Code is supplemented by the common law of trusts, including principles of equity, particularly as articulated in the Restatement of Trusts, Restatement (Third) of Property: Wills and Other Donative Transfers, and the Restatement of Restitution. The common law of trusts is not static but includes the contemporary and evolving rules of decision developed by the courts in exercise of their power to adapt the law to new situations and changing conditions. It also includes the traditional and broad equitable jurisdiction of the court, which the Code in no way restricts.

The statutory text of the SCTC is also supplemented by these Comments, which, like the Comments to any Uniform Act, may be relied on as a guide for interpretation. *See Acierno v. Worthy Bros. Pipeline Corp.,* 656 A.2d 1085, 1090 (Del. 1995) (interpreting Uniform Commercial Code); *Yale University v. Blumenthal,* 621 A.2d 1304, 1307 (Conn. 1993) (interpreting Uniform Management of Institutional Funds Act); 2 Norman Singer, Statutory Construction Section 52.05 (6th ed. 2000); Jack Davies, Legislative Law and Process in a Nutshell Section 55-4 (2d ed. 1986). See also South Carolina Probate Code Section 62-1-103.

Section 62-7-107. The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms of the trust; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

REPORTER'S COMMENT

This section provides rules for determining the law that will govern the meaning and effect of particular trust terms. The law to apply to determine whether a trust has been validly created is determined under Section 62-7-403.

Under prior South Carolina law, there was no statutory counterpart to this section; common law principles controlled.

Paragraph (1) allows a settlor to select the law that will govern the meaning and effect of the terms of the trust. The jurisdiction selected need not have any other connection to the trust. The settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor's lifetime. This section does not attempt to specify the strong public policies sufficient to invalidate a settlor's choice of governing law. These public policies will vary depending upon the locale and may change over time. See, however, *Russell v. Wachovia Bank*, 353 S.C. 208, 578 S.E.2d 329 (2003), in which the South Carolina Supreme Court cited language from the *Restatement (Second) of Conflict of Laws* Sections 268-270 (1971) in adopting a rule similar to that of SCTC Section 107.

Paragraph (2) provides a rule for trusts without governing law provisions - the meaning and effect of the trust's terms are to be determined by the law of the jurisdiction having the most significant relationship to the matter at issue. Factors to consider in determining the governing law include the place of the trust's creation, the location of the trust property, and the domicile of the settlor, the trustee, and the beneficiaries. *See* Restatement (Second) of Conflict of Laws Sections 270 cmt. c and 272 cmt. d (1971). Other more general factors that may be pertinent in particular cases include the relevant policies of the forum, the relevant policies of other interested jurisdictions and degree of their interest, the protection of justified expectations and certainty, and predictability and uniformity of result. *See* Restatement (Second) of Conflict of Laws Section 6 (1971). Usually, the law of the trust's principal place of administration will govern administrative matters and the law of the place having the most significant relationship to the trust's creation will govern the dispositive provisions.

This section is consistent with and was partially patterned on the Hague Convention on the Law Applicable to Trusts and on their Recognition, signed on July 1, 1985. Like this section, the Hague Convention allows the settlor to designate the governing law. Hague Convention art. 6. Absent a designation, the Convention provides that the trust is to be governed by the law of the place having the closest

connection to the trust. Hague Convention art. 7. The Convention also lists particular public policies for which the forum may decide to override the choice of law that would otherwise apply. These policies are protection of minors and incapable parties, personal and proprietary effects of marriage, succession rights, transfer of title and security interests in property, protection of creditors in matters of insolvency, and, more generally, protection of third parties acting in good faith. Hague Convention art. 15.

For the authority of a settlor to designate a trust's principal place of administration, see UTC Section 108(a) or SCTC Section 62-7-108(b). Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the reference to UTC Section 108(a) in the UTC Comment is appropriate for SCTC Section 62-7-108(b).

Section 62-7-108. (a) Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

(1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or

(2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise

(3) the usual place of business or residence of any of the cotrustees as agreed upon by them.

(b) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(c) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(d) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (c), may transfer the trust's principal place of

administration to another State or to a jurisdiction outside of the United States.

(e) Unless otherwise designated in the trust, the trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than ninety days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than ninety days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 62-7-704.

REPORTER'S COMMENT

This section prescribes rules relating to a trust's principal place of administration. Locating a trust's principal place of administration will ordinarily determine which court has primary if not exclusive jurisdiction over the trust. It may also be important for other matters, such as payment of state income tax or determining the jurisdiction whose laws will govern the trust. *See* Section 62-7-107 comment.

Because of the difficult and variable situations sometimes involved, the SCTC does not attempt to further define principal place of administration. A trust's principal place of administration ordinarily will be the place where the trustee is located. Determining the principal place of administration becomes more difficult, however, when cotrustees are located in different states or when a single institutional trustee has trust operations in more than one state. In such cases, other factors may become relevant, including the place where the trust records are kept or trust assets held, or in the case of an

institutional trustee, the place where the trust officer responsible for supervising the account is located.

Under the SCTC, the fixing of a trust's principal place of administration will determine where the trustee and beneficiaries have consented to suit (Section 62-7-202), and the rules for locating venue within a particular state (Section 62-7-204). It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction, and if so, whether it is a convenient forum.

Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the references to the subsections of UTC Section 108 in the UTC Comment have been adjusted correspondingly for SCTC Section 62-7-108.

SCTC Section 62-7-108(a) incorporates the provisions of former SCPC Section 62-7-202 (which dealt with venue), except SCTC subsection 108(a) is not limited to matters of venue.

A settlor expecting to name a trustee or cotrustees with significant contacts in more than one state may eliminate possible uncertainty about the location of the trust's principal place of administration by specifying the jurisdiction in the terms of the trust. Under UTC subsection (a) and SCTC subsection (b), a designation in the terms of the trust is controlling if (1) a trustee is a resident of or has its principal place of business in the designated jurisdiction, or (2) all or part of the administration occurs in the designated jurisdiction. Designating the principal place of administration should be distinguished from designating the law to determine the meaning and effect of the trust's terms, as authorized by Section 62-7-107. A settlor is free to designate one jurisdiction as the principal place of administration and another to govern the meaning and effect of the trust's provisions.

UTC Subsection (b) and SCTC subsection (c) provide that a trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. "Interests of the beneficiaries," defined in Section 62-7-103(7), means the beneficial interests provided n the terms of the trust. Ordinarily, absent a substantial change or circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration. The duty to administer the trust at an appropriate place may also dictate that the trustee not move the trust.

UTC Subsections (c)-(f) and SCTC subsections (d)-(g) provide a procedure for changing the principal place of administration to another state or country. Such changes are often beneficial. A change may be desirable to secure a lower state income tax rate, or because of relocation of the trustee or beneficiaries, the appointment of a new

trustee, or a change in the location of the trust investments. The procedure for transfer specified in this section applies only in the absence of a contrary provision in the terms of the trust. *See* Section 62-7-105. To facilitate transfer in the typical case, where all concur that a transfer is either desirable or is at least not harmful, a transfer can be accomplished without court approval unless a qualified beneficiary objects. To allow the qualified beneficiaries sufficient time to review a proposed transfer, the trustee must give the qualified beneficiaries at least 60 days prior notice of the transfer. Notice must be given not only to qualified beneficiaries as defined in Section 62-7-103(12) but also to those granted the rights of qualified beneficiaries under Section 62-7-110. To assure that those receiving notice have sufficient information upon which to make a decision, minimum contents of the notice are specified. If a qualified beneficiary objects, a trustee wishing to proceed with the transfer must seek court approval.

SCTC Section 62-7-108(e), which corresponds to UTC subsection 108(d), adds to the UTC version the introductory phrase "unless otherwise designated in the trust."

In connection with a transfer of the principal place of administration, the trustee may transfer some or all of the trust property to a new trustee located outside of the state. The appointment of a new trustee may also be essential if the current trustee is ineligible to administer the trust in the new place. UTC Subsection (f) and SCTC subsection (g) clarifies that the appointment of the new trustee must comply with the provisions on appointment of successor trustees as provided in the terms of the trust or under Section 62-7-704. Absent an order of succession in the terms of the trust, Section 62-7-704(c) provides the procedure for appointment of a successor trustee of a noncharitable trust, and Section 62-7-704(d) the procedure for appointment of a successor trustee of a charitable trust.

While transfer of the principal place of administration will normally change the governing law with respect to administrative matters, a transfer does not normally alter the controlling law with respect to the validity of the trust and the construction of its dispositive provisions. *See* 5A Austin W. Scott & William F. Fratcher, The Law of Trusts Section 615 (4th ed. 1989).

Section 62-7-109. (a) Notice to a person under this article or the sending of a document to a person under this article must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail,

personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this article or a document otherwise required to be sent under this article need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this article or the sending of a document under this article may be waived by the person to be notified or sent the document.

(d) If notice of a hearing on any petition is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) by mailing a copy thereof at least twenty days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post office address given in his request for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or

(3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy thereof in the same manner as required by law in the case of the publication of a summons for an absent defendant in the court of common pleas.

(e) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(f) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

REPORTER'S COMMENT

Subsection (a) clarifies that notices under the SCTC may be given by any method likely to result in its receipt by the person to be notified. The specific methods listed in the subsection are illustrative, not exhaustive. Subsection (b) relieves a trustee of responsibility for what would otherwise be an impossible task, the giving of notice to a person whose identity or location is unknown and not reasonably ascertainable by the trustee. The section does not define when a notice is deemed to have been sent or delivered or person deemed to be unknown or not

reasonably ascertainable, the drafters preferring to leave this issue to the enacting jurisdiction's rules of civil procedure.

Under the SCTC, certain actions can be taken upon unanimous consent of the beneficiaries or qualified beneficiaries. See Sections 62-7-411 (termination of noncharitable irrevocable trust) and 62-7-704 (appointment of successor trustee). UTC Subsection (b) of this section only authorizes waiver of notice. A consent required from a beneficiary in order to achieve unanimity is not waived because the beneficiary is missing. But the fact a beneficiary cannot be located may be a sufficient basis for a substitute consent to be given by another person on the beneficiary's behalf under the representation principles of Part 3.

In a nonjudicial context, SCTC Section 62-7-109(b) does not require notification of a person whose identity or location is unknown or cannot be reasonably ascertainable.

To facilitate administration, subsection (c) allows waiver of notice by the person to be notified or sent the document. Among the notices and documents to which this subsection can be applied are notice of a proposed transfer of principal place of administration (UTC Section 108(d) and SCTC Section 62-7-108(e)) or of a trustee's report (Section 62-7-813(e)). This subsection also applies to notice to qualified beneficiaries of a proposed trust combination or division (Section 62-7-417), of a temporary assumption of duties without accepting trusteeship (Section 62-7-701(c)(1)), and of a trustee's resignation (Section 62-7-705(a)(1)).

Notices under the SCTC are nonjudicial.

Previous South Carolina law had no precise counterpart. However, the South Carolina Probate Code contains various provisions respecting notice. The general notice section, SCPC Section 62-1-401 provides that notice of a hearing or other petition shall be delivered at least twenty (20) days before the time set for the hearing by certified, registered, or ordinary first class mail, or by delivering a copy to the person being notified at least twenty (20) days before the time set for hearing. That section also provides for the service of notice of hearing by publication if the address or identity of the person cannot be ascertained with reasonable diligence. SCTC Section 62-7-109(d) differs from the UTC version and incorporates the substance of SCPC Section 62-1-401.

The SCTC adds Subsections 62-7-109(e) and (f), which are not in UTC Section 109.

Section 62-7-110. (a) Whenever notice to qualified beneficiaries of a trust is required under this article, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this article if the charitable organization, on the date the charitable organization's qualification is being determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 62-7-408 or 62-7-409 has the rights of a qualified beneficiary under this article.

REPORTER'S COMMENT

Former South Carolina law had no statutory counterpart.

Under the SCTC, certain notices need be given only to the "qualified" beneficiaries. For the definition of "qualified beneficiary," see Section 62-7-103(12). Among these notices are notice of a transfer of the trust's principal place of administration (UTC Section 108(d) and SCTC Section 62-7-108(e)), notice of a trust division or combination (Section 62-7-417), notice of a trustee resignation (Section 62-7-705(a)(1)), and notice of a trustee's annual report (Section 62-7-813(c)). Subsection (a) of this section authorizes other beneficiaries to receive one or more of these notices by filing a request for notice with the trustee.

Under the Code, certain actions, such as the appointment of a successor trustee, can be accomplished by the consent of the qualified beneficiaries. *See, e.g.,* Section 62-7-704 (filling vacancy in trusteeship). Subsection (a) addresses only notice, not required consent. A person who requests notice under subsection (a) does not thereby acquire a right to participate in actions that can be taken only upon consent of the qualified beneficiaries.

Charitable trusts do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. In the case of a

charitable trust, this includes the state's attorney general and charitable organizations expressly designated to receive distributions under the terms of the trust. Under subsection (b), charitable organizations expressly designated in the terms of the trust to receive distributions and who would qualify as a qualified beneficiary were the trust noncharitable, are granted the rights of qualified beneficiaries. Because the charitable organization must be expressly named in the terms of the trust and must be designated to receive distributions, excluded are organizations that might receive distributions in the trustee's discretion but that are not named in the trust's terms. Requiring that the organization have an interest similar to that of a beneficiary of a private trust also denies the rights of a qualified beneficiary to organizations holding remote interests. For further discussion of the definition of "qualified beneficiary," see Section 62-7-103 comment.

Subsection (c) similarly grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other trust with a valid purpose but no ascertainable beneficiary. For the requirements for creating such trusts, see Sections 62-7-408 and 62-7-409.

Section 62-7-110 does not include a counterpart to UTC subsection 110(d), in the 2004 UTC Amendments, which gives the state Attorney General the rights of a qualified beneficiary in certain cases. See, however, SCTC Section 62-7-405, which provides certain rights and powers to the South Carolina Attorney General.

Subsection (d) does not limit other means by which the attorney general or other designated official can enforce a charitable trust.

Section 62-7-111. (a) For purposes of this section, 'interested persons' means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Interested persons may enter into a binding nonjudicial settlement agreement with respect to only the following trust matters:

(1) the approval of a trustee's report or accounting;

(2) direction to a trustee to perform or refrain from performing a particular administrative act or the grant to a trustee of any necessary or desirable administrative power;

(3) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(4) transfer of a trust's principal place of administration; and

(5) liability of a trustee for an action relating to the trust.

(c) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Part 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

REPORTER'S COMMENT

While the SCTC recognizes that a court may intervene in the administration of a trust to the extent its jurisdiction is invoked by interested persons or otherwise provided by law *(see* Section 62-7-201(a)), resolution of disputes by nonjudicial means is encouraged. This section facilitates the making of such agreements by giving them the same effect as if approved by the court. To achieve such certainty, however, subsection (c) requires that the nonjudicial settlement must contain terms and conditions that a court could properly approve. Under this section, a nonjudicial settlement cannot be used to produce a result not authorized by law, such as to terminate a trust in an impermissible manner.

Trusts ordinarily have beneficiaries who are minors; incapacitated, unborn or unascertained. Because such beneficiaries cannot signify their consent to an agreement, binding settlements can ordinarily be achieved only through the application of doctrines such as virtual representation or appointment of a guardian ad litem, doctrines traditionally available only in the case of judicial settlements. The effect of this section and the SCTC more generally is to allow for such binding representation even if the agreement is not submitted for approval to a court. For the rules on representation, including appointments of representatives by the court to approve particular settlements, see Part 3.

The fact that the trustee and beneficiaries may resolve a matter nonjudicially does not mean that beneficiary approval is required. For example, a trustee may resign pursuant to Section 62-7-705 solely by giving notice to the qualified beneficiaries, a living settlor, and any cotrustees. But a nonjudicial settlement between the trustee and beneficiaries will frequently prove helpful in working out the terms of the resignation.

Because of the great variety of matters to which a nonjudicial settlement may be applied, this section does not attempt to precisely define the "interested persons" whose consent is required to obtain a binding settlement as provided in subsection (a). However, the consent of the trustee would ordinarily be required to obtain a binding

settlement with respect to matters involving a trustee's administration, such as approval of a trustee's report or resignation.

Section 62-7-112. The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

REPORTER'S COMMENT

This section is patterned after Restatement (Third) of Trusts Section 25(2) and comment e (Tentative Draft No. 1, approved 1996), although this section, unlike the Restatement, also applies to irrevocable trusts. The revocable trust is used primarily as a will substitute, with its key provision being the determination of the persons to receive the trust property upon the settlor's death. Given this functional equivalence between the revocable trust and a will, the rules for interpreting the disposition of property at death should be the same whether the individual has chosen a will or revocable trust as the individual's primary estate planning instrument. Over the years, the legislatures of the States and the courts have developed a series of rules of construction reflecting the legislative or judicial understanding of how the average testator would wish to dispose of property in cases where the will is silent or insufficiently clear. Few legislatures have yet to extend these rules of construction to revocable trusts, and even fewer to irrevocable trusts, although a number of courts have done so as a matter of judicial construction. *See* Restatement (Third) of Trusts Section 25, Reporter's Notes to cmt. d and e (Tentative Draft No. 1, approved 1996).

Because of the wide variation among the States on the rules of construction applicable to wills, this Code does not attempt to prescribe the exact rules to be applied to trusts but instead adopts the philosophy of the Restatement that the rules applicable to trusts ought to be the same, whatever those rules might be.

Rules of construction are not the same as constructional preferences. A constructional preference is general in nature, providing general guidance for resolving a wide variety of ambiguities. An example is a preference for a construction that results in a complete disposition and avoids illegality. Rules of construction, on the other hand, are specific in nature, providing guidance for resolving specific situations or construing specific terms. Unlike a constructional preference, a rule of construction, when applicable, can lead to only one result. *See*

Restatement (Third) of Property: Donative Transfers Section 11.3 and cmt. b (Tentative Draft No. 1, approved 1995).

Rules of construction attribute intention to individual donors based on assumptions of common intention. Rules of construction are found both in enacted statutes and in judicial decisions. Rules of construction can involve the meaning to be given to particular language in the document, such as the meaning to be given to "heirs" or "issue." Rules of construction also address situations the donor failed to anticipate. These include the failure to anticipate the predecease of a beneficiary or to specify the source from which expenses are to be paid. Rules of construction can also concern assumptions as to how a donor would have revised donative documents in light of certain events occurring after execution. These include rules dealing with the effect of a divorce and whether a specific devisee will receive a substitute gift if the subject matter of the devise is disposed of during the testator's lifetime.

The most direct counterpart in the law of wills is South Carolina Probate Code Section 62-2-601 (Rules of Construction and Presumption). That section provides that the testator's intent controls the legal effect of his dispositions, and it refers to succeeding sections, which contain some, but not all, rules of construction with respect to wills. Other will construction rules are left to the common law in South Carolina. As to construction of wills, see S. Alan Medlin, The Law of Wills and Trusts, Volume 1, Estate Planning in South Carolina (2002) at Section 330 et seq. South Carolina Trust Code Section 62-7-112 is in part analogous to SCPC Sections 62-1-102 and 62-1-103. SCPC Section 62-1-102, entitled "Purposes; Rule of Construction," provides for a liberal interpretation of the SCPC in furtherance of the policies set forth in that section. SCPC Section 62-1-103 provides that the provisions of the SCPC supplement existing principles of law and equity.

Part 2

Judicial Proceedings

GENERAL COMMENT

This article addresses selected issues involving jurisdiction and venue. This article is not intended to provide comprehensive coverage of procedure with respect to trusts. These issues are better addressed elsewhere, for example in the State's rules of civil procedure or as provided by court rule.

Section 62-7-201 makes clear that the jurisdiction of the court is available as invoked by interested persons or as otherwise provided by law. Proceedings involving the administration of a trust normally will be brought in the court at the trust's principal place of administration. Section 62-7-202 provides that the trustee and beneficiaries are deemed to have consented to the jurisdiction of the court at the principal place of administration as to any matter relating to the trust.

There is significant overlap between Part 2 of the SCTC covering judicial proceedings and former Part II under Article 7 of the South Carolina Probate Code. To promote consistency and familiarity with existing South Carolina law and practice, the relevant South Carolina Probate Code language has been maintained whenever possible under this part of the South Carolina Trust Code. Additionally, several separate statutes formerly under the South Carolina Probate Code regarding court jurisdiction of trusts have been consolidated into a single section herein.

Section 62-7-201. (a) Subject to the provisions of Section 62-1-302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. These proceedings must be formal as defined by Section 62-1-201(17) but consent petitions are not subject to the requirements of formal proceedings. Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(2) review and settle interim or final accounts;

(3) review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation determined by the trustee for his own services. A person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee's services or if the trust directs otherwise; and

(4) appoint or remove a trustee.

(b) A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust.

(c) The probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings:

(1) determine the existence or nonexistence of trusts created other than by will;

(2) actions by or against creditors or debtors of trusts; and

(3) other actions and proceedings involving trustees and third parties.

(d) The probate court has concurrent jurisdiction with the circuit courts of this State over attorney's fees. Attorney's fees may be set at a fixed or hourly rate or by contingency fee.

(e) The court will not, over the objection of a party, entertain proceedings under this section involving a trust registered or having its principal place of administration in another state, unless:

(1) when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or

(2) when the interests of justice otherwise would seriously be impaired.

The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

REPORTER'S COMMENT

Section 62-7-201(a) grants exclusive subject matter jurisdiction to the probate court of interested parties' proceedings concerning the internal affairs of trusts. The subsection provides two illustrative and nonexclusive lists of such proceedings. The lists have this in common: all items on both lists are matters of dispute primarily between and

among the trustees and the beneficiaries of trusts, i.e., matters internal to trust administration, and are not matters immediately involving third parties, such as creditors and debtors of trusts. Compare the actions and proceedings concerning the external affairs of trusts, which are the subject matter of Section 62-7-204. See also the specific coverage of proceedings concerning a trustee's compensation, Section 62-7-205, and for this State's Uniform Declaratory Judgments Act, see Section 155-53-10 of the 1976 Code et seq., especially Section 15-53-50.

Section 62-7-201(b) makes it clear that no single proceeding in the probate court concerning the internal affairs of a trust will have the effect of subjecting the administration of the trust to later continuous supervision by the probate court.

SCTC subsections 62-7-201(a) and (b) incorporate former South Carolina Probate Code Section 62-7-201 regarding the Probate Court's exclusive jurisdiction over the internal affairs of trusts. Subsection (a)(3) has been taken from former South Carolina Probate Code Section 62-7-205. Such exclusive jurisdiction is subject to Section 62-1-302(d) of the South Carolina Probate Code regarding a party's right to remove a proceeding to the circuit court.

Subsections (c) and (d) are taken from former South Carolina Probate Code Section 62-7-204(A).

Subsection (e) is taken from former South Carolina Probate Code Section 62-7-203.

Subsection (e) refers to a trust's "principal place of administration" which is addressed under South Carolina Trust Code Section 62-7-108.

Whereas the Uniform Trust Code encourages resolution of disputes without resort to courts through options such as nonjudicial settlements authorized by Section 111, the South Carolina Trust Code limits nonjudicial settlements to specified matters set forth in Section 62-7-111, thereby generally maintaining the practice requiring court involvement for resolution of trust disputes.

Subsection (a) makes clear that the court's jurisdiction may be invoked even absent an actual dispute. Traditionally, courts in equity have heard petitions for instructions and have issued declaratory judgments if there is a reasonable doubt as to the extent of the trustee's powers or duties. The court will not ordinarily instruct trustees on how to exercise discretion, however. *See* Restatement (Second) of Trusts Section 187, 259 (1959). This section does not limit the court's equity jurisdiction.

Section 62-7-202. (a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving

the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

REPORTER'S COMMENT

There was no corresponding statute under the South Carolina Probate Code prior to the enactment of the SCTC.

This section clarifies that the courts of the principal place of administration have jurisdiction to enter orders relating to the trust that will be binding on both the trustee and beneficiaries. A trust's "principal place of administration" is addressed in SCTC Section 62-7-108. Consent to jurisdiction does not dispense with any required notice, however. With respect to jurisdiction over a beneficiary, the Comment to Uniform Probate Code Section 7-103, upon which portions of this section are based, is instructive:

It also seems reasonable to require beneficiaries to go to the seat of the trust when litigation has been instituted there concerning a trust in which they claim beneficial interests, much as the rights of shareholders of a corporation can be determined at a corporate seat. The settlor has indicated a principal place of administration by its selection of a trustee or otherwise, and it is reasonable to subject rights under the trust to the jurisdiction of the Court where the trust is properly administered.

The jurisdiction conferred over the trustee and beneficiaries by this section does not preclude jurisdiction by courts elsewhere on some other basis. Furthermore, the fact that the courts in a new State acquire jurisdiction under this section following a change in a trust's principal place of administration does not necessarily mean that the courts of the former principal place of administration lose jurisdiction, particularly as to matters involving events occurring prior to the transfer.

The jurisdiction conferred by this section is limited. Pursuant to subsection (b), until a distribution is made, jurisdiction over a beneficiary is limited to the beneficiary's interests in the trust.

Personal jurisdiction over a beneficiary is conferred only upon the making of a distribution. Subsection (b) also gives the court jurisdiction over other recipients of distributions. This would include individuals who receive distributions in the mistaken belief they are beneficiaries.

For a discussion of jurisdictional issues concerning trusts, see 5A Austin W. Scott & William F. Fratcher, The Law of Trusts Sections 556-573 (4th ed. 1989).

Section 62-7-203. RESERVED.

Section 62-7-204. (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county in which any trust property is located or the county where the last trustee had its principal place of administration, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

(c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(e) If a court transfers venue of a proceeding concerning a trust to a court in another county, venue for that proceeding, and any subsequent matters concerning that proceeding, including appeals, shall be retained by the county to which the venue has been transferred.

(f) If a probate court judge is disqualified from matters concerning a trust proceeding, and venue has not been transferred to another county, a special probate court judge appointed for that proceeding has all of the powers and duties appertaining to the probate court judge of the county where the proceeding commenced, and venue for any

subsequent matters concerning that proceeding, including appeals, remains with the county where that proceeding or file commenced.

REPORTER'S COMMENT

South Carolina Trust Code subsections 62-7-204 (a) and (b) are taken from former South Carolina Probate Code Section 62-7-202 and incorporate provisions of UTC Section 204. SCTC subsections (c), (d), and (e) are taken from former South Carolina Probate Code Section 62-1-303 and do not incorporate UTC provisions. A trust's "principal place of administration" is addressed in SCTC Section 62-7-108. SCTC Section 62-7-204 differs significantly from UTC Section 204.

The 2013 amendment clarified that, when venue of a trust proceeding is transferred to another county, subsequent matters concerning that proceeding, including appeals, shall be retained by the county to which venue has been transferred. If a special probate judge is appointed because a probate judge is disqualified and recused from hearing a trust proceeding, venue remains with the county where the proceeding or file commenced, unless a probate court otherwise transfers venue.

Part 3

Representation

GENERAL COMMENT

This article deals with representation of beneficiaries, both representation by fiduciaries (personal representatives, trustees, guardians, and conservators), and what is known as virtual representation.

There is significant overlap between Part 3 of the South Carolina Trust Code covering judicial proceedings and South Carolina Probate Code provisions concerning representation of others. To promote consistency and familiarity with existing South Carolina law and practice, the relevant South Carolina Probate Code language has been maintained whenever possible under this part of the South Carolina Trust Code.

Section 62-7-301 is the introductory section, laying out the scope of the article. The representation principles of this article have numerous applications under this Code. The representation principles of the article apply for purposes of settlement of disputes, whether by a court or nonjudicially. They apply for the giving of required notices. They apply for the giving of consents to certain actions.

Sections 62-7-302 through 305 cover the different types of representation. Section 62-7-302 deals with representation by the holder of a general testamentary power of appointment. Section 62-7-303 deals with representation by a fiduciary, whether of an estate, trust, conservatorship, or guardianship. The section also allows a parent without a conflict of interest to represent and bind a minor or unborn issue. Section 62-7-304 is the virtual representation provision. It provides for representation of and the giving of a binding consent by another person having a substantially identical interest with respect to the particular issue. Section 62-7-305 authorizes the court to appoint a representative to represent the interests of unrepresented persons or persons for whom the court concludes the other available representation might be inadequate.

The provisions of this article are subject to modification in the terms of the trust. Settlors are free to specify their own methods for providing substituted notice and obtaining substituted consent.

Section 62-7-301. (a) For purposes of this part, 'beneficiary representative' refers to a person who may represent and bind another person concerning the affairs of trusts.

(b) Notice to a beneficiary representative has the same effect as if notice were given directly to the represented person. Notice of a hearing on any petition in a judicial proceeding must be given pursuant to Section 62-7-109(d).

(c) The consent of a beneficiary representative is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(d) Except as otherwise provided in Sections 62-7-411 and 62-7-602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(e) In judicial proceedings, orders binding a beneficiary representative under this part bind the person(s) represented by that beneficiary representative.

REPORTER'S COMMENT

This section applies to both judicial and nonjudicial matters involving trusts. Nonjudicial matters may include, for example, the transfer of a trust's principal place of business, a proposed trust combination or division, a trustee's resignation, appointment of a successor trustee by

consent, a trustee's resignation, and the consent to, release of, or affirmance of a trustee's actions. See SCTC Section 62-7-111.

Subsection (a) defines the terms "beneficiary representative" for purposes of this part in an effort to avoid confusion between the SCTC term "representative" and the familiar term "personal representative" under the South Carolina Probate Code.

Subsection (b) of South Carolina Trust Code Section 62-7-301 confirms that notice of a hearing on a petition in a judicial proceeding must be given in the manner prescribed under SCTC Section 62-7-109(d). However, this section does not expressly address the manner of commencing a judicial proceeding.

Subsection (c) deals with the effect of a consent, whether by actual or virtual representation. Subsection (c) may be used to facilitate consent of the beneficiaries to modification or termination of a trust, with or without the consent of the settlor (Section 62-7-411), agreement of the qualified beneficiaries on appointment of a successor trustee of a noncharitable trust (Section 62-7-704(c)(2)), and a beneficiary's consent to or release or affirmance of the actions of a trustee (Section 62-7-1009). A consent by a beneficiary representative bars a later objection by the person represented, but a consent is not binding if the person represented raises an objection prior to the date the consent would otherwise become effective. The possibility that a beneficiary might object to a consent given on the beneficiary's behalf will not be germane in many cases because the person represented will be unborn or unascertained. However, the representation principles of this article will sometimes apply to adult and competent beneficiaries.

Subsection (d) addressing a person who may represent an incapacitated settlor specifically references the possibility of additional requirements imposed under Section 62-7-411 regarding modification or termination of noncharitable irrevocable trusts by consent and Section 62-7-602 addressing revocation or amendment of revocable trusts.

Subsection (e) confirms that orders in a judicial proceeding binding a beneficiary representative bind the person(s) represented by that beneficiary representative.

Section 62-7-302. To the extent there is no conflict of interest between the holder of a presently exercisable general power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power. The term "presently exercisable general power of

appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last Will and Testament, and the inclusion of a provision in the Will sufficient to exercise this power.

REPORTER'S COMMENT
This section tracks the language of current South Carolina Probate Code Section 62-1-108 which defines the term "presently exercisable general power of appointment." This section does not extend the substitute representation under this section to limited or nongeneral powers of appointment (which are also not covered under South Carolina Probate Code Section 62-1-108).

It specifies the circumstances under which a holder of a general testamentary power of appointment may receive notices on behalf of and otherwise represent and bind persons whose interests are subject to the power, whether as permissible appointees, takers in default, or otherwise. Such representation is allowed except to the extent there is a conflict of interest with respect to the particular matter or dispute. Typically, the holder of a general testamentary power of appointment is also a life income beneficiary of the trust, oftentimes of a trust intended to qualify for the federal estate tax marital deduction. *See* I.R.C. Section 2056(b)(5). Without the exception for conflict of interest, the holder of the power could act in a way that could enhance the holder's income interests to the detriment of the appointees or takers in default, whomever they may be.

Section 62-7-303. (a) To the extent there is no conflict of interest between the following beneficiary representatives and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls to the extent of the powers and authority conferred upon conservators generally or by court order;

(2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed to the extent of the powers and authority conferred upon guardians generally or by court order;

(3) an agent may represent and bind the principal to the extent the agent has authority to act with respect to the particular question or dispute;

(4) a trustee may represent and bind the beneficiaries of the trust with respect to questions or disputes involving the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate with respect to questions or disputes involving the decedent's estate; and

(6) a person may represent and bind the person's minor or unborn issue if a conservator or guardian for the issue has not been appointed.

(b) The order in which the beneficiary representatives are listed above sets forth the priority each such beneficiary representative has relative to the others. In any judicial proceeding or upon petition to the court, the court for good cause may appoint a beneficiary representative having lower priority or a person having no priority.

REPORTER'S COMMENT

This section allows for representation of persons by their fiduciaries (conservators, guardians, agents, trustees, and personal representatives). Representation is not available if the fiduciary or parent is in a conflict position with respect to the particular matter or dispute, however. A typical conflict would be where the fiduciary or parent seeking to represent the beneficiary is either the trustee or holds an adverse beneficial interest.

South Carolina Probate Code Section 62-1-403 is the counterpart to South Carolina Trust Code Section 62-7-303. The SCTC, however, adds representation by an agent on behalf of the principal under Subsection (a)(3).

The authority of a conservator or guardian under this section is subject to the authority conferred upon conservators and guardians generally under provisions of the South Carolina Probate Code or by court order, it not being the intent herein to enlarge a conservator's or guardian's powers otherwise.

Subsection (a)(2) authorizes a guardian to bind and represent a ward if a conservator of the ward's estate has not been appointed. Granting a guardian authority to represent the ward with respect to interests in the trust can avoid the need to seek appointment of a conservator. Under the South Carolina Trust Code, a "conservator" is appointed by the court to manage the ward's property, a "guardian" to make decisions with respect to the ward's personal affairs. *See* Section 62-7-103.

Subsection (a)(3) authorizes an agent to represent a principal only to the extent the agent has authority to act with respect to the particular question or dispute. Pursuant to Sections 62-7-411 and 62-7-602, an agent may represent a settlor with respect to the amendment, revocation or termination of the trust only to the extent this authority is expressly granted either in the trust or the power. Otherwise,

depending on the particular question or dispute, a general grant of authority in the power may be sufficient to confer the necessary authority.

Subsection (b) prioritizes the right to act as substitute representative where more than one such representation may apply.

Section 62-7-304. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the beneficiary representative and the person represented and provided the interest of the person represented is adequately represented by the beneficiary representative.

REPORTER'S COMMENT

This section authorizes a person with a substantially identical interest with respect to a particular question or dispute to represent and bind an otherwise unrepresented minor, incapacitated or unborn individual, or person whose location is unknown and not reasonably ascertainable. This section extends the doctrine of virtual representation to representation of minors and incapacitated individuals. This section does not apply to the extent there is a conflict of interest between the beneficiary representative and the person represented by the beneficiary representative, consistent with current South Carolina Probate Code Section 62-1-403(2)(iii).

Typically, the interests of the beneficiary representative and the person represented will be identical. A common example would be a trust providing for distribution to the settlor's children as a class, with an adult child being able to represent the interests of children who are either minors or unborn. Exact identity of interests is not required, only substantial identity with respect to the particular question or dispute. Whether such identity is present may depend on the nature of the interest. For example, a presumptive remaindermen may be able to represent alternative remaindermen with respect to approval of a trustee's report but not with respect to interpretation of the remainder provision or termination of the trust. Even if the beneficial interests of the beneficiary representative and person represented are identical, representation is not allowed in the event of conflict of interest. The beneficiary representative may have interests outside of the trust that

are adverse to the interest of the person represented, such as a prior relationship with the trustee or other beneficiaries.

South Carolina Probate Code Section 62-1-403(2)(iii) is the current counterpart to this Section 62-7-304. However, the South Carolina Trust Code adds an incapacitated person to the list of those who may be represented by another person under this section.

Section 62-7-305. At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

REPORTER'S COMMENT
Whereas the Uniform Trust Code encourages nonjudicial settlements and authorizes court appointment of a representative to act like a guardian ad litem but without ongoing court involvement, South Carolina expressly limits the scope of nonjudicial settlements to those matters specified in Section 62-7-111 and follows current practice for the appointment of guardians ad litem and ongoing court involvement pursuant to South Carolina Probate Code Section 62-1-403(4).

Part 4

Creation, Validity, Modification, and Termination of Trusts

Section 62-7-401. (a)(1) A trust described in Section 62-7-102 may be created by:

(i) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(ii) written declaration signed by the owner of property that the owner holds identifiable property as trustee; or

(iii) exercise of a power of appointment in favor of a trustee.

(2) To be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust. A transfer in trust of personal property

does not require written evidence, but must be proven by clear and convincing evidence, pursuant to Section 62-7-407.

(b) A trust that arises by act or operation of law does not require the existence of a writing.

(c) A revocable inter vivos trust may be created either by declaration of trust or by a transfer of property and is not rendered invalid because the settler retains substantial control over the trust including, but not limited to, (i) a right of revocation, (ii) substantial beneficial interests in the trust, or (iii) the power to control investments or reinvestments. This subsection does not prevent a finding that a revocable inter vivos trust, enforceable for other purposes, is illusory for purposes of determining a spouse's elective share rights pursuant to Article 2, Title 62. A finding that a revocable inter vivos trust is illusory and thus invalid for purposes of determining a spouse's elective share rights pursuant to Article 2, Title 62 does not render that revocable inter vivos trust invalid, but allows inclusion of the trust assets as part of the probate estate of the settlor only for the purpose of calculating the elective share. In that event, the trust property that passes or has passed to the surviving spouse, including a beneficial interest of the surviving spouse in that trust property, must be applied first to satisfy the elective share and to reduce contributions due from other recipient of transfers including the probate estate, and the trust assets are available for satisfaction of the elective share only to any remaining extent necessary pursuant to Section 62-2-207.

REPORTER'S COMMENT

This section is based on Restatement (Third) of Trusts Section 10 (Tentative Draft No. 1, approved 1996), and Restatement (Second) of Trusts Section 17 (1959). Under the methods specified for creating a trust in this section, a trust is not created until it receives property. For what constitutes an adequate property interest, see Restatement (Third) of Trusts Sections 40-41 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 74-86 (1959). The property interest necessary to fund and create a trust need not be substantial. A revocable designation of the trustee as beneficiary of a life insurance policy or employee benefit plan has long been understood to be a property interest sufficient to create a trust. See Section 62-7-103(11) ("property" defined). Furthermore, the property interest need not be transferred contemporaneously with the signing of the trust instrument. A trust instrument signed during the settlor's lifetime is not rendered invalid simply because the trust was not created until property was transferred to the trustee at a much later date, including by contract

after the settlor's death. A pourover devise to a previously unfunded trust is also valid and may constitute the property interest creating the trust. See Unif Testamentary Additions to Trusts Act Section 1 (1991), codified at Uniform Probate Code Section 2-511 and SCPC Section 62-2-510 (pourover devise to trust valid regardless of existence, size, or character of trust corpus). See also Restatement (Third) of Trusts Section 19 (Tentative Draft No. 1, approved 1996).

Section 62-7-401(a) provides different methods to create a trust, creating a distinction between third-party-trusteed trusts in subsection (a)(1)(i) and self-trusteed trusts in subsection (a)(1)(ii). Subsection (a)(1)(i) provides that, if a third party is to serve as trustee, transfer of property to that other person, whether during life or at death, is sufficient to create a trust; no writing is required.

Subsection (a)(1)(ii) requires that, if the settlor is also to be the trustee, then some written declaration signed by the settlor is required to create the trust. Such a declaration need not be a trust agreement, but can be some written evidence signed by the settlor sufficient to establish that the settlor intended to hold the property in trust.

While this section refers to transfer of property to a trustee, a trust can be created even though for a period of time no trustee is in office. See Restatement (Third) of Trusts Section 2 cmt. g (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 2 cmt. i (1959). A trust can also be created without notice to or acceptance by a trustee or beneficiary. See Restatement (Third) of Trusts Section 14 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 35-36 (1959).

The methods set out in Section 62-7-401 are not the exclusive methods to create a trust as recognized by Section 62-7-102. A trust can also be created by a promise that creates enforceable rights in a person who immediately or later holds these rights as trustee. See Restatement (Third) of Trusts Section 10(e) (Tentative Draft No. 1, approved 1996). A trust thus created is valid notwithstanding that the trustee may resign or die before the promise is fulfilled. Unless expressly made personal, the promise can be enforced by a successor trustee. For examples of trusts created by means of promises enforceable by the trustee, see Restatement (Third) of Trusts Section 10 cmt. g (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 14 cmt. h, 26 cmt. n (1959).

Pre-SCTC South Carolina law made a distinction between trusts for personal property and trusts in land. Trusts in personal property could be proved, as well as created, by parol declarations. See *Harris v. Bratton*, 34 S.C. 259. 13 S.E. 447 (1891). On the other hand, for a trust

of any "land, tenements, or hereditaments" to be valid, former South Carolina Probate Code Section 62-7-101 mandated that the trust be proved by a writing signed by the party creating the trust. An exception to the requirement of a writing to establish a trust in land was found in former SCPC Section 62-7-103 for trusts arising by operation of law, such as resulting and constructive trusts. Because the SCTC applies only to express trusts and not to trusts implied in law (Section 62-7-102), Sections 62-7-401(a)(1)(i) and (1)(ii) codify existing law that trusts of real property must be established by a writing, transfers in trust of personal property do not have the same requirement, and trusts containing real property that arise by operation of law do not require evidence of writing to be valid.

Former SCPC Section 62-7-112 has been retained as SCTC Section 62-7-401(c). Former SCPC Section 62-7-112 was enacted after the *Siefert* decision, *Seifert v. Southern Nat'l Bank of South Carolina*, 305 S.C. 353, 409 S.E. 2d 337 (1991), to clarify that the settlor's retention of substantial control over a trust, such as a right to revoke, does not render that trust invalid.

While a trust created by will may come into existence immediately at the testator's death and not necessarily only upon the later transfer of title from the personal representative, Section 62-7-701 makes clear that the nominated trustee does not have a duty to act until there is an acceptance of the trusteeship, express or implied. To avoid an implied acceptance, a nominated testamentary trustee who is monitoring the actions of the personal representative but who has not yet made a final decision on acceptance should inform the beneficiaries that the nominated trustee has assumed only a limited role. The failure so to inform the beneficiaries could result in liability if misleading conduct by the nominated trustee causes harm to the trust beneficiaries. See Restatement (Third) of Trusts Section 35 cmt. b (Tentative Draft No. 2, approved 1999).

While this section confirms the familiar principle that a trust may be created by means of the exercise of a power of appointment (paragraph ((a)(1)(iii)), this Code does not legislate comprehensively on the subject of powers of appointment but addresses only selected issues. See Section 62-7-302 (representation by holder of general testamentary power of appointment). For the law on powers of appointment generally, see Restatement (Second) of Property: Donative Transfers Sections 11.1-24.4 (1986); Restatement (Third) of Property: Wills and Other Donative Transfers (in progress).

Section 62-7-402. (a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in Section 62-7-408; or

(C) a trust for a noncharitable purpose, as provided in Section 62-7-409;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole current and future beneficiary.

(b) If the trust agreement is in writing, the trust instrument may be signed by the settlor or in the settlor's name by some other person in the settlor's presence and by the settlor's direction.

(c) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(d) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(e) For purposes of Section 62-7-402(a)(5), if a person holds legal title to property in a fiduciary capacity and also has an equitable or beneficial title in the same property, either by transfer, by declaration, or by operation of law, no merger of the legal and equitable titles shall occur unless:

(1) the fiduciary is the sole fiduciary and is also the sole current and future beneficiary; and

(2) the legal title and the equitable title are of the same quality and duration.

If either one of these conditions is not met, no merger may occur and the fiduciary relationship does not terminate.

REPORTER'S COMMENT

Subsection (a) codifies the basic requirements for the creation of a trust. To create a valid trust, the settlor must indicate an intention to create a trust. See Restatement (Third) of Trusts Section 13 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 23 (1959). But only such manifestations of intent as are admissible as proof in a judicial proceeding may be considered. See Section 62-7-103(17) ("terms of a trust" defined).

To create a trust, a settlor must have the requisite mental capacity. To create a revocable or testamentary trust, the settlor must have the capacity to make a will. To create an irrevocable trust, the settlor must have capacity during lifetime to transfer the property free of trust. See Section 62-7-601 (capacity of settlor to create revocable trust), and see generally Restatement (Third) of Trusts Section 11 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 18-22 (1959); and Restatement (Third) of Property: Wills and Other Donative Transfers Section 8.1 (Tentative Draft No. 3, 2001).

Subsection (a)(3) requires that a trust, other than a charitable trust, a trust for the care of an animal, or a trust for another valid noncharitable purpose, have a definite beneficiary. While some beneficiaries will be definitely ascertained as of the trust's creation, subsection (c) recognizes that others may be ascertained in the future as long as this occurs within the applicable perpetuities period. The definite beneficiary requirement does not prevent a settlor from making a disposition in favor of a class of persons. Class designations are valid as long as the membership of the class will be finally determined within the applicable perpetuities period. For background on the definite beneficiary requirement, see Restatement (Third) of Trusts Sections 44-46 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 112-122 (1959).

Subsection (a)(4) recites standard doctrine that a trust is created only if the trustee has duties to perform. See Restatement (Third) of Trusts Section 2 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 2 (1959). Trustee duties are usually active, but a validating duty may also be passive, implying only that the trustee has an obligation not to interfere with the beneficiaries' enjoyment of the trust property. Such passive trusts, while valid under this Code, may be terminable under the Statute of Uses. See Restatement (Third) of Trusts Section 6 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 67-72 (1959).

Subsection (a)(5) addresses the doctrine of merger, which, as traditionally stated, provides that a trust is not created if the settlor is the sole trustee and sole beneficiary of all beneficial interests. The SCTC modifies the UTC by adding the phrase "current and future" to UTC subsection (a)(5). The doctrine of merger has been inappropriately applied by the courts in some jurisdictions to invalidate self-declarations of trust in which the settlor is the sole life beneficiary but other persons are designated as beneficiaries of the remainder. The doctrine of merger is properly applicable only if all beneficial interests,

both life interests and remainders, are vested in the same person, whether in the settlor or someone else. An example of a trust to which the doctrine of merger would apply is a trust of which the settlor is sole trustee, sole beneficiary for life, and with the remainder payable to the settlor's probate estate. On the doctrine of merger generally, see Restatement (Third) of Trusts Section 69 (Tentative Draft No. 3, 2001); Restatement (Second) of Trusts Section 341 (1959).

Subsection (d) allows a settlor to empower the trustee to select the beneficiaries even if the class from whom the selection may be made cannot be ascertained. Such a provision would fail under traditional doctrine; it is an imperative power with no designated beneficiary capable of enforcement. Such a provision is valid, however, under both this Code and the Restatement, if there is at least one person who can meet the description. If the trustee does not exercise the power within a reasonable time, the power fails and the property will pass by resulting trust. See Restatement (Third) of Trusts Section 46 (Tentative Draft No. 2, approved 1999). See also Restatement (Second) of Trusts Section 122 (1959); Restatement (Second) of Property: Donative Transfers Section 12.1 cmt. a (1986).

No similar statutory provisions existed under South Carolina law prior to the enactment of the SCTC, except that former SCPC Section 62-7-603(A)(3) specified the requirements for merger of equitable and legal title. Former Section 62-7-603(A)(3) has been retained as subsection (e).

South Carolina case law provides that, for a trust to exist, certain elements must be present, including a declaration creating the trust, a trust res, and designated beneficiaries. See *Whetstone v. Whetstone*, 309 S.C. 227, 231-32, 420 S.E.2d 877, 879 (Ct. App. 1992). The declaration of trust has to be in writing when the trust property includes realty. See *Id*. If the declaration of trust is in writing, the SCTC allows the grantor to sign the trust agreement, but also allows, under Section 62-7-402 (b), the grantor to direct a third party to sign on the grantor's behalf and in the grantor's presence.

The Supreme Court has found that, with respect to the spousal elective share, a revocable inter vivos trust that conferred only custodial powers on the trustee, and that expressly barred the trustee from exercising any powers of sale, investment, or reinvestment during the settlor's lifetime without the settlor's consent, was illusory and invalid. See *Seifert v. Southern Nat. Bank of South Carolina*, 409 S.E.2d 337, 305 S.C. 353 (1991). Former SCPC Section 62-7-112 was subsequently enacted and is retained at SCTC Section 62-7-401(c).

Section 62-7-403. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

REPORTER'S COMMENT

The validity of a trust created by will is ordinarily determined by the law of the decedent's domicile. No such certainty exists with respect to determining the law governing the validity of inter vivos trusts. Generally, at common law a trust was created if it complied with the law of the state having the most significant contacts to the trust. Contacts for making this determination include the domicile of the trustee, the domicile of the settlor at the time of trust creation, the location of the trust property, the place where the trust instrument was executed, and the domicile of the beneficiary. See 5A Austin Wakeman Scott & William Franklin Fratcher, The Law of Trusts Sections 597, 599 (4th ed. 1987). Furthermore, if the trust has contacts with two or more states, one of which would validate the trust's creation and the other of which would deny the trust's validity, the tendency is to select the law upholding the validity of the trust. See 5A Austin Wakeman Scott &.William Franklin Fratcher, The Law of Trusts 600 (4th ed. 1987).

Former South Carolina Probate Code Section 62-7-106 recognized religious, educational, or charitable trusts validly created in the Settlor's state of domicile where a beneficiary or object of the trust resided or was located in South Carolina. The remainder of this SCTC section appears to have no prior South Carolina statutory equivalent.

Section 62-7-403 is comparable to South Carolina Probate Code Section 62-2-505 recognizing the validity of wills executed in compliance with the law of a variety of places where the testator had a significant contact, but expands the possible jurisdictions beyond those allowed for a valid will.

Section 62-7-403 extends the common law rule by validating a trust if its creation complies with the law of any of a variety of states in which the settlor or trustee had significant contacts. Pursuant to Section 62-7-403, a trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of

creation the settlor was domiciled, had a place of abode, or was a national; the trustee was domiciled or had a place of business; or any trust property was located.

The section does not supersede local law requirements for the transfer of real property, such that title can be transferred only by recorded deed.

Section 62-7-404. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

REPORTER'S COMMENT

For an explication of the requirement that a trust must not have a purpose that is unlawful, see Restatement (Third) of Trusts Sections 27-30 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 59-65 (1959). A trust with a purpose that is unlawful is invalid. Depending on when the violation occurred, the trust may be invalid at its inception or it may become invalid at a later date. The invalidity may also affect only particular provisions. Generally, a trust has a purpose, which is illegal if (1) its performance involves the commission of a criminal or tortious act by the trustee; (2) the settlor's purpose in creating the trust was to defraud creditors or others; or (3) the consideration for the creation of the trust was illegal. See Restatement (Third) of Trusts Section 28 cmt. a (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 60 cmt. a (1959. The 2013 amendment included the words "not contrary to public policy" because existing common law invalidates trusts that violate public policy.

Pursuant to Section 62-7-402(a), a trust must have an identifiable beneficiary unless the trust is of a type that does not have beneficiaries in the usual sense, such as a charitable trust or, as provided in Sections 62-7-408 and 62-7-409, trusts for the care of an animal or other valid noncharitable purpose. The general purpose of trusts having identifiable beneficiaries is to benefit those beneficiaries in accordance with their interests as defined in the trust's terms. The requirement of this section that a trust and its terms be for the benefit of its beneficiaries, which is derived from Restatement (Third) of Trusts Section 27(2) (Tentative Draft No. 2, approved 1999), implements this general purpose. While a settlor has considerable latitude in specifying how a particular trust purpose is to be pursued, the administrative and other nondispositive trust terms must reasonably relate to this purpose

and not divert the trust property to achieve a trust purpose that is invalid, such as one which is frivolous or capricious.

See Restatement (Third) of Trusts Section 27 cmt. b (Tentative Draft No. 2, approved 1999).

Section 62-7-412(b), which allows the court to modify administrative terms that are impracticable, wasteful, or impair the trust's administration, is a specific application of the requirement that a trust and its terms be for the benefit of the beneficiaries. The fact that a settlor suggests or directs an unlawful or other inappropriate means for performing a trust does not invalidate the trust if the trust has a substantial purpose that can be achieved by other methods. See Restatement (Third) of Trusts Section 28 cmt. e (Tentative Draft No. 2, approved 1999).

There was no South Carolina statutory provision that correlated with SCTC Section 62-7-404. South Carolina case law has been consistent with Section 62-7-404 in refusing to impose an express trust, resulting trust, or constructive trust on property in favor of a transferor attempting to impose a trust on property he transferred to the transferee, when the facts indicate no written agreement between them existed, the transferor had a fraudulent purpose for the transfers, and the transferee committed no fraud or deceit. See Settlemeyer v. McCluney, 359 S.C. 317, 596 S.E.2d 514 (S.C. Ct. App. 2004); All v. Prillaman, 200 S.C. 279, 20 S.E.2d 741 (S.C. 1942). "The law will not permit a party to deliberately put his property out of his control for a fraudulent purpose, and then, through intervention of a court of equity, regain the same after his fraudulent purpose has been accomplished" All v. Prillaman, 200 S.C. 279, 308, 20 S.E.2d 741, 753, quoting Jolly v. Graham, 78 N.E. 919, 920 (Ill. 1906). See also Colin McK. Grant Home V. Medlock, 292 S.C. 466, 349 S.E.2d 655 (Ct. App. 1987), involving a charitable trust, in which the equitable doctrine of equitable deviation was used to eliminate the racial restrictions from a charitable trust's requirements. See also Buck v. Toler, 146 S.C. 294, 141 S.E. 1 (1928), in which a testamentary trust that violated the rule against perpetuities and that was determined to have been created by the testatrix merely to tie up the property was found to be void.

Section 62-7-405. (a) A charitable trust may be created for the relief of distress or poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental or municipal purposes, or other purposes, the achievement of which purposes is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.

(d) Unless otherwise required by statute or by rule or regulation of the Attorney General, the trustees of charitable trusts shall not be required to file with the Attorney General any copies of trusts instruments or reports concerning the activities of charitable trusts.

(e) The Attorney General may make such rules and regulations relating to the information to be contained with the filing of a trust as may be required.

(f) All trustees of any trust governed by the laws of this State whose governing instrument does not expressly provide that this section shall not apply to such trust are required to act or to refrain from acting so as not to subject the trust to the taxes imposed by Sections 4941, 4942, 4943, 4944, or 4945 of the Internal Revenue Code, or corresponding provisions of any subsequent United States internal revenue law.

(g) Nothing contained in Sections 33-31-150 and 33-31-151 may be construed to cause a forfeiture or reversion of any of the property of a trust which is subject to such Sections, or to make the purposes of the trust impossible of accomplishment.

REPORTER'S COMMENT

The required purposes of a charitable trust specified in subsection (a) restate the well-established categories of charitable purposes listed in Restatement (Third) of Trusts Section 28 (Tentative Draft No. 3, approved 2001), and Restatement (Second) of Trusts Section 368 (1959), which ultimately derive from the Statute of Charitable Uses, 43 Eliz. I, c.4 (1601). The directive to the courts to validate purposes the achievement of which are beneficial to the community has proved to be remarkably adaptable over the centuries. The drafters concluded that it should not be disturbed.

South Carolina Trust Code Section 62-7-405 adds "distress" to the Uniform Trust Code version, to cover disasters or sudden catastrophes in addition to "poverty." The SCTC also adds "scientific, literary and benevolent" to the UTC version. Practically, the specified charitable purposes will be identical to Internal Revenue Code Section 501 (c)(3).

Charitable trusts are subject to the restriction in Section 62-7-404 that a trust purpose must be legal. This would include trusts that

involve invidious discrimination. See Restatement (Third) of Trusts Section 28 cmt. f (Tentative Draft No. 3, approved 2001).

Under subsection (b), a trust that states a general charitable purpose does not fail if the settlor neglected to specify a particular charitable purpose or organization to receive distributions. The court may instead validate the trust by specifying particular charitable purposes or recipients, or delegate to the trustee the framing of an appropriate scheme. See Restatement (Second) of Trusts Section 397 cmt. d (1959). Subsection (b) of this section is a corollary to Section 413, which states the doctrine of cy pres. Under Section 62-7-413(a), a trust with a particular charitable purpose which is impracticable or impossible to achieve does not necessarily fail. The court must instead apply the trust property in a manner consistent with the settlor's charitable purposes to the extent they can be ascertained.

Subsection (b) does not apply to the long-established estate planning technique of delegating to the trustee the selection of the charitable purposes or recipients. In that case, judicial intervention to supply particular terms is not necessary to validate the creation of the trust. The necessary terms instead will be supplied by the trustee. See Restatement (Second) of Trusts Section 396 (1959). Judicial intervention under subsection (b) will become necessary only if the trustee fails to make a selection. See Restatement (Second) of Trusts Section 397 cmt. d (1959). Pursuant to Section 62-7-110(b), the charitable organizations selected by the trustee would not have the rights of qualified beneficiaries under this Code because they are not expressly designated to receive distributions under the terms of the trust.

Section 62-7-405(b) must be read in conjunction with SCTC Sections 62-7-404 and 62-7-413. SCTC Section 62-7-413 incorporates the doctrine of equitable deviation from South Carolina common law. See the South Carolina Comment to SCTC Section 62-7-413.

SCTC Section 62-7-405(c) adds "the trustee and the Attorney General" to those who may maintain a proceeding to enforce the trust under the UTC version.

Former South Carolina Probate Code Sections 62-7-501 through 62-7-507, Part 5 of Article 7 of Title 62, covered charitable trusts. These sections are revised and incorporated in SCTC Section 62-7-405.

SCPC Section 62-7-501 required individual trustees of certain charitable trusts to file a copy of the trust with the Attorney General. Section 62-7-405(d) makes this initial filing applicable to all charitable trusts, subject to certain exceptions.

SCPC Section 62-7-502 required that certain charitable trusts file annual reports with the attorney general.

SCPC Section 62-7-505 exempted many charitable trusts from the filing requirements of Part Five:

"… trusts or trustees of the following: Churches, cemeteries, orphanages operated in conjunction with churches, hospitals, colleges, or universities, or school districts, nor shall it apply to banking institutions which act as trustees under the supervision of the State Board of Financial Institutions or under the supervision of federal banking agencies."

SCPC Sections 62-7-502 and 62-7-505 are repealed. The exemption is anachronistic. SCTC Section 62-7-405(d) requires that every charitable trust make an initial filing at inception with the Attorney General, subject to certain exceptions.

SCPC Section 62-7-504 is retained at Section 62-7-405(e), empowering the Attorney General to issue regulations to require further reporting from charitable trusts.

SCPC Section 62-7-506 incorporated the prohibited transaction provisions applicable to private foundations and charitable trusts into every trust and is retained in SCTC Section 62-7-405(f). (Existing Section 33-31-150 applies the restrictions to not-for-profit South Carolina corporations.)

SCPC Section 62-7-507 made clear that incurring an excise tax for violation of the prohibited transaction provisions will not result in trust termination, and is retained in Section 62-7-405(g).

South Carolina expressly rejects the portion of the UTC Comment which makes "public policy" or "invidious discrimination" a basis to find that a trust violates Section 62-7-404.

South Carolina common law does not allow enforcement of a trust for an unlawful purpose. South Carolina's existing case law is sufficient to prohibit discrimination in a charitable trust.

Contrary to Restatement (Second) of Trusts Section 391 (1959), subsection (c) grants a settlor standing to maintain an action to enforce a charitable trust. The grant of standing to the settlor does not negate the right of the state attorney general or persons with special interests to enforce either the trust or their interests. For the law on the enforcement of charitable trust, see Susan N. Gary, Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law, 21 U. Hawaii L. Rev. 593 (1999).

Section 62-7-406. A trust is voidable to the extent its creation was induced by fraud, duress, or undue influence.

REPORTER'S COMMENT
This section is a specific application of Restatement (Third) of Trusts Section 12 (Tentative Draft No. 1, approved 1996), and Restatement (Second) of Trusts Section 333 (1959), which provide that a trust can be set aside or reformed on the same grounds as those which apply to a transfer of property not in trust, among which include undue influence, duress, and fraud, and mistake. This section addresses undue influence, duress, and fraud. For reformation of a trust on grounds of mistake, see Section 62-7-415. See also Restatement (Third) of Property: Wills and Other Donative Transfers Section 8.3 (Tentative Draft No. 3, approved 2001), which closely tracks the language above. Similar to a will, the invalidity of a trust on grounds of undue influence, duress, or fraud may be in whole or in part.

The South Carolina version of this section changes the word "void" to "voidable" to eliminate any suggestion that a trust might be void *ab initio* or that the trustee's actions might be invalid even though taken in good faith and before any determination that the trust is void.

Third parties dealing with the trustee of a voidable trust will be protected by South Carolina Trust Code Section 62-7-1012.

This section is similar to present South Carolina law regarding the validity of wills.

Section 62-7-407. Except as otherwise required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms may be established only by clear and convincing evidence.

REPORTER'S COMMENT
While it is always advisable for a settlor to reduce a trust to writing, the SCTC follows established law in recognizing oral trusts. Such trusts are viewed with caution, however.

This section is in accordance with existing South Carolina law requiring oral trusts to be proved by clear and convincing evidence. However, South Carolina statutory law has consistently required that the declaration or creation of trusts in lands, tenements or hereditaments be manifested and proved by some writing such as a trust agreement or last will. Absent such a writing, the trust would be void, per former South Carolina Probate Code Section 62-7-101 et seq. Historically, a distinction has been made between the creation of the trust and the conveyance of real property thereto, but the writing must manifest a previous trust. This section no longer distinguishes between

trusts funded with real estate from those funded with personalty. Both must be established by clear and convincing evidence. See *Beckham v. Short,* 380 S.E. 2d 826 (S.C. 1989).

Absent some specific statutory provision, such as a Statute of Frauds provision requiring that transfers of real property be proved by writing, a trust need not be evidenced by a writing.

For the Statute of Frauds generally, see Restatement (Second) of Trusts Sections 40-52 (1959). For a description of what the writing must contain, assuming that a writing is required, see Restatement (Third) of Trusts Section 22 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 46-49 (1959). For a discussion of when the writing must be signed, see Restatement (Third) of Trusts Section 23 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 41-42 (1959). For the law of oral trusts, see Restatement (Third) of Trusts Section 20 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 43-45 (1959).

South Carolina Trust Code Section 62-7-401(a)(2) requires a writing to create a declaration of trust (a self-trusteed trust).

Section 62-7-408. (a) A trust may be created to provide for the care of an animal or animals alive or in gestation during the settlor's lifetime, whether or not alive at the time the trust is created. The trust terminates upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person concerned for the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

REPORTER'S COMMENT

This section and the next section of the Code validate so called honorary trusts. Unlike honorary trusts created pursuant to the common law of trusts, which are arguably no more than powers of appointment, the trusts created by this and the next section are valid and enforceable. For a discussion of the common law doctrine, see Restatement (Third)

of Trusts Section 47 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 124 (1959).

This section addresses a particular type of honorary trust, the trust for the care of an animal. Section 62-7-409 specifies the requirements for trusts without ascertainable beneficiaries that are created for other noncharitable purposes. A trust for the care of an animal may last for the life of the animal. While the animal will ordinarily be alive on the date the trust is created, an animal may be added as a beneficiary after that date as long as the addition is made prior to the settlor's death. Animals in gestation but not yet born at the time of the trust's creation may also be covered by its terms. A trust authorized by this section may be created to benefit one designated animal or several designated animals.

South Carolina Trust Code Section 62-7-408 differs in several minor ways from the uniform version. Two provisions found in the UTC Comment have been added to the body of Section 62-7-408(a): (1) that the trust can benefit animals alive during the settlor's lifetime, regardless of whether they are alive at the time the trust is created, and (2) that animals in gestation at the settlor's death can be included in the trust. Surplus language in the UTC has also been omitted from the SCTC version.

Subsection (b) addresses enforcement. SCTC Section 62-7-408(b) modifies the UTC version, attempting to clarify that a person need be concerned only for an animal's welfare to petition the court. That person does not have to have a legally cognizable interest in the animal. Noncharitable trusts ordinarily may be enforced by their beneficiaries. Charitable trusts may be enforced by the State's attorney general or by a person deemed to have a special interest. See Restatement (Second) of Trusts Section 391 (1959). But at common law, a trust for the care of an animal or a trust without an ascertainable beneficiary created for a noncharitable purpose was unenforceable because there was no person authorized to enforce the trustee's obligations.

Sections 62-7-408 and 62-7-409 close this gap. The intended use of a trust authorized by either section may be enforced by a person designated in the terms of the trust or, if none, by a person appointed by the court. In either case, Section 62-7-110(b) grants to the person appointed the rights of a qualified beneficiary for the purpose of receiving notices and providing consents. If the trust is created for the care of an animal, a person with an interest in the welfare of the animal has standing to petition for an appointment. The person appointed by the court to enforce the trust should also be a person who has exhibited

an interest in the animal's welfare. The concept of granting standing to a person with a demonstrated interest in the animal's welfare is derived from the Uniform Guardianship and Protective Proceedings Act, which allows a person interested in the welfare of a ward or protected person to file petitions on behalf of the ward or protected person

Subsection (c) addresses the problem of excess funds. If the court determines that the trust property exceeds the amount needed for the intended purpose and that the terms of the trust do not direct the disposition, a resulting trust is ordinarily created in the settlor or settlor's successors in interest. See Restatement (Third) of Trusts Section 47 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 124 (1959). Successors in interest include the beneficiaries under the settlor's will, if the settlor has a will, or in the absence of an effective will provision, the settlor's heirs. The settlor may also anticipate the problem of excess funds by directing their disposition in the terms of the trust. The disposition of excess funds is within the settlor's control: See Section 62-7-105(a). While a trust for an animal is usually not created until the settlor's death; subsection (a) allows such a trust to be created during the settlor's lifetime. Accordingly, if the settlor is still living, subsection (c) provides for distribution of excess funds to the settlor, and not to the settlor' s successors in interest.

Should the means chosen not be particularly efficient, a trust created for the care of an animal can also be terminated by the trustee or court under Section 62-7-414. Termination of a trust under that section, however, requires that the trustee or court develop an alternative means for carrying out the trust purposes. See Section 62-7-414(c).

This section and the next section are suggested by Section 2-907 of the Uniform Probate Code, but much of this and the following section is new.

A trust created under this section would not be recognized under former South Carolina law. Thus, this section creates a new concept for South Carolina.

Section 62-7-409. Except as otherwise provided in this section or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than the period allowed under any rule against perpetuities applicable under South Carolina law, except for the care

and maintenance of a cemetery or cemetery plots, graves, mausoleums, columbaria, grave markers, or monuments.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

REPORTER'S COMMENT

South Carolina Trust Code Section 62-7-409 had no exact statutory counterpart under prior South Carolina law, although this Section continues South Carolina's allowance of trusts for the perpetual care of cemetery plots as set forth in S. C. Code Section 27-5-70.

This section authorizes two types of trusts without ascertainable beneficiaries; trusts for general but noncharitable purposes, and trusts for a specific noncharitable purpose other than the care of an animal, on which see Section 62-7-408. Examples of trusts for general noncharitable purposes include a bequest of money to be distributed to such objects of benevolence as the trustee might select. Unless such attempted disposition was interpreted as charitable, at common law the disposition was honorary only and did not create a trust. Under this section, however, the disposition is enforceable as a trust for a period of up to the maximum allowed under any applicable state rule against perpetuities.

The most common example of a trust for a specific noncharitable purpose is a trust for the care of a cemetery plot. The rule against perpetuities limitation does not apply to cemeteries, cemetery plots, grave sites, mausoleums, columbaria, grave markers, or monuments.

Perpetual care cemeteries are addressed in Title 40, Chapter 8, Sections 40-8-110 et. seq.

For the requirement that a trust, particularly the type of trust authorized by this section, must have a purpose that is not capricious, see Section 62-7-404 Comment. For examples of the types of trusts authorized by this section, see Restatement (Third) of Trusts Section 47 (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 62 cmt. W and Section 124 (1959). The case law on capricious purposes is collected in 2 Austin W. Scott & William F. Fratcher, The Law of Trusts Section 124.7 (4th ed. 1987).

This section is similar to Section 62-7-408, although less detailed. Much of the Comment to Section 62-7-408 also applies to this section.

Section 62-7-410. (a) In addition to the methods of termination prescribed by Sections 62-7-411 through 62-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 62-7-411 through 62-7-416, or trust combination or division under Section 62-7-417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 62-7-411 may be commenced by the settlor. The settlor of a charitable trust as well as the Attorney General, among others, may maintain a proceeding to modify the trust under Section 62-7-413.

REPORTER'S COMMENT

South Carolina Trust Code Section 62-7-410 provides for the modification or termination of trusts and refers to the more specific provisions of Sections 62-7-411 through 62-7- 417. This SCTC Section does not adopt the provisions of Uniform Trust Code Section 62-7-410, calling for termination of the trust when "no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve." These may be grounds to terminate a trust under the SCTC, but only upon appropriate notice to interested parties and an opportunity for a hearing. A declaratory judgment may be sought to determine if the trust has terminated.

Section 62-7-411. (a) A noncharitable irrevocable trust may be modified or terminated with court approval upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservator if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as ordered by the court.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

REPORTER'S COMMENT

This section describes the circumstances in which termination or modification of a noncharitable irrevocable trust may be compelled by the beneficiaries, with or without the concurrence of the settlor, but with court approval. For provisions governing modification or termination of trusts without the need to seek beneficiary consent, see Sections 62-7-412 (modification or termination due to unanticipated circumstances or inability to administer trust effectively), 62-7-414 (termination or modification of uneconomic noncharitable trust), and 62-7-416 (modification to achieve settlor's tax objectives). If the trust is revocable by the settlor, the method of revocation specified in Section 62-7-602 applies. South Carolina Trust Code Section 62-7-411(a) adds the phrase "with court approval" to the first sentence of the Uniform Trust Code version and the phrase "modification or" to the second sentence of the UTC version. The SCTC omits UTC subsection 411(c), which provided that a spendthrift provision would not be presumed to constitute a material purpose of the trust. SCTC Section 62-7-411(c) substitutes the phrase "as ordered by the court" to the UTC version of subsection (d) for the phrase "as agreed by the beneficiaries."

Subsection (a) provides the requirements for termination or modification by the beneficiaries with the concurrence of the settlor. Subsection (b) provides the requirements for termination or modification by unanimous consent of the beneficiaries without the concurrence of the settlor. The rules on trust modification and termination in subsections (a)-(b) carries forward the *Claflin* rule, first stated in the famous case of *Claflin v. Claflin*, 20 N.E. 454 (Mass. 1889). Subsection (c) directs how the trust property is to be distributed

following a termination under either subsection (a) or (b). Subsection (d) creates a procedure for judicial approval of a proposed termination or modification when the consent of less than all of the beneficiaries is available.

Under this section, a trust may be modified or terminated over a trustee's objection. However, pursuant to Section 62-7-410, the trustee has standing to object to a proposed termination or modification.

The settlor's right to join the beneficiaries in terminating or modifying a trust under this section does not rise to the level of a taxable power. See Treas. Reg. Section 20.2038-1(a)(2). No gift tax consequences result from a termination as long as the beneficiaries agree to distribute the trust property in accordance with the value of their proportionate interests.

The provisions of Part 3 on representation, virtual representation and the appointment and approval of representatives appointed by the court apply to the determination of whether all beneficiaries have signified consent under this section. The authority to consent on behalf of another person, however, does not include authority to consent over the other person's objection. See Section 62-7-301(c). Regarding the persons who may consent on behalf of a beneficiary, see Sections 62-7-302 through 62-7-305. A consent given by a representative is invalid to the extent there is a conflict of interest between the representative and the person represented. If virtual or other form of representation is unavailable, Section 62-7-305 of the Code permits the court to appoint a representative who may give the necessary consent to the proposed modification or termination on behalf of the minor, incapacitated, unborn, or unascertained beneficiary. The ability to use virtual and other forms of representation to consent on a beneficiary's behalf to a trust termination or modification has not traditionally been part of the law, although there are some notable exceptions. Compare Restatement (Second) Section 337(1) (1959) (beneficiary must not be under incapacity), with *Hatch v. Riggs National Bank*, 361 F.2d 559 (D.C. Cir. 1966) (guardian ad litem authorized to consent on beneficiary's behalf).

Subsection (a) also addresses the authority of an agent, conservator, or guardian to act on a settlor's behalf. Consistent with Section 62-7-602 on revocation or modification of a revocable trust, the section assumes that a settlor, in granting an agent general authority, did not intend for the agent to have authority to consent to the termination or modification of a trust, authority that could be exercised to radically alter the settlor's estate plan. In order for an agent to validly consent to a termination or modification of the settlor's revocable trust, such

authority must be expressly conveyed either in the power or in the terms of the trust.

Subsection (a), however, does not impose restrictions on consent by a conservator or guardian, other than prohibiting such action if the settlor is represented by an agent. The section instead leaves the issue of a conservator's or guardian's authority to local law. Many conservatorship statutes recognize that termination or modification of the settlor's trust is a sufficiently important transaction that a conservator should first obtain the approval of the court supervising the conservatorship. See, e.g., Unif Probate Code Section 5-411(a)(4). Because the SCTC uses the term "conservator" to refer to the person appointed by the court to manage an individual's property (see Section 62-7-103(4)), a guardian may act on behalf of a settlor under this section only if a conservator has not been appointed.

Subsection (a) is similar to Restatement (Third) of Trusts Section 65(2) (Tentative Draft No. 3, approved 2001), and Restatement (Second) of Trusts Section 338(2) (1959), both of which permit termination upon joint action of the settlor and beneficiaries. Unlike termination by the beneficiaries alone under subsection (b), termination with the concurrence of the settlor does not require a finding that the trust no longer serves a material purpose. No finding of failure of material purpose is required because all parties with a possible interest in the trust's continuation, both the settlor and beneficiaries, agree there is no further need for the trust. Restatement Third goes further than subsection (b) of this section and Restatement Second, however, in also allowing the beneficiaries to compel termination of a trust that still serves a material purpose if the reasons for termination outweigh the continuing material purpose.

Subsection (b), similar to Restatement Third but not Restatement Second, allows modification by beneficiary action. The beneficiaries may modify any term of the trust if the modification is not inconsistent with a material purpose of the trust. Restatement Third, though, goes further than this Code in also allowing the beneficiaries to use trust modification as a basis for removing the trustee if removal would not be inconsistent with a material purpose of the trust. Under the Code, however, Section 62-7-706 is the exclusive provision on removal of trustees. Section 62-7-706(b)(4) recognizes that a request for removal upon unanimous agreement of the qualified beneficiaries is a factor for the court to consider, but before removing the trustee the court must also find that such action best serves the interests of all the beneficiaries, that removal is not inconsistent with a material purpose of the trust, and that a suitable cotrustee or successor trustee is

available. Compare Section 62-7-706(b)(4), with Restatement (Third) Section 65 cmt. f (Tentative Draft No. 3, approved 2001).

The requirement that the trust no longer serve a material purpose before it can be terminated by the beneficiaries does not mean that the trust has no remaining function. In order to be material, the purpose remaining to be performed must be of some significance:

Material purposes are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to the beneficiary's management skills, judgment, or level of maturity. Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular advantage. Sometimes, of course, the very nature or design of a trust suggests its protective nature or some other material purpose.

Restatement (Third) of Trusts Section 65 cmt. d (Tentative Draft No. 3, approved 2001).

Subsection (c) recognizes that, once termination has been approved, how the trust property is to be distributed is solely for the court to decide.

No similar statutory provisions existed under prior South Carolina law.

Under South Carolina case law, a court has the power to alter or modify an irrevocable trust to effectuate the intent of the settler, but it is the duty of the courts to preserve, not destroy, trusts. See *Chiles v. Chiles*, 270 S.C. 379, 242 S.E.2d 426 (S.C. 1978). When a settler sought modification of an irrevocable trust without the consent of the beneficiaries, the court would modify the trust to effectuate the settlor's intent only when some exigency or emergency made the modification indispensable to the preservation of the trust. See *Chiles.*

Under existing South Carolina case law, a spendthrift trust cannot be terminated by agreement of all beneficiaries when the purpose of the trust is to provide an income stream for life or until the trust fund was exhausted, since to do so would defeat a material purpose of the trust. See *Germann v. New York Life Insurance Co,* 286 S.C. 34 , 331 S.E.2d 385(S.C..App. 1985).

Section 62-7-412. (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent

practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court.

REPORTER'S COMMENT

This section broadens the court's ability to apply equitable deviation to terminate or modify a trust. South Carolina Trust Code Section 62-7-412(a) conceptually broadens the traditional authority of the court to modify trust provisions because of unanticipated circumstances, especially with respect to dispositive provisions. Subsection (a) is similar to Restatement (Third) of Trusts Section 66(1) (Tentative Draft No. 3, approved 2001), except that this section, unlike the Restatement, does not impose a duty on the trustee to petition the court if the trustee is aware of circumstances justifying judicial modification. The purpose of the "equitable deviation" authorized by subsection (a) is not to disregard the settlor's intent but to modify inopportune provisions to effectuate better the settlor's broader purposes. Among other things, equitable deviation may be used to modify administrative or dispositive terms due to the failure to anticipate economic change or the incapacity of a beneficiary. For numerous illustrations, see Restatement (Third) of Trusts Section 66 cmt. b (Tentative Draft No. 3, approved 2001). While it is necessary that there be circumstances not anticipated by the settlor before the court may grant relief under subsection (a), the circumstances may have been in existence when the trust was created. This section thus complements Section 62-7-415, which allows for reformation of a trust based on mistake of fact or law at the creation of the trust.

Subsection (b) broadens the court's ability to modify the administrative terms of a trust. The standard under subsection (b) is similar to the standard for applying equitable deviation to a charitable trust. See Section 62-7-413(a). Just as a charitable trust may be modified if its particular charitable purpose becomes impracticable or wasteful, so can the administrative terms of any trust, charitable or non-charitable. Subsections (a) and (b) are not mutually exclusive. Many situations justifying modification of administrative terms under subsection (a) will also justify modification under subsection (b). Subsection (b) is also an application of the requirement in Section 62-7-404 that a trust and its terms must be for the benefit of its

beneficiaries. See also Restatement (Third) of Trusts Section 27(2) & cmt. b (Tentative Draft No. 2, approved 1999). Although the settlor is granted considerable latitude in defining the purposes of the trust, the principle that a trust have a purpose which is for the benefit of its beneficiaries precludes unreasonable restrictions on the use of trust property. An owner's freedom to be capricious about the use of the owner's own property ends when the property is impressed with a trust for the benefit of others. See Restatement (Second) of Trusts Section 124 cmt. g (1959). Thus, attempts to impose unreasonable restrictions on the use of trust property will fail. See Restatement (Third) of Trusts Section 27 Reporter's Notes to cmt. b (Tentative Draft No. 2, approved 1999). Subsection (b), unlike subsection (a), does not have a direct precedent in the common law, but various states have adopted such a measure by statute. See, e.g., Mo. Rev. Stat. Section 456.590.1.

Modification under this section, because it does not require beneficiary action, is not precluded by a spendthrift provision.

South Carolina Trust Code Section 62-7-412(c) modifies the uniform version to provide that, upon termination, trust property is to be distributed as ordered by the court.

Section 62-7-413. (a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may deviate from the terms of the trust to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable intent.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than the number of years allowed under any rule against perpetuities applicable under South Carolina law, have elapsed since the date of the trust's creation.

REPORTER'S COMMENT

This section clarifies and codifies in part existing South Carolina law that recognizes "equitable deviation," which is the power of a court in certain situations to change the provisions of a charitable trust.

South Carolina has long recognized the doctrine of equitable deviation, which permits a court of equity to deviate from the strict terms of a trust when changed conditions render the accomplishment of the charitable purpose impossible or impracticable. Subsection (a) codifies the court's inherent authority to apply equitable deviation. The power may be applied to modify an administrative or dispositive term. The court may order the trust terminated and distributed to other charitable entities.

When the Section 62-7-413 was enacted, the words "cy pres" in the Uniform Trust Code version were deleted and replaced with language referring to equitable deviation because South Carolina courts have refused to recognize the doctrine of cy pres. See e.g.. *Mars v. Gilbert*, 93 S.C. 455, 77 S.E. 131 (S.C. 1913) (expressly rejecting the doctrine of equitable cy pres. but making clear that literal compliance with the terms of a will is not always required when the conditions have changed). See also *All Saints Parish, Waccamaw, a South Carolina non-profit corporation, a/k/a The Episcopal Church of All Saints and a/k/a The Vestry and Church Wardens of the Episcopal Church of All Saints Parish*, 358 S.C. 209, 595 S.E. 2d 253 (Ct. App 2004*)*, *rev'd on other grounds*, 385 S. C. 428, 685 S.E. 2d 163 (2009).

Although Section 62-7-413 changes the references from cy pres in the UTC version to equitable deviation terminology, Section 62-7-413 is otherwise taken verbatim from the UTC (except for a slight modification in the manner of referring to the rule against perpetuities). Consequently, the substantive provisions of UTC section 413 are exactly the same as those in Section 62-7-413.

Section 62-7-414. (a) After notice to the qualified beneficiaries, and without court approval, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court or, if the court does

not specify the manner of distribution, or if no court approval is required, in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

REPORTER'S COMMENT

Subsection (a) assumes that a trust with a value of $100,000 or less is sufficiently likely to be inefficient to administer that a trustee should be able to terminate it without the expense of a judicial termination proceeding. Also, in subsection (c) a phrase added to the uniform version clarifies that the court may specify how the trust assets should be distributed - e.g., in cases when the court is involved in a termination under subsection (b).

Because subsection (a) is a default rule, a settlor is free to set a higher or lower figure or to specify different procedures or to prohibit termination without a court order. *See* Section 62-7-105.

Subsection (b) allows the court to modify or terminate a trust if the costs of administration would otherwise be excessive in relation to the size of the trust. The court may terminate a trust under this section even if the settlor has forbidden it. *See* Section 62-7-105(b)(4). Judicial termination under this subsection may be used whether or not the trust is larger or smaller than $100,000.

When considering whether to terminate a trust under either subsection (a) or (b), the trustee or court should consider the purposes of the trust. Termination under this Section is not always wise. Even if administrative costs may seem excessive in relation to the size of the trust, protection of the assets from beneficiary mismanagement may indicate that the trust be continued. The court may be able to reduce the costs of administering the trust by appointing a new trustee.

Upon termination of a trust under this section, subsection (c) requires that the trust property be distributed in a manner consistent with the purposes of the trust. In addition to outright distribution to the beneficiaries, Section 62-7-816(21) authorizes payment to be made by a variety of alternate payees. Distribution under this section will typically be made to the qualified beneficiaries in proportion to the actuarial value of their interests.

If the trustee or cotrustee is a beneficiary and would receive part or all of the trust assets upon termination of a trust under subsection (a), then the trustee's power to terminate is subject to the limitations in SCTC Section 62-7-814.

Even though not accompanied by the usual trappings of a trust, the creation and transfer of an easement for conservation or preservation

will frequently create a charitable trust. The organization to whom the easement was conveyed will be deemed to be acting as trustee of what will ostensibly appear to be a contractual or property arrangement. Because of the fiduciary obligation imposed, the termination or substantial modification of the easement by the "trustee" could constitute a breach of trust. The drafters of the Uniform Trust Code concluded that easements for conservation or preservation are sufficiently different from the typical cash and securities found in small trusts that they should be excluded from this section, and subsection (d) so provides. Most creators of such easements, it was surmised, would prefer that the easement be continued unchanged even if the easement, and hence the trust, has a relatively low market value. For the law of conservation easements, see Restatement (Third) of Property: Servitudes Section 1.6 (2000).

While this Section is not directed principally at honorary trusts, it may be so applied. *See* Sections 62-7-408 and 62-7-409.

Because termination of a trust under this Section is initiated by the trustee or ordered by the court, termination is not precluded by a spendthrift provision.

Subsection (a) had no counterpart in prior South Carolina law, though a trust document might contain similar provisions.

Section 62-7-415. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

REPORTER'S COMMENT

There was no comparable South Carolina statutory provision authorizing a court to reform an unambiguous trust to conform to the settlor's intent.

South Carolina Trust Code Section 62-7-415 would permit the introduction of parol evidence to show the settlor's intent and the existence of a mistake of fact or law, provided that the evidence is clear and convincing to protect against the possibility of unreliable or fraudulent evidence. This section permits consideration of evidence relevant to the settlor's intention even when contradicted by the plain meaning of the words in the instrument.

This section applies whether the mistake is one of expression or one of inducement. A mistake of expression occurs when the terms of the trust misstate the settlor's intention, fail to include a term that was

intended to be included, or include a term that was not intended to be excluded. A mistake in the inducement occurs when the terms of the trust accurately reflect what the settlor intended to be included or excluded but this intention was based on a mistake of fact or law. See Restatement (Third) of Property: Donative Transfers Section 12.1 cmt. i (Tentative Draft No. 1, approved 1995). Mistakes of expression are frequently caused by scriveners' errors while mistakes of inducement often trace to errors of the settlor.

Reformation is different from resolving an ambiguity. Resolving an ambiguity involves the interpretation of language already in the instrument. Reformation, on the other hand, may involve the addition of language not originally in the instrument, or the deletion of language originally included by mistake, if necessary to conform the instrument to the settlor's intent. Because reformation may involve the addition of language to the instrument, or the deletion of language that may appear clear on its face, reliance on extrinsic evidence is essential. To guard against the possibility of unreliable or contrived evidence in such circumstance, the higher standard of clear and convincing proof is required. See Restatement (Third) of Property: Donative Transfers Section 12.1 cmt. e (Tentative Draft No. 1, approved 1995).

In determining the settlor's original intent, the court may consider evidence relevant to the settlor's intention even though it contradicts an apparent plain meaning of the text. The objective of the plain meaning rule, to protect against fraudulent testimony, is satisfied by the requirement of clear and convincing proof. See Restatement (Third) of Property: Donative Transfers Section 12.1 cmt. d and Reporter's Notes (Tentative Draft No. 1, approved 1995). See also John H. Langbein & Lawrence W. Waggoner, Reformation of Wills on the Ground of Mistake: Change of Direction in American Law?, 130 U. Pa. L. Rev. 521 (1982).

For further discussion of the rule of this section and its application to illustrative cases, see Restatement (Third) of Property: Donative Transfers Section 12.1 cmts. and Reporter's Notes (Tentative Draft No. 1, approved 1995).

The 2013 amendment better conforms the language of this section to the language of the Restatement (Third) of Property provision on which this section is based.

Section 62-7-416. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

REPORTER'S COMMENT

This section is copied from Restatement (Third) of Property: Donative Transfers Section 12.2 (Tentative Draft No. 1, approved 1995). "Modification" under this section is to be distinguished from the "reformation" authorized by Section 62-7-415. Reformation under Section 62-7-415 is available when the terms of a trust fail to reflect the donor's original, particularized intention. The mistaken terms are then reformed to conform to this specific intent. The modification authorized here allows the terms of the trust to be changed to meet the settlor's tax-saving objective as long as the resulting terms, particularly the dispositive provisions, are not inconsistent with the settlor's probable intent. The modification allowed by this subsection is similar in concept to the equitable deviation doctrine for charitable trusts (see Section 62-7-413), and the deviation doctrine for unanticipated circumstances (see Section 62-7-412).

There was no South Carolina statutory provision that correlates with this Section. Former Section 62-7-211 of the South Carolina Probate Code provided for division or consolidation of trusts, provided that the consolidation or division was not inconsistent with the intent of the trustor, the action would facilitate trust administration, and the action would be in the best interests of all beneficiaries and not materially impair their interests. See South Carolina Trust Code Section 62-7-417.

Whether a modification made by the court under this section will be recognized under federal tax law is a matter of federal law. Absent specific statutory or regulatory authority, binding recognition is normally given only to modifications made prior to the taxing event, for example, the death of the testator or settlor in the case of the federal estate tax. See Rev. Rul. 73-142, 1973-1 C.B. 405. Among the specific modifications possibly authorized by the Internal Revenue Code or Service include the revision of split-interest trusts to qualify for the charitable deduction, modification of a trust for a noncitizen spouse to become eligible as a qualified domestic trust, and the splitting of a trust to utilize better the exemption from generation-skipping tax.

For further discussion of the rule of this section and the relevant case law, see Restatement (Third) of Property: Donative Transfers Section 12.2 cmts. and Reporter's Notes (Tentative Draft No. 1, approved 1995).

South Carolina case law indicates that the courts will not allow a beneficiary's interest to be negated if the beneficiary objects, regardless

of the tax benefit desired. See *Chiles v. Chiles*, 270 S.C. 379, 242 S.E.2d 426 (S.C. 1978) (the Supreme Court reversed, with respect to the one appellant only, the lower court's extinguishment of certain noncharitable beneficiaries' interests to vest a charitable contribution deduction for federal estate tax purposes).

Section 62-7-417. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

REPORTER'S COMMENT

This section expands former South Carolina Probate Code Section 62-7-211, which allowed the division or consolidation of trusts only with court approval when such action was not authorized by the trust instrument and is subject to contrary provision in the terms of the trust. Many trust instruments and standardized estate planning forms include comprehensive provisions governing combination and division of trusts. Except for the requirement that the qualified beneficiaries receive advance notice of a proposed combination or division, this section is similar to Restatement (Third) of Trusts Section 68 (Tentative Draft No. 3, approved 2001).

This section allows a trustee to combine two or more trusts even though their terms are not identical. Typically the trusts to be combined will have been created by different members of the same family and will vary on only insignificant details, such as the presence of different perpetuities savings periods. The more the dispositive provisions of the trusts to be combined differ from each other the more likely it is that a combination would impair some beneficiary's interest, hence the less likely that the combination can be approved. Combining trusts may prompt more efficient trust administration and is sometimes an alternative to terminating an uneconomic trust as authorized by Section 62-7-414. Administrative economies promoted by combining trusts include a potential reduction in trustees' fees, particularly if the trustee charges a minimum fee per trust, the ability to file one trust income tax return instead of multiple returns, and the ability to invest a larger pool of capital more effectively. Particularly if the terms of the trust are identical, available administrative economies may suggest that the trustee has a responsibility to pursue a combination. See Section 62-7-805 (duty to incur only reasonable costs).

Division of trusts is often beneficial and, in certain circumstances, almost routine. Division of trusts is frequently undertaken due to a desire to obtain maximum advantage of exemptions available under the federal generation-skipping tax. While the terms of the trusts which result from such a division are identical, the division will permit differing investment objectives to be pursued and allow for discretionary distributions to be made from one trust and not the other. Given the substantial tax benefits often involved, a failure by the trustee to pursue a division might in certain cases be a breach of fiduciary duty. The opposite could also be true if the division is undertaken to increase fees or to fit within the small trust termination provision. See Section 62-7-414.

This section authorizes a trustee to divide a trust even if the trusts that result are dissimilar. Conflicts among beneficiaries, including differing investment objectives, often invite such a division, although as in the case with a proposed combination of trusts, the more the terms of the divided trusts diverge from the original plan, the less likely it is that the settlor's purposes would be achieved and that the division could be approved.

This section does not require that a combination or division be approved either by the court or by the beneficiaries. Prudence may dictate, however, that court approval under Section 62-7-410 be sought and beneficiary consent obtained whenever the terms of the trusts to be combined or the trusts that will result from a division differ substantially one from the other. For the provisions relating to beneficiary consent, or ratification of a transaction, or release of trustee from liability, see Section 62-7-1009.

While the consent of the beneficiaries is not necessary before a trustee may combine or divide trusts under this section, advance notice to the qualified beneficiaries of the proposed combination or division is required. This is consistent with Section 62-7-813, which requires that the trustee keep the qualified beneficiaries reasonably informed of trust administration, including the giving of advance notice to the qualified beneficiaries of several specified actions that may have a major impact on their interests.

Numerous States have enacted statutes authorizing division of trusts, either by trustee action or upon court order. For a list of these statutes, see Restatement (Third) Property: Donative Transfers Section 12.2 Statutory Note (Tentative Draft No. 1, approved 1995). Combination or division has also been authorized by the courts in the absence of authorizing statute. See, *e.g., In re Will of Marcus*, 552 N.Y.S. 2d 546 (Surr. Ct. 1990) (combination); *In re Heller Inter Vivos Trust*, 613

N.Y.S. 2d 809 (Surr. Ct. 1994) (division); and *BankBoston v. Marlow*, 701 N.E. 2d 304 (Mass. 1998) (division).

For a provision authorizing a trustee, in distributing the assets of the divided trust, to make non-pro-rata distributions, see Section 62-7-816(22).

Section 62-7-418. (a) When any person shall be seized of any lands, tenements, rents, reversions, remainders, or other hereditaments to the use, confidence, or trust of any other person or of any body politic by reason of any bargain, sale, feoffment, covenant, contract, agreement, will, or otherwise, the person or body politic that shall have such use, confidence, or trust, in fee simple, fee tail, for term of life or for years or otherwise or any use, confidence, or trust in remainder or reversion, shall be deemed and adjudged in lawful seizing, estate and possession of and in such lands, tenements, rents, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions, and purposes in law of and in such like estates as they shall have in use, trust, or confidence of or in them.

(b) When several persons shall be jointly seized of any lands, tenements, rents, reversions, remainders, or other hereditaments to the use, confidence, or trust of any of them that be so jointly seized, such person or persons who shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments shall have such estate, possession, and seizing of and in such lands, tenements, rents, reversions, remainders, and other hereditaments only to him or them that shall have any such use, confidence, or trust, in like nature, manner, form, condition, and course as he or they had before in the use, confidence, or trust of such lands, tenements, or hereditaments, saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than such person or persons who are seized of such lands, tenements, or hereditaments to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action as they or any of them had or might have had without this section and also saving to all and singular those persons and their heirs who are seized to any use all such former right, title, entry, interest, possession, rents, customs, services, and action as they or any of them might have had to his or their own proper use in or to any lands, tenements, rents, or hereditaments whereof they are seized to any other use, anything contained in this chapter to the contrary notwithstanding.

REPORTER'S COMMENT

There is no counterpart to this section in the Uniform Trust Code.

South Carolina Trust Code Subsections 62-7-418(a) and (b) retain and incorporate former South Carolina Probate Code Sections 62-7-107 and 62-7-108.

Part 5

Creditors' Claims; Spendthrift and Discretionary Trusts

GENERAL COMMENT

This article addresses the validity of a spendthrift provision and the rights of creditors, both of the settlor and beneficiaries, to reach a trust to collect a debt. Sections 62-7-501 and 62-7-502 state the general rules. To the extent that a trust is protected by a spendthrift provision, a beneficiary's creditor may not reach the beneficiary's interest until distribution is made by the trustee. To the extent not protected by a spendthrift provision, however, the creditor can reach the beneficiary's interest subject to the court's power to limit the relief. Section 62-7-503 lists the categories of creditors whose claims are not subject to a spendthrift restriction. Sections 62-7-504 through 62-7-507 address special categories in which the rights of a beneficiary's creditors are the same whether or not the trust contains a spendthrift provision. Section 62-7-504 deals with discretionary trusts and trusts for which distributions are subject to a standard. Section 62-7-505 covers creditor claims against a settlor, whether the trust is revocable or irrevocable, and if revocable, whether the claim is made during the settlor's lifetime or incident to the settlor's death. Section 62-7-506 provides a creditor with a remedy if a trustee fails to make a mandated distribution within a reasonable time. Section 62-7-507 clarifies that although the trustee holds legal title to trust property, that property is not subject to the trustee's personal debts.

The provisions of this article relating to the validity and effect of a spendthrift provision and the rights of certain creditors and assignees to reach the trust may not be modified by the terms of the trust. *See* Section 62-7-105(b)(5).

This article does not supersede state exemption statutes nor any fraudulent transfer statutes, which, when applicable, invalidates any type of gratuitous transfer, including transfers into trust.

Section 62-7-501. (a) Except as provided in subsection (b), the court may authorize a creditor or assignee of the beneficiary to reach

the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

(b) This section shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary to the extent a beneficiary's interest:

(1) is protected by a spendthrift provision, or

(2) is a discretionary trust interest as referred to in S.C. Code Section 62-7-504.

REPORTER'S COMMENT

Absent a valid spendthrift provision, a creditor may reach the interest of a beneficiary the same as any other of the beneficiary's assets. This does not necessarily mean that the creditor can collect all distributions made to the beneficiary. Other creditor law of the State may limit the creditor to a specified percentage of a distribution. This section does not prescribe the procedures for reaching a beneficiary's interest or of priority among claimants, leaving those issues to the State's law on creditor rights. The section does clarify, however, that an order obtained against the trustee, whatever state procedure may have been used, may extend to future distributions whether made directly to the beneficiary or to others for the beneficiary's benefit. By allowing an order to extend to future payments, the need for the creditor periodically to return to court will be reduced.

A creditor typically will pursue a claim by serving an order on the trustee attaching the beneficiary's interest. Assuming that the validity of the order cannot be contested, the trustee will then pay to the creditor instead of to the beneficiary any payments the trustee would otherwise be required to make to the beneficiary, as well as discretionary distributions the trustee decides to make. The creditor may also, in theory, force a judicial sale of a beneficiary's interest.

Because proceedings to satisfy a claim are equitable in nature, the second sentence of this section ratifies the court's discretion to limit the award as appropriate under the circumstances. In exercising its discretion to limit relief, the court may appropriately consider the support needs of a beneficiary and the beneficiary's family. *See* Restatement (Third) of Trusts Section 56 cmt. e (Tentative Draft No. 2, approved 1999).

The case law in South Carolina was uncertain as to the effectiveness and application of the spendthrift provision but appears to indicate that a spendthrift provision operated against only income interests but not

principal interests. See S. Alan Medlin, The Law of Wills and Trusts, Vol. I. Estate Planning in South Carolina, Section 508.2(a), p. 5-19 (2002). Older cases seem to allow a cessor clause to prevent the voluntary or involuntary alienation of the beneficiary's interest. See S. Alan Medlin, supra. This Section avoids the confusion regarding the effectiveness and application of the spendthrift provision and also clarifies and broadens the laws in South Carolina so that a spendthrift provision operates as a restraint against both income and principal interests, except as otherwise provided in the following sections of the SCTC.

Section 62-7-501 provides additional protection not only for spendthrift interests, but also for interests in discretionary trusts as referred to in S. C. Code Section 62-7-504. Discretionary trusts do not have to rely on spendthrift language for a beneficiary's present or future interest in the trust to be exempt from creditor attachment.

For a definition of discretionary trust, resort should be made to the South Carolina common law. See generally *Heath v. Bishop*, 25 S. C. Eq. (4 Rich. Eq.) 446 (S.C. 1851); *Collins v. Collins*, 219 S.C. 1. 63 S.E. 2d 811 (S.C.1951); see also *Sarlin v. Sarlin*, 312 S. C. 27, 430 S. E. 2d 530 (S.C. App. 1993); *Page v. Page*, 243 S. C. 312, 133 S. E. 2d 829 (S.C. 1963).

Section 62-7-502. (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a 'spendthrift trust', or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

REPORTER'S COMMENT

Under this section, a settlor has the power to restrain the transfer of a beneficiary's interest, regardless of whether the beneficiary has an interest in income, in principal, or in both. Unless one of the exceptions under this article applies, a creditor of the beneficiary is prohibited from attaching a protected interest and may only attempt to collect directly from the beneficiary after payment is made. This

section is similar to Restatement (Third) of Trusts Section 58 (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Sections 152-153 (1959). For the definition of spendthrift provision, see Section 62-7-103(15).

For a spendthrift provision to be effective under this Code, it must prohibit both the voluntary and involuntary transfer of the beneficiary's interest, that is, a settlor may not allow a beneficiary to assign while prohibiting a beneficiary's creditor from collecting, and vice versa. See Restatement (Third) of Trusts Section 58 cmt. b (Tentative Draft No. 2, approved 1999). See also Restatement (Second) of Trusts Section 152(2) (1959). A spendthrift provision valid under this Code will also be recognized as valid in a federal bankruptcy proceeding. See 11 U.S.C. Section 541(c)(2).

Subsection (b), which is derived from Texas Property Code Section 112.035(b), allows a settlor to provide maximum spendthrift protection simply by stating in the instrument that all interests are held subject to a "spendthrift trust" or words of similar effect.

A disclaimer, because it is a refusal to accept ownership of an interest and not a transfer of an interest already owned, is not affected by the presence or absence of a spendthrift provision. Most disclaimer statutes expressly provide that the validity of a disclaimer is not affected by a spendthrift protection. See, e.g., Unif. Probate Code Section 2-801(a) and SCPC Section 62-2-801(c)(6). Releases and exercises of powers of appointment are also not affected because they are not transfers of property. See Restatement (Third) of Trusts Section 58 cmt. c (Tentative Draft No. 2, approved 1999).

A spendthrift provision is ineffective against a beneficial interest retained by the settlor. See Restatement (Third) of Trusts Section 58(2) (Tentative Draft No. 2, approved 1999). This is a necessary corollary to Section 62-7-505(a)(2), which allows a creditor or assignee of the settlor to reach the maximum amount that can be distributed to or for the settlor's benefit. This right to reach the trust applies whether or not the trust contains a spendthrift provision.

A valid spendthrift provision makes it impossible for a beneficiary to make a legally binding transfer, but the trustee may choose to honor the beneficiary's purported assignment. The trustee may recommence distributions to the beneficiary at anytime. The beneficiary, not having made a binding transfer, can withdraw the beneficiary's direction but only as to future payments. See Restatement (Third) of Trusts Section 58 cmt. d (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 152 cmt. i (1959).

For discussion of the treatment of spendthrift provisions in South Carolina, see Comment to SCTC Section 62-7-501.

Section 62-7-503. (a) In this section, 'child' includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

(c) The exception in subsection (b) is unenforceable against a special needs trust, supplemental needs trust, or similar trust established for a disabled person if the applicability of such a provision could invalidate such a trust's exemption from consideration as a countable resource for Medicaid or Supplemental Security Income (SSI) purposes or if the applicability of such a provision has the effect or potential effect of rendering such disabled person ineligible for any program of public benefit, including, but not limited to, Medicaid and SSI.

REPORTER'S COMMENT

This section exempts the claims of certain categories of creditors from the effects of a spendthrift restriction.

The exception in subsection (b) for judgments or orders to support a beneficiary's child is in accord with Restatement (Third) of Trusts Section 59(a) (Tentative Draft No. 2, approved 1999), Restatement (Second) of Trusts Section 157(a) (1959), and numerous state statutes. It is also consistent with federal bankruptcy law, which exempts such support orders from discharge. South Carolina Trust Code Section 62-7-503(b), however, eliminates the exceptions contained in Uniform Trust Code Section 503 for a beneficiary's spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance as well as a judgment creditor who has provided services for the protection of a beneficiary's interest in a spendthrift trust. The effect of this exception is to permit the claimant for unpaid support to attach present or future distributions that would otherwise be made to the beneficiary. Distributions subject to attachment include distributions required by the express terms of the trust, such as mandatory payments of income, and distributions the trustee has otherwise decided to make, such as through the exercise of discretion. Subsection (b), unlike Section 62-7-504, does not authorize the child claimant to compel a distribution from the trust. Section 62-7-504

authorizes a child claimant to compel a distribution to the extent the trustee has abused a discretion or failed to comply with a standard for distribution.

Subsection (b) refers both to "support" and "maintenance" in order to accommodate differences among the states in terminology employed. No difference in meaning between the two terms is intended.

The definition of "child" in subsection (a) accommodates the differing approaches states take to defining the class of individuals eligible for child support, including such issues as whether support can be awarded to stepchildren. However the state making the award chooses to define "child" will be recognized under this Code, whether the order sought to be enforced was entered in the same or different state.

South Carolina has eliminated the exceptions found in UTC Section 503 (b) and (c) certain judgment creditors and for a claim made by the State of South Carolina or the United States to the extent a state or federal law provides for any such claim. Thus, under the SCTC, the only exception to a spendthrift trust will be for a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance. South Carolina also adds a new subsection (c), not found in the UTC, which makes clear that the exception in subsection (b) for child support shall be unenforceable against a special or supplemental needs trusts under the circumstances described in subsection (c). Unlike Restatement (Third) of Trusts Section 59(2) (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 157(b) (1959), this Code does not create an exception to the spendthrift restriction for creditors who have furnished necessary services or supplies to the beneficiary. There is also no exception for tort claimants. For a discussion of the exception for tort claims, which has not generally been recognized, see Restatement (Third) of Trusts Section 59 Reporter's Notes to cmt. a (Tentative Draft No. 2, approved 1999). For a discussion of other exceptions to a spendthrift restriction, recognized in some States, see George G. Bogert & George T. Bogert, The Law of Trusts and Trustees Section 224 (Rev. 2d ed. 1992); and 2A Austin W. Scott & William F. Fratcher, The Law of Trusts Sections 157-157.5 (4th ed. 1987).

Section 62-7-504. (a) In this section, 'child' includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c), a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and

(2) the court shall direct the trustee to pay to the child such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution; provided, however, this right may not be exercised by a creditor of the beneficiary.

(e) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution from insurance proceeds payable to the trustee as beneficiary to the extent state law exempts such insurance proceeds from creditors' claims.

(f) A creditor of a beneficiary who is also a trustee or cotrustee may not reach the trustee's beneficial interest or otherwise compel a distribution if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

REPORTER'S COMMENT

South Carolina Trust Code Section 62-7-504 eliminates the exceptions allowed under Uniform Trust Code Section 504 for judgments or court orders in favor of a beneficiary's spouse or former spouse. As with SCTC Section 62-7-503, the only exception will be for a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance. However, a child's claim against a discretionary trust interest will be limited to those cases where a trustee has not complied with a standard of distribution or has abused a discretion.

This section addresses the ability of a beneficiary's creditor to reach the beneficiary's discretionary trust interest, whether or not the exercise of the trustee's discretion is subject to a standard. This section, similar

to the Restatement, eliminates the distinction between discretionary and support trusts, unifying the rules for all trusts fitting within either of the former categories. See Restatement (Third) of Trusts Section 60 Reporter's Notes to cmt. a (Tentative Draft No. 2, approved 1999).

This section could have limited application. Pursuant to Section 62-7-502, the effect of a valid spendthrift provision, where applicable, is to prohibit a creditor from collecting on a distribution prior to its receipt by the beneficiary. Only if the trust is not protected by a spendthrift provision, or if the creditor falls within one of the exceptions to spendthrift enforcement created by Section 62-7-503, does this section become relevant.

For a discussion of the definition of "child" in subsection (a), see Section 62-7-503 Comment.

Subsection (b), which establishes the general rule, forbids a creditor from compelling a distribution from the trust, even if the trustee has failed to comply with the standard of distribution or has abused a discretion. Under subsection (d), the power to force a distribution due to an abuse of discretion or failure to comply with a standard belongs solely to the beneficiary. Under Section 62-7-814(a), a trustee must always exercise a discretionary power in good faith and with regard to the purposes of the trust and the interests of the beneficiaries.

Subsection (c) creates an exception for support claims of a child who has a judgment or order against a beneficiary for support or maintenance. While a creditor of a beneficiary generally may not assert that a trustee has abused a discretion or failed to comply with a standard of distribution, such a claim may be asserted by the beneficiary's child enforcing a judgment or court order against the beneficiary for unpaid support or maintenance. The court must direct the trustee to pay the child such amount as is equitable under the circumstances but not in excess of the amount the trustee was otherwise required to distribute to or for the benefit of the beneficiary. Before fixing this amount, the court having jurisdiction over the trust should consider that in setting the respective support award, the family court has already considered the respective needs and assets of the family. The SCTC does not prescribe a particular procedural method for enforcing a judgment or order against the trust, leaving that matter to local collection law.

The South Carolina Trust Code adds to the UTC version the proviso at the end of subsection (d), which prevents a beneficiary's creditor from enforcing on behalf of the beneficiary the beneficiary's right, to the extent it exists, to maintain a judicial proceeding against a trustee

for an abuse of discretion or failure to comply with a standard of distribution.

South Carolina's version of subsection (e), not found in the UTC, ensures that even if there is no spendthrift provision, insurance proceeds remain exempt from creditors' claims pursuant to S. C. Code Section 38-63-40 et seq. and other relevant state laws.

Section 62-7-505. (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62-3-801 et seq.

(b) For purposes of this section:

(1) a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a revocable trust if the beneficiary-trustee's power to make distributions to the beneficiary-trustee is limited by an ascertainable standard related to the beneficiary-trustee's health, education, maintenance, and support;

(2) the assets in a trust that are attributable to a contribution to an inter vivos marital deduction trust described in either Section 2523(e) or (f) of the Internal Revenue Code of 1986, after the death of the spouse of the settlor of the inter vivos marital deduction trust are deemed to have been contributed by the settlor's spouse and not by the settlor.

REPORTER'S COMMENT

Subsection (a)(1) states what is now a well accepted conclusion, that a revocable trust is subject to the claims of the settlor's creditors while the settlor is living. See Restatement (Third) of Trusts Section 25 cmt. a (Tentative Draft No. 1, approved 1996). Such claims were not allowed at common law, however. See Restatement (Second) of Trusts Section 330 cmt. o (1959). Because a settlor usually also retains a beneficial interest that a creditor may reach under subsection (a)(2), the common law rule, were it retained in this Code, would be of little significance. See Restatement (Second) of Trusts Section 156(2) (1959).

Subsection (a)(2), which is based on Restatement (Third) of Trusts Section 58(2) and cmt. e (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 156 (1959), follows traditional doctrine in providing that a settlor who is also a beneficiary may not use the trust as a shield against the settlor's creditors. The drafters of the Uniform Trust Code concluded that traditional doctrine reflects sound policy. Consequently, the drafters rejected the approach taken in States like Alaska and Delaware, both of which allow a settlor to retain a beneficial interest immune from creditor claims. See Henry J. Lischer, Jr., Domestic Asset Protection Trusts: Pallbearers to Liability, 35 Real Prop. Prob. & Tr. J. 479 (2000); John E. Sullivan, III, Gutting the Rule Against Self-Settled Trusts: How the Delaware Trust Law Competes with Offshore Trusts, 23 Del. J. Corp. L. 423 (1998). The SCTC confirms this policy. Under the Code, whether the trust contains a spendthrift provision or not, a creditor of the settlor may reach the maximum amount that the trustee could have paid to the settlor-beneficiary. If the trustee has discretion to distribute the entire income and principal to the settlor, the effect of this subsection is to place the settlor's creditors in the same position as if the trust had not been created. For the definition of "settlor," see Section 62-7-103(14).

This section does not address possible rights against a settlor who was insolvent at the time of the trust's creation or was rendered insolvent by the transfer of property to the trust. This subject is instead left to the State's law on fraudulent transfers. A transfer to the trust by an insolvent settlor might also constitute a voidable preference under federal bankruptcy law.

Subsection (a)(3) recognizes that a revocable trust is usually employed as a will substitute. As such, the trust assets, following the death of the settlor, should be subject to the settlor's debts and other charges. However, under SCTC 62-7-505(a)(3), only assets held in a revocable trust at the time of the settlor's death will be subject to

creditor's claims. Assets transferred to a revocable trust following the settlor's death will not become subject to creditor's claims as a result of the transfer. For example, life insurance proceeds and cash surrender values that would be exempt under the terms of the trust pursuant to §38-63-40 or §38-65-90 would maintain the exempt status if payable to the trust. Also, in accordance with traditional doctrine, the assets of the settlor's probate estate must normally first be exhausted before the assets of the revocable trust can be reached. This section does not attempt to address the procedural issues raised by the need first to exhaust the decedent's probate estate before reaching the assets of the revocable trust. Nor does this section address the priority of creditor claims or liability of the decedent's other nonprobate assets for the decedent's debts and other charges. Subsection (a)(3), however, does ratify the typical pourover will, revocable trust plan. As long as the rights of the creditor or family member claiming a statutory allowance are not impaired, the settlor is free to shift liability from the probate estate to the revocable trust. Regarding other issues associated with potential liability of nonprobate assets for unpaid claims, see Section 6-102 of the Uniform Probate Code, which was added to that Code in 1998.

Upon the lapse, release, or waiver of a power of withdrawal, the property formerly subject to the power will normally be subject to the claims of the power holder's creditors and assignees the same as if the power holder were the settlor of a now irrevocable trust. Pursuant to subsection (a)(2), a creditor or assignee of the power holder generally may reach the power holder's entire beneficial interest in the trust, whether or not distribution is subject to the trustee's discretion. The Uniform Trust Code does not address creditor issues with respect to property subject to a special power of appointment or a testamentary general power of appointment. For creditor rights against such interests, see Restatement (Property) Second: Donative Transfers Sections 13.1 -- 3.7 (1986).

Section 62-7-506. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date. For purposes of this section, a mandatory distribution is a distribution where the trustee has no discretion in determining whether the distribution shall be made or the amount or timing of such distribution.

REPORTER'S COMMENT

The effect of a spendthrift provision is generally to insulate totally a beneficiary's interest until a distribution is made and received by the beneficiary. *See* Section 62-7-502. But this section, along with several other sections in this article, recognizes exceptions to this general rule. Whether a trust contains a spendthrift provision or not, a trustee should not be able to avoid creditor claims against a beneficiary by refusing to make a distribution required to be made by the express terms of the trust. On the other hand, a spendthrift provision would become largely a nullity were a beneficiary's creditors able to attach all required payments as soon as they became due. This section reflects a compromise between these two competing principles. A creditor can reach a mandatory distribution, including a distribution upon termination, if the trustee has failed to make the payment within a reasonable time after the designated distribution date. Following this reasonable period, payments mandated by the express terms of the trust are in effect being held by the trustee as agent for the beneficiary and should be treated as part of the beneficiary's personal assets.

South Carolina Trust Code Section 62-7-506 adds to the Uniform Trust Code version of Section 506 a definition of "mandatory distribution" to prevent the South Carolina section from being interpreted to require distributions from discretionary trusts as referred to in SCTC Section 62-7-504. Common examples of mandatory distributions are found in qualified terminable interest property trusts, charitable remainder trusts, and grantor retained trusts, when the trustee is required to make a distribution annually of a sum certain.

This section is similar to Restatement (Third) of Trusts Section 58 cmt. d (Tentative Draft No. 2, approved 1999).

Section 62-7-507. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

REPORTER'S COMMENTS

Because the beneficiaries of the trust hold the beneficial interest in the trust property and the trustee holds only legal title without the benefits of ownership, the creditors of the trustee have only a personal claim against the trustee. *See* Restatement (Third) Section 5 cmt. k (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 12 cmt. a (1959). Similarly, a personal creditor of the trustee who attaches trust property to satisfy the debt does not acquire title as a

bona fide purchaser even if the creditor is unaware of the trust. *See* Restatement (Second) of Trusts Section 308 (1959). The protection afforded by this section is consistent with that provided by the Bankruptcy Code. Property in which the trustee holds legal title as trustee is not part of the trustee's bankruptcy estate. 11 U.S.C. Section 541(d).

The exemption of the trust property from the personal obligations of the trustee is the most significant feature of Anglo-American trust law by comparison with the devices available in civil law countries. A principal objective of the Hague Convention on the Law Applicable to Trusts and on their Recognition is to protect the Anglo-American trust with respect to transactions in civil law countries. *See* Hague Convention art. 11. *See also* Henry Hansmann & Ugo Mattei, *The Functions of Trust Law: A Comparative Legal and Economic Analysis*, 73 N.Y.U. L. Rev. 434 (1998); John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce*, 107 Yale L.J. 165, 179-80 (1997).

Part 6

Revocable Trusts

GENERAL COMMENT

This article deals with issues of significance not totally settled under prior law. Because of the widespread use in recent years of the revocable trust as an alternative to a will, this short article is one of the more important articles of the Code. This article and the other articles of the Code treat the revocable trust as the functional equivalent of a will. Section 62-7-601 provides that the capacity standard for wills applies in determining whether the settlor had capacity to create a revocable trust. Section 62-7-602, after providing that a trust is presumed revocable unless stated otherwise, prescribes the procedure for revocation or amendment, whether the trust contains one or several settlors. Section 62-7-603 provides that while a trust is revocable and the settlor has capacity, the rights of the beneficiaries are subject to the settlor's control. Section 62-7-604 prescribes a statute of limitations on contest of revocable trusts.

Sections 62-7-601 and 62-7-604, because they address requirements relating to creation and contest of trusts, are not subject to alteration or restriction in the terms of the trust. *See* Section 62-7-105. Sections 62-7-602 and 62-7-603, by contrast, are not so limited and are fully subject to the settlor's control.

Section 62-7-601. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

REPORTER'S COMMENT

This section is patterned after Restatement (Third) of Trusts Section 11(1) (Tentative Draft No. 1, approved 1996). The revocable trust is used primarily as a will substitute, with its key provision being the determination of the persons to receive the trust property upon the settlor's death. To solidify the use of the revocable trust as a device for transferring property at death, the settlor usually also executes a pourover will. The use of a pourover will assures that property not transferred to the trust during life will be combined with the property the settlor did manage to convey. Given this primary use of the revocable trust as a device for disposing of property at death, the capacity standard for wills rather than that for lifetime gifts should apply. The application of the capacity standard for wills does not mean that the revocable trust must be executed with the formalities of a will. There are no execution requirements under this Code for a trust not created by will, and a trust not containing real property may be created by an oral statement. *See* Section 62-7-407 and comment. See SCTC Section 62-7-401, which requires a writing for a self-trusteed declaration of trust.

The SCTC does not explicitly spell out the standard of capacity necessary to create other types of trusts, although Section 62-7-402 does require that the settlor have capacity. This section includes a capacity standard for creation of a revocable trust because of the uncertainty in the case law and the importance of the issue in modern estate planning. No such uncertainty exists with respect to the capacity standard for other types of trusts. To create a testamentary trust, the settlor must have the capacity to make a will. To create an irrevocable trust, the settlor must have the capacity that would be needed to transfer the property free of trust. *See generally* Restatement (Third) of Trusts Section 11 (Tentative Draft No. 1, approved 1996); Restatement (Third) of Property: Wills and Other Donative Transfers Section 8.1 (Tentative Draft No. 3, approved 2001).

South Carolina Probate Code Section 62-2-501 provides that a person who is "of sound mind and who is not a minor as defined in Section 62-2-201(27) may make a will." Section 62-2-201(27) defines a minor as a person under eighteen excluding persons under eighteen who are married or emancipated by court decree. The test for mental

capacity is whether the person has the capability to know (1) his estate, (2) the objects of his affections, and (3) to whom he wishes to give his property. The capacity to understand as opposed to actual knowledge or understanding is sufficient. It is a lower standard than that required to sign a deed or contract. Weeks v. Drawdy, 329 S.C. 251, 495 S.E.2d 454 (S.C. Ct.App. 1997); McCollum v. Banks, et al., 213 S.C. 476, 50 S.E.2d 199 (S.C. 1948).

A higher degree of capacity is required to execute an irrevocable trust. The settlor must have the mental capacity to understand the nature of the trust and its probable consequences. Macauley, et al. v. Wachovia Bank, et al., 351 S.C. 287, 569 S.E.2d 371 (S.C. Ct.App. 2002).

There was no prior statutory counterpart to this Section.

As a practical matter, the relatively common use of pour over wills in conjunction with minimally funded revocable trusts indicates that the measure of capacity for execution of the trust is the same as that for a will. See Bowles v. Bradley, 219 S.C. 377, 461 S.E.2d 811 (S.C. 1995).

Section 62-7-602. (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this article.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust, manifesting clear and convincing evidence of the settlor's intent; or

(B) by oral statement to the trustee if the trust was created orally; or

(C) any other written method, other than a later will or codicil, delivered to the trustee and manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) RESERVED

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship and with regard to the requirements of Section 62-5-408 (3)(c).

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

REPORTER'S COMMENT

South Carolina Trust Code Section 62-7-602(a) is a departure from former South Carolina law, which presumed that a trust was irrevocable unless a power of revocation was validly reserved and that, if a particular method of revocation was specified, it must be strictly followed. Where the right to revoke was reserved and no particular mode was specified, any mode sufficiently showing an intention to revoke was effective. See Peoples National Bank of Greenville v. Peden et al., 229 S.E. 2d 163 (S.C. 1956), citing to 4 Bogert on Trusts and Trustees Section 996 and 54 Am. Jur. Section 77 on Trusts. Likewise, a settlor had to expressly reserve the right to modify a trust. First Carolinas Joint Stock Land Bank v. Deschamps, et al., 171 S. C. 466 172 S.E. 622 (S.C. 1934).

The South Carolina Supreme Court has noted that there are some exceptions to the general rule that a trust cannot be revoked or modified unless such a power is expressly reserved in the trust instrument, such as mistake. Chiles v. Chiles, et al., 20 S. C. 379, 242 S.E. 2d 426 (S.C. 1978), citing to the Restatement 2d of Trusts Section 330(2).

Most states follow the rule that a trust is presumed irrevocable absent evidence of contrary intent. *See* Restatement (Second) of Trusts Section 330 (1959). California, Iowa, Montana, Oklahoma, and Texas presume that a trust is revocable. The South Carolina Trust Code

endorses this minority approach, but only for trusts created after its effective date. This Code presumes revocability when the instrument is silent because the instrument was likely drafted by a nonprofessional, who intended the trust as a will substitute. The most recent revision of the Restatement of Trusts similarly reverses the former approach. A trust is presumed revocable if the settlor has retained a beneficial interest. *See* Restatement (Third) of Trusts Section 63 cmt. c (Tentative Draft No. 3, approved 2001). Because professional drafters habitually spell out whether or not a trust is revocable, subsection (a) will have limited application.

A power of revocation includes the power to amend. An unrestricted power to amend may also include the power to revoke a trust. *See* Restatement (Third) of Trusts Section 63 cmt. g (Tentative Draft No. 3, approved 2001); Restatement (Second) of Trusts Section 331 cmt. g & h (1959).

Subsection (b), which is similar to Restatement (Third) of Trusts Section 63 cmt. k (Tentative Draft No. 3, approved 2001), provides default rules for revocation or amendment of a trust having several settlors. The settlor's authority to revoke or modify the trust depends on whether the trust contains community property. To the extent the trust contains community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses. The purpose of this provision, and the reason for the use of joint trusts in community property states, is to preserve the community character of property transferred to the trust. While community property does not prevail in a majority of states, contributions of community property to trusts created in noncommunity property states does occur. This is due to the mobility of settlors, and the fact that community property retains its community character when a couple moves from a community to a noncommunity state. For this reason, subsection (b), and its provision on contributions of community property, should be enacted in all states, whether community or noncommunity.

With respect to separate property contributed to the trust, or all property of the trust if none of the trust property consists of community property, subsection (b) provides that each settlor may revoke or amend the trust as to the portion of the trust contributed by that settlor. The inclusion of a rule for contributions of separate property does not mean that the use of joint trusts should be encouraged. The rule is included because of the widespread use of joint trusts in noncommunity property states in recent years. Due to the desire to preserve the community character of trust property, joint trusts are a necessity in

community property states. Unless community property will be contributed to the trust, no similarly important reason exists for the creation of a joint trust in a noncommunity property state. Joint trusts are often poorly drafted, confusing the dispositive provisions of the respective settlors. Their use can also lead to unintended tax consequences. *See* Melinda S. Merk, *Joint Revocable Trusts for Married Couples Domiciled in Common-Law Property States*, 32 Real Prop. Prob. & Tr. J. 345 (1997).

Subsection (b) does not address the many technical issues that can arise in determining the settlors' proportionate contribution to a joint trust. Most problematic are contributions of jointly-owned property. In the case of joint tenancies in real estate, each spouse would presumably be treated as having made an equal contribution because of the right to sever the interest and convert it into a tenancy in common. This is in contrast to joint accounts in financial institutions, ownership of which in most states is based not on fractional interest but on actual dollar contribution. *See*, *e.g.*, Unif. Probate Code Section 6-211. Most difficult may be determining a contribution rule for entireties property. In *Holdener v. Fieser*, 971 S.W. 2d 946 (Mo. Ct. App. 1998), the court held that a surviving spouse could revoke the trust with respect to the entire interest but did not express a view as to revocation rights while both spouses were living.

Subsection (b)(3) requires that the other settlor or settlors be notified if a joint trust is revoked by less than all of the settlors. Notifying the other settlor or settlors of the revocation or amendment will place them in a better position to protect their interests. If the revocation or amendment by less than all of the settlors breaches an implied agreement not to revoke or amend the trust, those harmed by the action can sue for breach of contract. If the trustee fails to notify the other settlor or settlors of the revocation or amendment, the parties aggrieved by the trustee's failure can sue the trustee for breach of trust.

Subsection (c), which is similar to Restatement (Third) of Trusts Section 63 cmt. h & i (Tentative Draft No. 3, approved 2001), specifies the method of revocation and amendment. Revocation of a trust differs fundamentally from revocation of a will. Revocation of a will, because a will is not effective until death, cannot affect an existing fiduciary relationship. With a trust, however, because a revocation will terminate an already existing fiduciary relationship, there is a need to protect a trustee who might act without knowledge that the trust has been revoked. There is also a need to protect trustees against the risk that they will misperceive the settlor's intent and mistakenly assume that an informal document or communication constitutes a revocation

when that was not in fact the settlor's intent. To protect trustees against these risks, drafters habitually insert provisions providing that a revocable trust may be revoked only by delivery to the trustee of a formal revoking document. Some courts require strict compliance with the stated formalities. Other courts, recognizing that the formalities were inserted primarily for the trustee's and not the settlor's benefit, will accept other methods of revocation as long as the settlor's intent is clear. *See* Restatement (Third) of Trusts Section 63 Reporter's Notes to cmt. h-j (Tentative Draft No. 3, approved 2001).

This Code tries to effectuate the settlor's intent to the maximum extent possible while at the same time protecting a trustee against inadvertent liability. While notice to the trustee of a revocation is good practice, this section does not make the giving of such notice a prerequisite to a trust's revocation. To protect a trustee who has not been notified of a revocation or amendment, subsection (f) provides that a trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust, as unamended, was still in effect. However, to honor the settlor's intent, subsection (c) generally honors a settlor's clear expression of intent even if inconsistent with stated formalities in the terms of the trust.

Under subsection (c), the settlor may revoke or amend a revocable trust by substantial compliance with the method specified in the terms of the trust or by a later will or codicil or any other method manifesting clear and convincing evidence of the settlor's intent. Only if the method specified in the terms of the trust is made exclusive is use of the other methods prohibited. Even then, a failure to comply with a technical requirement, such as required notarization, may be excused as long as compliance with the method specified in the terms of the trust is otherwise substantial.

While revocation of a trust will ordinarily continue to be accomplished by signing and delivering a written document to the trustee, other methods, such as a physical act or an oral statement coupled with a withdrawal of the property, might also demonstrate the necessary intent. These less formal methods, because they provide less reliable indicia of intent, will often be insufficient, however. The method specified in the terms of the trust is a reliable safe harbor and should be followed whenever possible.

Revocation or amendment by will is mentioned in subsection (c) not to encourage the practice but to make clear that it is not precluded by omission. *See* Restatement (Third) of Property: Will and Other

Donative Transfers Section 7.2 cmt. e (Tentative Draft No. 3, approved 2001), which validates revocation or amendment of will substitutes by later will. Situations do arise, particularly in death-bed cases, where revocation by will may be the only practicable method. In such cases, a will, a solemn document executed with a high level of formality, may be the most reliable method for expressing intent. A revocation in a will ordinarily becomes effective only upon probate of the will following the testator's death. For the cases, see Restatement (Third) of Trusts Section 63 Reporter's Notes to cmt. h-i (Tentative Draft No. 3, approved 2001).

A residuary clause in a will disposing of the estate differently than the trust is alone insufficient to revoke or amend a trust. The provision in the will must either be express or the will must dispose of specific assets contrary to the terms of the trust. The substantial body of law on revocation of Totten trusts by will offers helpful guidance. The authority is collected in William H. Danne, Jr., *Revocation of Tentative ("Totten") Trust of Savings Bank Account by Inter Vivos Declaration or Will*, 46 A.L.R. 3d 487 (1972).

Subsection (c) does not require that a trustee concur in the revocation or amendment of a trust. Such a concurrence would be necessary only if required by the terms of the trust. If the trustee concludes that an amendment unacceptably changes the trustee's duties, the trustee may resign as provided in Section 62-7-705.

As to SCTC Section 62-7-602(c), although prior South Carolina case law required strict compliance with method of revocation provided by the terms of the trust, the courts would recognize a valid revocation as long as it was clear that the settlor had exercised every right within his power to revoke the trust and if notice requirements which were strictly for the benefit of the trustee were waived by the trustee. Peoples National Bank of Greenville v. Peden et al., 229 S.C. 167, 92 S.E. 2d 163 (S.C. 1956). SCTC subsection (c)(2) differs from the UTC version by requiring a writing to revoke or amend a trust unless the trust was created orally.

Under prior South Carolina case law, if the power to revoke was not expressly reserved in a trust, the terms of a later will could not control the disposition of property under a previously executed trust document. Bonney v. Granger, et al., 292 S.C. 308, 356 S.E. 2d 138 (S.C. Ct. App. 1987). If the right to revoke was reserved and no particular method of revocation was specified, a revocable trust could be revoked by a testamentary devise of the corpus of the trust. Whether a will impliedly revoked a revocable trust was a question of intention. Peoples National Bank of Greenville v. Peden et al., 229 S.C. 167, 92

S.E. 2d 163 (S.C. 1956), citing to 54 Am Jur. Section 77. A residuary clause was insufficient to revoke or amend a trust. First Carolinas Joint Stock Land Bank v. Deschamps, et al., 171 S.C. 466, 172 S.E. 622 (S.C.1934).

See SCTC Section 62-7-401, which requires a writing for the creation of self-trusteed declarations of trust.

Subsection (d), providing that upon revocation the trust property is to be distributed as the settlor directs, codifies a provision commonly included in revocable trust instruments. Prior South Carolina case law required a trustee upon termination of a trust to distribute the assets to the beneficiaries or to their nominee. Beaty Trust Co. v. S. C. Tax Com., 278 S.C. 113, 292 S.E. 2d 788 (S.C. 1982). There was no prior South Carolina law that addressed the responsibility of the trustee in regard to a revocable trust.

A settlor's power to revoke is not terminated by the settlor's incapacity. The power to revoke may instead be exercised by an agent in accordance with Section 62-7-602.1.

Subsection (f) addresses the authority of a conservator or guardian to revoke or amend a revocable trust. Under the South Carolina Trust Code, a "conservator" is appointed by the court to manage the ward's party, a "guardian" to make decisions with respect to the ward's personal affairs. *See* Section 62-7-103. Consequently, subsection (f) authorizes a guardian to exercise a settlor's power to revoke or amend a trust only if a conservator has not been appointed.

In South Carolina, the probate court, acting through a conservator, exercises control over the estate and affairs of an incapacitated person in regard to trusts. Acting through the conservator, the court may create, amend or fund, but not revoke (unless amendment could be construed so broadly as to constitute a right to revoke), a revocable trust. In exercising these powers, the court must consider the estate plan and the terms of any revocable trust of which the incapacitated person is settlor.

If a conservator has not been appointed, subsection (f) authorizes a guardian to exercise a settlor's power to revoke or amend the trust upon approval of the court supervising the guardianship. The court supervising the guardianship will need to determine whether it can grant a guardian authority to revoke a revocable trust under local law or whether it will be necessary to appoint a conservator for that purpose.

Section 62-7-602A. (a) An agent acting pursuant to a power of attorney may exercise the following powers of the settlor with respect

to a revocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

(1) revocation of the trust;

(2) amendment of the trust;

(3) additions to the trust;

(4) direction to dispose of property of the trust;

(5) creation of the trust, notwithstanding the provisions of Section 62-7-402(a)(1) and (2).

(b) An agent acting pursuant to a power of attorney may exercise the following powers of the settlor with respect to an irrevocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

(1) additions to the trust;

(2) creation of the trust, notwithstanding the provisions of Section 62-7-402(a)(1) and (2).

(c) The exercise of the powers described in subsection (a) and (b) shall not alter the amount of property beneficiaries are to receive on the settlor's death under the settlor's existing will or other estate planning documents or in the absence thereof in accordance with the law of intestate succession.

REPORTER'S COMMENT

This section replaces former SCTC Section 62-7-602(e) and expands agent powers with respect to a revocable trust.

Subsection (a) expands the powers found in the Uniform Trust Code and former Section 62-7-602(e) which authorized an agent under a power of attorney to revoke, amend, or distribute property from a revocable trust of the principal. Subsection (a) adds to these powers the authorization of an agent of the settlor to create or add to a revocable trust. Subsection (b) revises the limitations of the former Section 62-7-602(e) that prohibited an agent from deviating from the settlor's estate plan by stating that there shall be no deviation in regard to the amount of property beneficiaries are to receive from the settlor's will or in the absence thereof from the law of intestate succession.

Section 62-7-603. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

REPORTER'S COMMENT

This section has the effect of postponing enforcement of the rights of the beneficiaries of a revocable trust until the death of the settlor or

other person holding the power to revoke the trust. This section thus recognizes that the settlor of a revocable trust is in control of the trust and should have the right to enforce the trust.

Pursuant to this section, the duty under Section 62-7-813 to inform and report to beneficiaries is owed to the settlor of a revocable trust as long as the settlor has capacity.

The beneficiaries are entitled to request information concerning the trust and the trustee must provide the beneficiaries with annual trustee reports and whatever other information may be required under Section 62-7-813. However, because this section may be freely overridden in the terms of the trust, a settlor is free to deny the beneficiaries these rights, even to the point of directing the trustee not to inform them of the existence of the trust. Also, should an incapacitated settlor later regain capacity, the beneficiaries' rights will again be subject to the settlor's control. The cessation of the settlor's control upon the settlor's incapacity or death does not mean that the beneficiaries may reopen transactions the settlor approved while having capacity.

Typically, the settlor of a revocable trust will also be the sole or primary beneficiary of the trust. Upon the settlor's incapacity, any right of action the settlor-trustee may have against the trustee for breach of fiduciary duty will pass to the settlor's agent or conservator.

Prior South Carolina law addressed the trustee's duty of loyalty to the beneficiaries of the trust. See e.g., Ramage v. Ramage, 283 S.C. 239, 322 S.E. 2d 22 (S.C. Ct. App. 1984). SCTC Section 62-7-603 omits the language found in the UTC 2004 Amendments expressly providing that a trust is revocable only while the settlor has the capacity to revoke.

Section 62-7-604. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) one year after the settlor's death; or

(2) one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within one hundred twenty days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

REPORTER'S COMMENT

This section provides finality to the question of when a contest of a revocable trust may be brought. The section is designed to allow an adequate time in which to bring a contest while at the same time permitting the expeditious distribution of the trust property following the settlor's death.

A trust can be contested on a variety of grounds. For example, the contestant may allege that no trust was created due to lack of intent to create a trust or lack of capacity (*see* Section 62-7-402), that undue influence, duress, or fraud was involved in the trust's creation (*see* Section 62-7-406), or that the trust had been revoked or modified (*see* Section 62-7-602). A "contest" is an action to invalidate all or part of the terms of the trust or of property transfers to the trustee. An action against a beneficiary or other person for intentional interference with an inheritance or gift, not being a contest, is not subject to this section. For the law on intentional interference, see Restatement (Second) of Torts Section 774B (1979). Nor does this section preclude an action to determine the validity of a trust that is brought during the settlor's lifetime, such as a petition for a declaratory judgment, if such action is authorized by other law. *See* Section 62-7-106 (SCTC supplemented by common law of trusts and principles of equity).

This section applies only to a revocable trust that becomes irrevocable by reason of the settlor's death. A trust that became irrevocable by reason of the settlor's lifetime release of the power to revoke is outside its scope. A revocable trust does not become irrevocable upon a settlor's loss of capacity. Pursuant to Section 62-7-602 and 62-7-602.1, the power to revoke may be exercised by the settlor's agent, conservator, or guardian, or personally by the settlor if the settlor regains capacity.

Subsection (a) specifies a time limit on when a contest can be brought. A contest is barred upon the first to occur of two possible events. The maximum possible time for bringing a contest is one year from the settlor's death. This should provide potential contestants with ample time in which to determine whether they have an interest that will be affected by the trust, even if formal notice of the trust is

lacking. The one-year period is derived from Section 62-3-108, under which the contest of an informally probate will must occur by the later of one year from death or eight months after informal probate

A trustee who wishes to shorten the contest period may do so by giving notice. Subsection (a)(2) bars a contest by a potential contestant 120 days after the date the trustee sent that person a copy of the trust instrument and informed the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a contest. The 120 day period in subsection (a)(2) is subordinate to the one-year bar in subsection (a)(1). A contest is automatically barred one year after the settlor's death even if notice is sent by the trustee less than 120 days prior to the end of that period.

Because only a small minority of trusts are actually contested, trustees should not be restrained from making distributions because of concern about possible liability should a contest later be filed. Absent a protective statute, a trustee is ordinarily absolutely liable for misdelivery of the trust assets, even if the trustee reasonably believed that the distribution was proper. *See* Restatement (Second) of Trusts Section 226 (1959). Subsection (b) addresses liability concerns by allowing the trustee, upon the settlor's death, to proceed expeditiously to distribute the trust property. The trustee may distribute the trust property in accordance with the terms of the trust until and unless the trustee receives notice of a pending judicial proceeding contesting the validity of the trust, or until notified by a potential contestant of a possible contest, followed by its filing within 120 days.

Even though a distribution in compliance with subsection (b) discharges the trustee from potential liability, subsection (c) makes the beneficiaries of what later turns out to have been an invalid trust liable to return any distribution received. Issues as to whether the distribution must be returned with interest, or with income earned or profit made are not addressed in this section but are left to the law of restitution.

For purposes of notices under this section, the substitute representation principles of Part 3 are applicable. The notice by the trustee under subsection (a)(2) or by a potential contestant under subsection (b)(2) must be given in a manner reasonably suitable under the circumstances and likely to result in its receipt. *See* Section 62-7-109(a).

This section does not address possible liability for the debts of the deceased settlor or a trustee's possible liability to creditors for distributing trust assets. For possible liability of the trust, see Section 62-7-505(a)(3) and Comment

For statutory limitations periods applicable to wills, see South Carolina Probate Code Section 62-3-108.

For statutory limitations periods applicable to claims of beneficiaries against the trustee, see SCTC Section 62-7-1005.

Section 62-7-605. A provision in a revocable trust purporting to penalize any interested person for contesting the validity of the trust or instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting proceedings.

REPORTER'S COMMENT
This Section is analogous to South Code Probate Code Section 62-3-905, which is applicable to wills.

Section 62-7-606. (A) Unless the trust expressly provides otherwise, if the beneficiary under a revocable trust, who is a great-grandparent or a lineal descendant of a great-grandparent of the settlor, is dead at the time of execution of the trust, fails to survive the settlor, or is treated as if he predeceased the settlor, the issue of the deceased beneficiary who survived the settlor take in place of the deceased beneficiary and if they are all of the same degree of kinship to the beneficiary they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a beneficiary under a class gift if he had survived the settlor is treated as a beneficiary for purposes of this section whether his death occurred before or after the execution of the trust.

(B) Except as provided in subsection (A), if the disposition of any real or personal property under a revocable trust fails for any reason, this property becomes a part of the residue of the trust.

(C) Except as provided in subsection (A), if the residue under a revocable trust is distributed to two or more persons and the share of one of the residuary beneficiaries fails for any reason, his share passes to the other residuary beneficiary or to other residuary beneficiaries in proportion to their interests in the residue.

REPORTER'S COMMENT
This Section retains and incorporates former South Carolina Probate Code Section 62-7-113 (except for the deletion of the words "inter vivos" when used to describe the trust and the addition of the introductory "Unless the trust expressly provides otherwise") and is analogous to SCPC Section 62-2-603 applicable to wills.

Section 62-7-607. If after executing a revocable trust the settlor is divorced or the marriage annulled or the spouse is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses, the divorce or annulment or order revokes any disposition or appointment of property including beneficial interests made by such trust to the spouse, any provision conferring a general or special power of appointment on the spouse, and any nomination of the spouse as trustee, unless the trust expressly provides otherwise. Property prevented from passing to a spouse because of revocation by divorce or annulment or order passes as if the spouse failed to survive the settlor, and other provisions conferring some power or office on this spouse are interpreted as if the spouse failed to survive the settlor. If these provisions for the spouse are revoked solely by this section, they are revived by the settlor's remarriage to the former spouse. For purposes of this section, divorce or annulment or order means any divorce or annulment or order which would exclude the spouse as a surviving spouse within the meaning of subsections (a) and (b) of Section 62-2-802. A decree of separate maintenance which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of marital circumstances other than as described in this section revokes a disposition to a spouse in a revocable trust.

REPORTER'S COMMENT
This Section retains and incorporates South Carolina Probate Code Section 62-7-114 (except for the deletion of the words "inter vivos" when used to describe the trust) and is consistent with SCPC Section 62-2-507.

Part 7

Office of Trustee

GENERAL COMMENT
This article contains a series of default rules dealing with the office of trustee. Sections 62-7-701 and 62-7-702 address the process for getting a trustee into office, including the procedures for indicating an acceptance and whether bond will be required. Section 62-7-703 addresses cotrustees, permitting the cotrustees to act by majority action and specifying the extent to which one trustee may delegate to another. Sections 62-7-704 through 62-7-707 address changes in the office of trustee, specifying the circumstances when a vacancy must be filled,

the procedure for resignation, the grounds for removal, and the process for appointing a successor. Sections 62-7-708 and 62-7-709 prescribe the standards for determining trustee compensation and reimbursement for expenses advanced.

Except for the court's authority to order bond, all of the provisions of this article are subject to modification in the terms of the trust. *See* Section 62-7-105.

Section 62-7-701. (a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

REPORTER'S COMMENT

This section, which specifies the requirements for a valid acceptance of the trusteeship, implicates many of the same issues that arise in determining whether a trust has been revoked. Consequently, the two provisions track each other closely. *Compare* Section 62-7-701(a), *with* Section 62-7-602(c) (procedure for revoking or modifying trust). Procedures specified in the terms of the trust are recognized, but only substantial, not literal compliance is required. A failure to meet technical requirements, such as notarization of the trustee's signature, does not result in a failure to accept. Ordinarily, the trustee will indicate acceptance by signing the trust instrument or signing a separate written instrument. However, this section validates any other method demonstrating the necessary intent, such as by knowingly

exercising trustee powers, unless the terms of the trust make the specified method exclusive. This section also does not preclude an acceptance by estoppel. For general background on issues relating to trustee acceptance and rejection, see Restatement (Third) of Trusts Section 35 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 102 (1959). Consistent with Section 62-7-201(b), which emphasizes that continuing judicial supervision of a trust is the rare exception, not the rule, the SCTC does not require that a trustee qualify in court.

To avoid the inaction that can result if the person designated as trustee fails to communicate a decision either to accept or to reject the trusteeship, subsection (b) provides that a failure to accept within a reasonable time constitutes a rejection of the trusteeship. What will constitute a reasonable time depends on the facts and circumstances of the particular case. A major consideration is possible harm that might occur if a vacancy in a trusteeship is not filled in a timely manner. A trustee's rejection normally precludes a later acceptance but does not cause the trust to fail. *See* Restatement (Third) of Trusts Section 35 cmt. c (Tentative Draft No. 2, approved 1999). Regarding the filling of a vacancy in the event of a rejection, see Section 62-7-704.

A person designated as trustee who decides not to accept the trusteeship need not provide a formal rejection, but a clear and early communication is recommended. The appropriate recipient of the rejection depends upon the circumstances. Ordinarily, it would be appropriate to communicate the rejection to the person who informed the designee of the proposed trusteeship. If judicial proceedings involving the trust are pending, the rejection could be filed with the court. In the case of a person named as trustee of a revocable trust, it would be appropriate to communicate the rejection to the settlor. In any event, it would be best to inform a beneficiary with a significant interest in the trust because that beneficiary might be more motivated than others to seek appointment of a new trustee.

Subsection (c)(1) makes clear that a nominated trustee may act expeditiously to protect the trust property without being considered to have accepted the trusteeship. However, upon conclusion of the intervention, the nominated trustee must send a rejection of office to the settlor, if living and competent, otherwise to a qualified beneficiary.

Because of the potential liability that can inhere in trusteeship, subsection (c)(2) allows a person designated as trustee to inspect the trust property without accepting the trusteeship. The condition of real property is a particular concern, including possible tort liability for the condition of the premises or liability for violation of state or federal

environmental laws such as CERCLA, 42 U.S.C. Section 9607. For a provision limiting a trustee's personal liability for obligations arising from ownership or control of trust property, see Section 62-7-1010(b).

South Carolina had no prior statutory counterpart. Generally, at common law, "in an express trust, a trustee must agree to serve as trustee because of the attendant duties and potential liability." S. Alan Medlin, The Law of Wills and Trusts, Vol. 1, Estate Planning in South Carolina (2002) at Section 502, citing Anderson v. Earle, 9 S.C. 460 (S.C. 1878).

Section 62-7-702. (a) A trustee shall provide bond to secure the performance of the trustee's duties if:

(1) the terms of the governing instrument require the trustee to provide bond;

(2) a beneficiary requests the trustee to provide bond and the court finds the request to be reasonable; or

(3) the court finds that it is necessary for the trustee to provide bond in order to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

However, in no event shall bond be required of a trustee, including a trustee appointed by the court, if the governing instrument directs otherwise. On petition of the trustee or other interested person, the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties.

(b) If bond is required, it shall be filed in the court in the place in which the trust has its principal place of administration in amounts and with sureties and liabilities consistent with the requirements of South Carolina Code Sections 62-3-604 relating to bonds of personal representatives.

REPORTER'S COMMENT

South Carolina Trust Code Section 62-7-702 differs significantly from the Uniform Trust Code version of Section 702. SCTC Section 62-7-702 is in accord with former South Carolina Probate Code Section 62-7-304, providing that a trustee will not normally be required to post bond.

Section 62-7-703. (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

REPORTER'S COMMENT

This section contains most but not all of the Code's provisions on cotrustees. Other provisions relevant to cotrustees include Sections 62-7-704 (vacancy in trusteeship need not be filled if cotrustee remains in office), 62-7-705 (notice of resignation must be given to cotrustee), 62-7-706 (lack of cooperation among cotrustees as ground for removal), 62-7-707 (obligations of resigning or removed trustee), 62-7-813 (reporting requirements upon vacancy in trusteeship), and 62-7-1013 (authority of cotrustees to authenticate documents.

Cotrustees are appointed for a variety of reasons. Having multiple decision-makers serves as a safeguard against eccentricity or misconduct. Cotrustees are often appointed to gain the advantage of differing skills, perhaps a financial institution for its permanence and professional skills, and a family member to maintain a personal connection with the beneficiaries. On other occasions, cotrustees are

appointed to make certain that all family lines are represented in the trust's management.

Cotrusteeship should not be called for without careful reflection. Division of responsibility among cotrustees is often confused, the accountability of any individual trustee is uncertain, obtaining consent of all trustees can be burdensome, and, unless an odd number of trustees is named, deadlocks requiring court resolution can occur. Potential problems can be reduced by addressing division of responsibilities in the terms of the trust. Like the other sections of this article, this section is freely subject to modification in the terms of the trust. *See* Section 62-7-105.

Much of this section is based on comparable provisions of the Restatement of Trusts, although with extensive modifications. Reference should also be made to ERISA Section 405 (29 U.S.C. Section 1105), which in recent years has been the statutory base for the most significant case law on the powers and duties of cotrustees.

Subsection (a) is in accord with Restatement (Third) of Trusts Section 39 (Tentative Draft No. 2, approved 1999), which rejects the common law rule, followed in earlier Restatements, requiring unanimity among the trustees of a private trust. *See* Restatement (Second) of Trusts Section 194 (1959). This section is consistent with the prior Restatement rule applicable to charitable trusts, which allowed for action by a majority of trustees. *See* Restatement (Second) of Trusts Section 383 (1959). Under subsection (b), a majority of the remaining trustees may act for the trust when a vacancy occurs in a cotrusteeship. Section 62-7-704 provides that a vacancy in a cotrusteeship need be filled only if there is no trustee remaining in office.

Subsections (b) and (d) provide for the proper administration of the trust in the event a cotrustee is unavailable or temporarily incapacitated. Subsection (c) compels a cotrustee to participate in the trustee's function or delegate such a duty unless excused by "absence, illness, disqualification under the law, or other temporary incapacity." Other laws under which a cotrustee might be disqualified include federal securities law and the ERISA prohibited transactions rules.

Subsection (e) addresses the extent to which a trustee may delegate the performance of functions to a cotrustee. The standard differs from the standard for delegation to an agent as provided in Section 62-7-807 because the two situations are different. Section 62-7-807, which is identical to Section 9 of the Uniform Prudent Investor Act, recognizes that many trustees are not professionals. Consequently, trustees should be encouraged to delegate functions they are not competent to perform.

Subsection (e) is premised on the assumption that the settlor selected cotrustees for a specific reason and that this reason ought to control the scope of a permitted delegation to a cotrustee. Subsection (e) prohibits a trustee from delegating to another trustee functions the settlor reasonably expected the trustees to perform jointly. The exact extent to which a trustee may delegate functions to another trustee in a particular case will vary depending on the reasons the settlor decided to appoint cotrustees. The better practice is to address the division of functions in the terms of the trust, as allowed by Section 62-7-105. Subsection (e) is based on language derived from Restatement (Second) of Trusts Section 171 (1959). This section of the Restatement Second, which applied to delegations to both agents and cotrustees, was superseded, as to delegation to agents, by Restatement (Third) of Trusts: Prudent Investor Rule Section 171 (1992).

By permitting the trustees to act by a majority, this section contemplates that there may be a trustee or trustees who might dissent. The safeguard for a dissenting cotrustee is sprinkled throughout subsections (f), (g) and (h), Subsection (f) provides for a limitation on liability for a non-joining co-trustee, but that limitation on liability is tempered in subsection (g) by providing that a trustee must exercise "reasonable care". Under subsection (g), a trustee may not passively dissent to an improper action by a cotrustee. Subsection (h) protects a dissenting cotrustee who joins in an action at the direction of the majority and notifies any cotrustee of his dissent. Subsection (h) does not require the dissent to be in writing. Further, under subsections (g) and (h) together, a cotrustee cannot dissent and thereafter remain passive for actions by the majority of cotrustees amounting to a "serious breach of trust." The dissenting trustee must exercise "reasonable care" to correct the conduct of the cotrustee(s). The responsibility to take action against a breaching cotrustee codifies the substance of Sections 184 and 224 of the Restatement (Second) of Trusts (1959).

Section 62-7-704. (a) A vacancy in a trusteeship occurs if:

(1) a person designated as trustee rejects the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General concurs in the selection; or

(3) by a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust. The procedure for such appointment and the notice requirement shall be the same as set forth for special administrators under South Carolina Code Section 62-3-614.

REPORTER'S COMMENT

This section provides a definition for a vacancy in a trusteeship and the procedure for appointment of a successor trustee if no provisions for dealing with these matters are set forth in the trust. *See also* Sections 62-7-701 (accepting or declining trusteeship), 62-7-705 (resignation), and 62-7-706 (removal). Good drafting practice suggests that the terms of the trust deal expressly with the problem of vacancies, naming successors and specifying the procedure for filling vacancies. This section applies only if the terms of the trust fail to specify a procedure.

Subsection (a) provides a list of matters causing a vacancy in trusteeship. The disqualification of a trustee referred to in subsection (a)(4) would include a financial institution whose right to engage in trust business has been revoked or removed. Such disqualification might also occur if the trust's principal place of administration is transferred to a jurisdiction in which the trustee, whether an individual or institution, is not qualified to act.

Subsection (b) grants authority to the remaining trustee(s) for the administration of the trust following a vacancy. If a vacancy in the cotrusteeship is not filled, Section 62-7-703 authorizes the remaining cotrustees to continue to administer the trust. However, as provided in subsection (e), the court, exercising its inherent equity authority, may always appoint additional trustees if the appointment would promote better administration of the trust. *See* Restatement (Third) of Trusts Section 34 cmt. a (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 108 cmt. a (1959).

Subsection (c) provides a procedure for filling a vacancy in trusteeship if such a vacancy is required to be filled. Vacancies in this context could arise when the sole remaining trustee no longer is available to serve or the trust requires cotrustees and only one is named in the trust. Subsection (c) provides priority of succession of trustees in a non-charitable trust. Absent an effective provision in the terms of the trust, subsection (c)(2) permits a vacancy in the trusteeship to be filled, without the need for court approval, by a person selected by unanimous agreement of the qualified beneficiaries. An effective provision in the terms of the trust for the designation of a successor trustee includes a procedure under which the successor trustee is selected by a person designated in those terms. Pursuant to Section 62-7-705(a)(1), the qualified beneficiaries may also receive the trustee's resignation. If a trustee resigns following notice as provided in Section 62-7-705, the trust may be transferred to a successor appointed pursuant to subsection (c)(2) of this section, all without court involvement. A nonqualified beneficiary who is displeased with the choice of the qualified beneficiaries may petition the court for removal of the trustee under Section 62-7-706.

If the qualified beneficiaries fail to make an appointment, subsection (c)(3) authorizes the court to fill the vacancy. In making the appointment, the court should consider the objectives and probable intention of the settlor, the promotion of the proper administration of the trust, and the interests and wishes of the beneficiaries. *See* Restatement (Third) of Trusts Section 34 cmt. f (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 108 cmt. d (1959).

Subsection (d) provides for priority of succession in a charitable trust. These sections provide a method for the vacancy to be filled without court approval. Subsection (d) includes the language added by the 2004 Amendments to the UTC, dealing with the concurrence of the Attorney General. If the attorney general does not concur in the selection, however, or if the trust does not designate a charitable

organization to receive distributions, the vacancy may be filled only by the court.

Subsection (e) provides for a court appointed special trustee or "special fiduciary" if necessary for the "administration of the trust." The provisions of subsection (e) are unqualified and provide "whether or not a vacancy in a trusteeship exists or is required to be filled" the court has authority to appoint such an additional trustee. Such a trustee would have the authority provided by the court in its order of appointment. If the order of appointment contains no limitations, the additional trustee would succeed to the full powers of a trustee under the trust.

In the case of a revocable trust, the appointment of a successor will normally be made directly by the settlor. As to the duties of a successor trustee with respect to the actions of a predecessor, see Section 62-7-812.

Section 62-7-705. (a) A trustee may resign:

(1) upon at least 30 days notice in writing to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) with the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

REPORTER'S COMMENT

This section rejects the common law rule that a trustee may resign only with permission of the court, and goes further than the Restatements, which allow a trustee to resign with the consent of the beneficiaries. *See* Restatement (Third) of Trusts Section 36 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 106 (1959). Concluding that the default rule ought to approximate standard drafting practice, the drafting committee provided in subsection (a) that a trustee may resign by giving notice to the qualified beneficiaries, a living settlor, and any cotrustee. A resigning trustee may also follow the traditional method and resign with approval of the court.

Restatement (Third) of Trusts Section 36 cmt. d (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 106 cmt. b (1959), provide, similar to subsection (c), that a resignation does not release the resigning trustee from potential liabilities for acts or

omissions while in office. The act of resignation can give rise to liability if the trustee resigns for the purpose of facilitating a breach of trust by a cotrustee. *See Ream v. Frey*, 107 F.3d 147 (3rd Cir. 1997).

Regarding the residual responsibilities of a resigning trustee until the trust property is delivered to a successor trustee, see Section 62-7-707.

In the case of a revocable trust, because the rights of the qualified beneficiaries are subject to the settlor's control (*see* Section 62-7-603), resignation of the trustee is accomplished by giving notice to the settlor instead of the beneficiaries.

Section 62-7-705(a)(1) adds to the Uniform Trust Code version of Section 705 the words "in writing" after "notice" for clarification, as a writing is the reasonable and customary choice for notification.

This Section incorporates some of the provisions of former South Carolina Probate Code Section 62-7-705, except that this Section introduces a thirty (30) day written notice provision for resignation. The former South Carolina statute allowed the Trustee to resign if the document so provided, all beneficiaries consented, or the court approved the resignation. Subsection (c) makes clear that a mere resignation does not terminate a trustee's liability.

Section 62-7-706. (a) For the reasons set forth in subsection (b), the settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 62-7-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

REPORTER'S COMMENT

This section sets forth the grounds for removal of a trustee.

Subsection (a), contrary to the common law, grants the settlor of The right to petition for removal does not give the settlor of an irrevocable trust any other rights, such as the right to an annual report or to receive other information concerning administration of the trust. The right of a beneficiary to petition for removal does not apply to a revocable trust while the settlor has capacity. Pursuant to Section 62-7-603(a), while a trust is revocable and the settlor has capacity, the rights of the beneficiaries are subject to the settlor's exclusive control.

For clarification, Section 62-7-706(a) adds to the Uniform Trust Code version the words "for the reasons set forth in subsection (b)." The UTC Comment makes clear that a beneficiary's rights under a revocable trust are subject to those of the settlor.

Trustee removal may be regulated by the terms of the trust. *See* Section 62-7-105. In fashioning a removal provision for an irrevocable trust, the drafter should be cognizant of the danger that the trust may be included in the settlor's federal gross estate if the settlor retains the power to be appointed as trustee or to appoint someone who is not independent. See Rev. Rul. 95-58, 1995-2 C.B. 191.

Subsection (b) lists the grounds for removal of the trustee. The grounds for removal are similar to those found in Restatement (Third) of Trusts Section 37 cmt. a (Tentative Draft No. 2, approved 1999). A trustee may be removed for untoward action, such as for a serious breach of trust, but the section is not so limited. A trustee may also be removed under a variety of circumstances in which the court concludes that the trustee is not best serving the interests of the beneficiaries. The term "interests of the beneficiaries" means the beneficial interests as provided in the terms of the trust, not as defined by the beneficiaries. *See* Section 62-7-103(7). Removal for conduct detrimental to the interests of the beneficiaries is a well-established standard for removal of a trustee. *See* Restatement (Third) of Trusts Section 37 cmt. d (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 107 cmt. a (1959).

Subsection (b)(1), consistent with Restatement (Third) of Trusts Section 37 cmt. a and g (Tentative Draft No. 2, approved 1999), makes clear that not every breach of trust justifies removal of the trustee. The breach must be "serious." A serious breach of trust may consist of a single act that causes significant harm or involves flagrant misconduct. A serious breach of trust may also consist of a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together. A particularly appropriate circumstance justifying removal of the trustee is a serious breach of the trustee's duty to keep the beneficiaries reasonably

informed of the administration of the trust or to comply with a beneficiary's request for information as required by Section 62-7-813. Failure to comply with this duty may make it impossible for the beneficiaries to protect their interests. It may also mask more serious violations by the trustee. "Serious breach of trust" is defined in SCTC Subsection 62-7-103(24).

The lack of cooperation among trustees justifying removal under subsection (b)(2) need not involve a breach of trust. The key factor is whether the administration of the trust is significantly impaired by the trustees' failure to agree. Removal is particularly appropriate if the naming of an even number of trustees, combined with their failure to agree, has resulted in deadlock requiring court resolution. The court may remove one or more or all of the trustees. If a cotrustee remains in office following the removal, under Section 62-7-704 appointment of a successor trustee is not required.

Subsection (b)(2) deals only with lack of cooperation among cotrustees, not with friction between the trustee and beneficiaries. Friction between the trustee and beneficiaries is ordinarily not a basis for removal. However, removal might be justified if a communications breakdown is caused by the trustee or appears to be incurable. See Restatement (Third) of Trusts Section 37 cmt. a (Tentative Draft No. 2, approved 1999).

Subsection (b)(3) authorizes removal for a variety of grounds, including unfitness, unwillingness, or persistent failure to administer the trust effectively. Removal in any of these cases is allowed only if it best serves the interests of the beneficiaries. For the definition of "interests of the beneficiaries," see Section 62-7-103(7). "Unfitness" may include not only mental incapacity but also lack of basic ability to administer the trust. Before removing a trustee for unfitness the court should consider the extent to which the problem might be cured by a delegation of functions the trustee is personally incapable of performing. "Unwillingness" includes not only cases where the trustee refuses to act but also a pattern of indifference to some or all of the beneficiaries. See Restatement (Third) of Trusts Section 37 cmt. a (Tentative Draft No. 2, approved 1999). A "persistent failure to administer the trust effectively" might include a long-term pattern of mediocre performance, such as consistently poor investment results when compared to comparable trusts.

It has traditionally been more difficult to remove a trustee named by the settlor than a trustee named by the court, particularly if the settlor at the time of the appointment was aware of the trustee's failings. *See* Restatement (Third) of Trusts Section 37 cmt. f (Tentative Draft No. 2,

approved 1999); Restatement (Second) of Trusts Section 107 cmt. f-g (1959). Because of the discretion normally granted to a trustee, the settlor's confidence in the judgment of the particular person whom the settlor selected to act as trustee is entitled to considerable weight. This deference to the settlor's choice can weaken or dissolve if a substantial change in the trustee's circumstances occurs. To honor a settlor's reasonable expectations, subsection (b)(4) lists a substantial change of circumstances as a possible basis for removal of the trustee. Changed circumstances justifying removal of a trustee might include a substantial change in the character of the service or location of the trustee. A corporate reorganization of an institutional trustee is not itself a change of circumstances if it does not affect the service provided the individual trust account. Before removing a trustee on account of changed circumstances, the court must also conclude that removal is not inconsistent with a material purpose of the trust, that it will best serve the interests of the beneficiaries, and that a suitable cotrustee or successor trustee is available.

Subsection (b)(4) also contains a specific but more limited application of Section 62-7-411. Section 62-7-411 allows the beneficiaries by unanimous agreement to compel modification of a trust if the court concludes that the particular modification is not inconsistent with a material purpose of the trust. Subsection (b)(4) of this section similarly allows the qualified beneficiaries to request removal of the trustee if the designation of the trustee was not a material purpose of the trust. Before removing the trustee the court must also find that removal will best serve the interests of the beneficiaries and that a suitable cotrustee or successor trustee is available.

Subsection (c) authorizes the court to intervene pending a final decision on a request to remove a trustee. Among the relief that the court may order under Section 62-7-1001(b) is an injunction prohibiting the trustee from performing certain acts and the appointment of a special fiduciary to perform some or all of the trustee's functions. Pursuant to Section 62-7-1004, the court may also award attorney's fees as justice and equity may require.

Section 62-7-707. (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

REPORTER'S COMMENT

This section addresses the continuing authority and duty of a resigning or removed trustee. This section is comparable to South Carolina Probate Code Sections 62-3-608 through 62-3-611 concerning the termination of a personal representative. Subject to the power of the court to make other arrangements or unless a cotrustee remains in office, a resigning or removed trustee has continuing authority until the trust property is delivered to a successor. If a cotrustee remains in office, there is no reason to grant a resigning or removed trustee any continuing authority, and none is granted under this section. In addition, if a cotrustee remains in office, the former trustee need not submit a final trustee's report. *See* Section 62-7-813(c).

There is ample authority in the SCTC for the appointment of a special fiduciary, an appointment which can avoid the need for a resigning or removed trustee to exercise residual powers until a successor can take office. *See* Sections 62-7-704(e) (court may appoint additional trustee or special fiduciary whenever court considers appointment necessary for administration of trust), 62-7-705(b) (in approving resignation, court may impose conditions necessary for protection of trust property), 62-7-706(c) (pending decision on petition for removal, court may order appropriate relief), and 62-7-1001(b)(5) (to remedy breach of trust, court may appoint special fiduciary as necessary to protect trust property or interests of beneficiary).

If the former trustee has died, the SCTC does not require that the trustee's personal representative wind up the deceased trustee's administration. Nor is a trustee's conservator or guardian required to complete the former trustee's administration if the trustee's authority terminated due to an adjudication of incapacity. However, to limit the former trustee's liability, the personal representative, conservator or guardian may submit a trustee's report on the former trustee's behalf as authorized by Section 62-7-813(c). Otherwise, the former trustee remains liable for actions taken during the trustee's term of office until liability is otherwise barred.

Section 62-7-708. (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

REPORTER'S COMMENT

This section incorporates and clarifies the provisions of current South Carolina law for determination of trustee fees. Former South Carolina Probate Code Section 62-7-205 required the trustee to return the excess part of any fee determined to be unreasonable by the court.

Subsection (a) establishes a standard of reasonable compensation. Relevant factors in determining this compensation, as specified in the Restatement, include the custom of the community; the trustee's skill, experience, and facilities; the time devoted to trust duties; the amount and character of the trust property; the degree of difficulty, responsibility and risk assumed in administering the trust, including in making discretionary distributions; the nature and costs of services rendered by others; and the quality of the trustee's performance. *See* Restatement (Third) of Trusts Section 38 cmt. c (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 242 cmt. b (1959).

In setting compensation, the services actually performed and responsibilities assumed by the trustee should be closely examined. A downward adjustment of fees may be appropriate if a trustee has delegated significant duties to agents, such as the delegation of investment authority to outside managers. *See* Section 62-7-807 (delegation by trustee). On the other hand, a trustee with special skills, such as those of a real estate agent, may be entitled to extra compensation for performing services that would ordinarily be delegated. *See* Restatement (Third) of Trusts Section 38 cmt. d (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 242 cmt. d (1959).

Because "trustee" as defined in Section 62-7-103(19) includes not only an individual trustee but also cotrustees, each trustee, including a cotrustee, is entitled to reasonable compensation under the circumstances. The fact that a trust has more than one trustee does not mean that the trustees together are entitled to more compensation than had either acted alone. Nor does the appointment of more than one trustee mean that the trustees are eligible to receive the compensation

in equal shares. The total amount of the compensation to be paid and how it will be divided depend on the totality of the circumstances. Factors to be considered include the settlor's reasons for naming more than one trustee and the level of responsibility assumed and exact services performed by each trustee. Often the fees of cotrustees will be in the aggregate higher than the fees for a single trustee because of the duty of each trustee to participate in administration and not delegate to a cotrustee duties the settlor expected the trustees to perform jointly. *See* Restatement (Third) of Trusts Section 38 cmt. i (Tentative Draft No. 2, approved 1999). The trust may benefit in such cases from the enhanced quality of decision-making resulting from the collective deliberations of the trustees.

Financial institution trustees normally base their fees on published fee schedules. Published fee schedules are subject to the same standard of reasonableness under the SCTC as are other methods for computing fees. The courts have generally upheld published fee schedules but this is not automatic. Among the more litigated topics is the issue of termination fees. Termination fees are charged upon termination of the trust and sometimes upon transfer of the trust to a successor trustee. Factors relevant to whether the fee is appropriate include the actual work performed; whether a termination fee was authorized in the terms of the trust; whether the fee schedule specified the circumstances in which a termination fee would be charged; whether the trustee's overall fees for administering the trust from the date of the trust's creation, including the termination fee, were reasonable; and the general practice in the community regarding termination fees. Because significantly less work is normally involved, termination fees are less appropriate upon transfer to a successor trustee than upon termination of the trust. For representative cases, see *Cleveland Trust Co. v. Wilmington Trust Co.*, 258 A.2d 58 (Del. 1969); *In re Trusts Under Will of Dwan*, 371 N.W. 2d 641 (Minn. Ct. App. 1985); *Mercer v. Merchants National Bank*, 298 A.2d 736 (N.H. 1972); *In re Estate of Payson*, 562 N.Y.S. 2d 329 (Surr. Ct. 1990); *In re Indenture Agreement of Lawson*, 607 A. 2d 803 (Pa. Super. Ct. 1992); *In re Estate of Ischy*, 415 A.2d 37 (Pa. 1980); *Memphis Memorial Park v. Planters National Bank*, 1986 Tenn. App. LEXIS 2978 (May 7, 1986); *In re Trust of Sensenbrenner,* 252 N.W. 2d 47 (Wis. 1977).

This Code does not take a specific position on whether dual fees may be charged when a trustee hires its own law firm to represent the trust. For a discussion, see Ronald C. Link, *Developments Regarding the Professional Responsibility of the Estate Administration Lawyer: The*

Effect of the Model Rules of Professional Conduct, 26 Real Prop. Prob. & Tr. J. 1, 22-38 (1991).

Subsection (b) permits the terms of the trust to override the reasonable compensation standard, subject to the court's inherent equity power to make adjustments downward or upward in appropriate circumstances. Compensation provisions should be drafted with care. Common questions include whether a provision in the terms of the trust setting the amount of the trustee's compensation is binding on a successor trustee, whether a dispositive provision for the trustee in the terms of the trust is in addition to or in lieu of the trustee's regular compensation, and whether a dispositive provision for the trustee is conditional on the person performing services as trustee. *See* Restatement (Third) of Trusts Section 38 cmt. a (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 242 cmt. f (1959).

Compensation may be set by agreement. A trustee may enter into an agreement with the beneficiaries for lesser or increased compensation, although an agreement increasing compensation is not binding on a nonconsenting beneficiary. *See* Section 62-7-111(b) (matters that may be the resolved by nonjudicial settlement). *See also* Restatement (Third) of Trusts Section 38 cmt. f (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 242 cmt. i (1959). A trustee may also agree to waive compensation and should do so prior to rendering significant services if concerned about possible gift and income taxation of the compensation accrued prior to the waiver. *See* Rev. Rul. 66-167, 1966-1 C.B. 20. *See also* Restatement (Third) of Trusts Section 38 cmt. g (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 242 cmt. j (1959).

Section 62-7-816(15) grants the trustee authority to fix and pay its compensation without the necessity of prior court review, subject to the right of a beneficiary to object to the compensation in a later judicial proceeding. Allowing the trustee to pay its compensation without prior court approval promotes efficient trust administration but does place a significant burden on a beneficiary who believes the compensation is unreasonable. To provide a beneficiary with time to take action, and because of the importance of trustee's fees to the beneficiaries' interests, Section 62-7-813(b)(4) requires a trustee to provide the qualified beneficiaries with advance notice of any change in the method or rate of the trustee's compensation. Failure to provide such advance notice constitutes a breach of trust, which, if sufficiently serious, would justify the trustee's removal under Section 62-7-706.

Under Sections 62-7-925 and 62-7-926 of the South Carolina Uniform Principal and Income Act, one-half of a trustee's regular compensation is charged to income and the other half to principal. Chargeable to principal are fees for acceptance, distribution, or termination of the trust, and fees charged on disbursements made to prepare property for sale.

Section 62-7-709. (a) A trustee is entitled to be reimbursed out of the trust property, with interest at the legal rate as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(c) A prospective trustee is entitled to be reimbursed from trust property for expenses reasonably incurred by the prospective trustee pursuant to Section 62-7-701(c) to protect or investigate the trust assets before deciding whether or not to accept the trusteeship.

REPORTER'S COMMENT

A trustee has the authority to expend trust funds as necessary in the administration of the trust, including expenses incurred in the hiring of agents. *See* Sections 62-7-807 (delegation by trustee) and 62-7-816(15) (trustee to pay expenses of administration from trust).

Subsection (a)(1) clarifies that a trustee is entitled to reimbursement from the trust for incurring expenses within the trustee's authority. The trustee may also withhold appropriate reimbursement for expenses before making distributions to the beneficiaries. *See* Restatement (Third) of Trusts Section 38 cmt. b (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 244 cmt. b (1959). A trustee is ordinarily not entitled to reimbursement for incurring unauthorized expenses. Such expenses are normally the personal responsibility of the trustee.

As provided in subsection (a)(2), a trustee is entitled to reimbursement for unauthorized expenses only if the unauthorized expenditures benefited the trust. The purpose of this provision, which is derived from Restatement (Second) of Trusts Section 245 (1959), is not to ratify the unauthorized conduct of the trustee, but to prevent unjust enrichment of the trust. Given this purpose, a court, on

appropriate grounds, may delay or even deny reimbursement for expenses which benefited the trust. Appropriate grounds include: (1) whether the trustee acted in bad faith in incurring the expense; (2) whether the trustee knew that the expense was inappropriate; (3) whether the trustee reasonably believed the expense was necessary for the preservation of the trust estate; (4) whether the expense has resulted in a benefit; and (5) whether indemnity can be allowed without defeating or impairing the purposes of the trust. *See* Restatement (Second) of Trusts Section 245 cmt. g (1959).

Subsection (b) implements Section 62-7-802(h)(5), which creates an exception to the duty of loyalty for advances by the trustee for the protection of the trust if the transaction is fair to the beneficiaries. Former South Carolina Probate Code Section 62-7-704(18) empowered the trustee "to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary . . . ."

Reimbursement under this section may include attorney's fees and expenses incurred by the trustee in defending an action. However, a trustee is not ordinarily entitled to attorney's fees and expenses if it is determined that the trustee breached the trust. *See* 3A Austin W. Scott & William F. Fratcher, The Law of Trusts Section 245 (4th ed. 1988).

Part 8

Duties and Powers of Trustee

GENERAL COMMENT

This article states the fundamental duties of a trustee and lists the trustee's powers. The duties listed are not new, but how the particular duties are formulated and applied has changed over the years. This Part was drafted where possible to conform with the South Carolina Uniform Prudent Investor Act. The South Carolina Prudent Investor Act prescribes a trustee's responsibilities with respect to the management and investment of trust property. The SCTC also addresses a trustee's duties with respect to distribution to beneficiaries.

Because of the widespread adoption of the Uniform Prudent Investor Act, it was decided not to disassemble and fully integrate the Prudent Investor Act into the Uniform Trust Code. Instead, states enacting the Uniform Trust Code were encouraged to recodify their version of the Prudent Investor Act by reenacting it as Part 9 of this Code rather than