Advance Sheet No. 2 | April 28, 2022 | Pages 1487 - 1546 Acts 120 - 137

2022 REGULAR SESSION

Acts and Joint Resolutions

of the

GENERAL ASSEMBLY
OF THE STATE OF SOUTH CAROLINA

Numbers in parenthesis to left of act numbers (numbers in bold face) refer as follows: number with R before it refers to ratification number, number with S before it refers to bill number in Senate, and number with H before it refers to bill number in House of Representatives.

Ashley Harwell-Beach, Code Commissioner, P.O. Box 11489,
Columbia, S.C. 29211

Sunset provisions

SECTION 7. The provisions of SECTIONS 2 and 3 terminate on the fifth anniversary of the effective date of this act.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 26th day of January, 2022.

Approved the 27th day of January, 2022.

No. 120

(R124, H4576)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-260 SO AS TO DECLARE THE THIRD TUESDAY IN FEBRUARY OF EACH YEAR AS "HISTORICALLY BLACK COLLEGES AND UNIVERSITIES DAY".

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

Historically Black Colleges and Universities Day

SECTION 1. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-260. The third Tuesday in February of each year is designated as 'Historically Black Colleges and Universities Day' in South Carolina."

Time effective

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

Ratified the 10th day of February, 2022.

Approved the 15th day of February, 2022.

No. 121

(R125, S430)

AN ACT TO AMEND SECTION 43-25-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMMISSION FOR THE BLIND, SO AS TO PROVIDE THAT MEETINGS SHALL BE HELD AT LEAST ONCE A YEAR.

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

Commission for the Blind

SECTION 1. Section 43-25-10 of the 1976 Code, as last amended by Act 239 of 2018, is further amended to read:

"Section 43-25-10. There is created the South Carolina Commission for the Blind. The commission shall consist of seven members, one from each of the seven congressional districts, of whom three shall meet the legal definition of blindness as defined in Section 43-25-20. The Governor shall, with the advice and consent of the Senate, appoint the members of the commission for terms of four years and until their successors are appointed and qualify. All vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. The members of the commission shall elect one of its members as chairman for a term of two years or until his successor has been elected. The chairman shall preside at the regular meetings of the commission to be held at least once each year. The chairman may call a meeting when he considers it necessary to be held at a time to be determined by the commission. The commission shall appoint a commissioner and other officers as the commission considers necessary, none of whom may be a member of the commission, and shall fix the compensation and

prescribe the duties of these appointees. The members of the commission shall receive no salary but must be allowed the usual mileage, subsistence, and per diem as authorized by law for commissions, committees, and boards."

Time effective

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

Ratified the 9th day of March, 2022.

Approved the 14th day of March, 2022.

No. 122

(R126, S508)

AN ACT TO AMEND SECTIONS 44-78-15, 44-78-20, 44-78-30, 44-78-45, 44-78-50, AND 44-78-60, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO DO NOT RESUSCITATE ORDERS FOR EMERGENCY MEDICAL SERVICES, SO AS TO ALLOW A PARENT OR LEGAL GUARDIAN OF A MEDICALLY ELIGIBLE CHILD TO REQUEST AND REVOKE A DO NOT RESUSCITATE ORDER FOR EMERGENCY SERVICES FOR THE CHILD, WITH EXCEPTIONS, TO DEFINE CERTAIN TERMS, AND FOR OTHER PURPOSES.

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

Definitions

SECTION 1. A.Section 44-78-15(7) of the 1976 Code is amended to read:

"(7) 'Terminal condition' means an incurable or irreversible condition that within reasonable medical judgment will cause death within a reasonably short period of time with or without the administration of life-sustaining treatment."

B. Section 44-78-15 of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) 'Child' means a person under the age of eighteen who is neither married nor judicially emancipated and who is medically eligible for hospice care as a result of a terminal condition."

Do not resuscitate (DNR) order for emergency services

SECTION 2. Section 44-78-20 of the 1976 Code is amended to read:

"Section 44-78-20. (A) Except as prohibited in subsections (C) and (D), a patient who has a terminal condition, a surrogate for a patient with a terminal condition under the Adult Health Care Consent Act, an agent of a patient with a terminal condition named by the patient in a Health Care Power of Attorney, or a parent or legal guardian with the legal authority to make medical decisions for a child with a terminal condition may request a health care provider responsible for the care of the patient to execute a 'do not resuscitate order for emergency services' if:

(1) the patient has a terminal condition; and

(2) the terminal condition has been diagnosed by a health care provider and the health care provider's record establishes the time, date, and medical condition which gives rise to the diagnosis of a terminal condition.

(B) At the request of the patient for whom a 'do not resuscitate order' is written, the patient's surrogate or agent, or a parent or legal guardian with the legal authority to make medical decisions for the child, the health care provider who executes the 'do not resuscitate order' shall make the order in writing on a form conforming to the requirements of Section 44-78-30(A), and either shall:

(1) affix to the wrist of the patient a 'do not resuscitate bracelet' that meets the specifications established under Section 44-78-30(B); or

(2) provide the patient, the patient's surrogate or agent, or a parent or legal guardian with the legal authority to make medical decisions for the child with an order form, from a commercial vendor approved by the department pursuant to Section 44-78-30(B), to allow a 'do not resuscitate bracelet' to be ordered from the commercial vendor.

(C) Neither parent nor legal guardian with the legal authority to make medical decisions for a child shall request a 'do not resuscitate for emergency services order' for the child unless a reasonable attempt has been made to inform, either orally or in writing, the second parent or legal guardian of the child with the legal authority to make medical

decisions for the child of the intention of the first parent or legal guardian to request a 'do not resuscitate order', if the second parent or legal guardian is reasonably available. Accordingly, the following shall be entered in the child's medical record:

(1) the date, time, and mode of communication of the provision of such information, as well as the name of the sender;

(2) if the second parent or legal guardian of the child does not respond to the provision of such information within forty-eight hours; and

(3) the nature of the lack of availability of the second parent or legal guardian if an attempt to provide such information is not made.

(D) A 'do not resuscitate order for emergency services order' shall not be requested by either parent or legal guardian with the legal authority to make medical decisions for a child nor executed by a health care provider responsible for the care of the child if either parent or legal guardian with the legal authority to make medical decisions for the child explicitly refuses consent, either orally or in writing, for requesting a 'do not resuscitate order' for the child, except in accordance with a court order pursuant to subsection (E). Such refusal of consent shall be entered in the child's medical record.

(E) If the parents or legal guardians of a child with the legal authority to make medical decisions for the child are unable to agree to request a 'do not resuscitate order for emergency services' of a health care provider responsible for the care of the child, either parent or legal guardian may institute a proceeding under subsection (F) to resolve the conflict. Pending the final determination of such proceedings, including any appeals, a 'do not resuscitate order for emergency services' shall not be requested by either parent or legal guardian nor executed by the health care provider.

(F) A parent or legal guardian with legal authority to make medical decisions for the child may petition the family court or circuit court of the county in which the child resides or in which the child is receiving treatment for an order to a health care provider responsible for the care of the child to execute a 'do not resuscitate order for emergency services' for the child, or an order to enjoin a violation of or threat to violate subsection (D). Upon receiving such a petition, the family court or circuit court shall issue an order fixing the date, time, and place of a hearing on the petition and order that notice of the hearing shall be given to such persons as the court shall direct. A preliminary hearing may be held without notice if the court determines that doing so is necessary to prevent imminent danger to the child's life. In the court's discretion, a

hearing may be conducted in a courtroom, a treatment facility, or at some other suitable place."

Required form

SECTION 3. Section 44-78-30 of the 1976 Code is amended to read:

"Section 44-78-30. (A) A document purporting to be a 'do not resuscitate order' for EMS purposes must be in substantially the following form:

NOTICE TO EMS PERSONNEL

This notice is to inform all emergency medical personnel who may be called to render assistance to _____ that he/she has a terminal condition which has been diagnosed by me, and has specifically requested that no resuscitative efforts including artificial stimulation of the cardiopulmonary system by electrical, mechanical, or manual means be made in the event of cardiopulmonary arrest or, if he/she is a child, such a request has been specifically made by a parent or legal guardian with the legal authority to make medical decisions for the child.

REVOCATION PROCEDURE

THIS FORM MAY BE REVOKED BY AN ORAL STATEMENT BY THE PATIENT OR, IF THE PATIENT IS A CHILD, BY A PARENT OR LEGAL GUARDIAN WITH THE LEGAL AUTHORITY TO MAKE MEDICAL DECISIONS FOR THE CHILD TO EMS PERSONNEL OR BY MUTILATING, OBLITERATING, OR DESTROYING THE DOCUMENT IN ANY MANNER.

Date:_____

_____

Patient's signature (or surrogate or agent)

_____

Parent or Legal Guardian

_____

Physician's signature

_____

Physician's address

_____

Physician's telephone number

(B) The department may approve a 'do not resuscitate bracelet' developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words 'South Carolina Do Not Resuscitate

EMS' and the patient's first name and last name on the back. The department may not approve a 'do not resuscitate bracelet' developed and distributed by a commercial vendor if the vendor does not require a health care provider's order for the bracelet before distributing it to a patient.

(C) The cost of obtaining a bracelet must be borne by the patient or, if the patient is a child, the parent or legal guardian of the child and may not be provided by the department at the expense of the department.

(D) The vendor approved by the department shall not fulfill a request for a 'do not resuscitate bracelet' without receiving a health care provider's order for the bracelet with the request."

Health care provider and EMS personnel, compliance with DNR order

SECTION 4. Section 44-78-45(A) of the 1976 Code is amended to read:

"(A) A health care provider and an EMS personnel shall follow the request of the patient or, if the patient is a child, the parent or legal guardian with the legal authority to make medical decisions for the child and must not provide resuscitative measures when the patient has a 'do not resuscitate order for emergency medical services' or is wearing a 'do not resuscitate bracelet', except where the:

(1) order is revoked pursuant to Section 44-78-60; or

(2) bracelet, when applicable, appears to have been tampered with or removed."

Children, ineligible to request DNR order

SECTION 5. Section 44-78-50 of the 1976 Code is amended to read:

"Section 44-78-50. (A) Nothing in this chapter may be construed to condone, authorize, or approve mercy killing or euthanasia or to permit any affirmative action or deliberate act to end life other than to allow the natural process of dying.

(B) No child may request a 'do not resuscitate order for emergency medical services' as provided for in this article.

(C) The withholding of resuscitative measures pursuant to this article does not constitute suicide for any purpose."

Means of revocation

SECTION 6. Section 44-78-60 of the 1976 Code is amended to read:

"Section 44-78-60. A patient or, if the patient is a child, a parent or legal guardian with the legal authority to make medical decisions for the child, may revoke a 'do not resuscitate order for emergency services' by:

(1) mutilating, obliterating, or destroying the 'do not resuscitate order for emergency medical services' document in any manner;

(2) orally expressing to an emergency medical technician, first responder, or to a person who serves as a member of an emergency health care facility's personnel, the desire to be resuscitated, after which the emergency medical technician, first responder, or the member of the emergency health care facility shall disregard the 'do not resuscitate order for emergency medical services' document and, if applicable, promptly remove the bracelet;

(3) defacing, burning, cutting, or otherwise destroying the bracelet, if applicable; or

(4) removing the bracelet or asking another person to remove the bracelet."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 9th day of March, 2022.

Approved the 14th day of March, 2022.

No. 123

(R129, H3211)

AN ACT TO AMEND SECTION 63-1-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JOINT CITIZENS AND LEGISLATIVE COMMITTEE ON CHILDREN, SO AS TO ADD ADDITIONAL EX OFFICIO COMMITTEE MEMBERS, AND TO REPEAL THE COMMITTEE'S SUNSET PROVISION.

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

Joint Citizens and Legislative Committee on Children

SECTION 1. Section 63-1-50(A) of the 1976 Code, as last amended by Act 1 of 2019, is further amended to read:

"(A) There is established the Joint Citizens and Legislative Committee on Children to be composed of three members of the House of Representatives appointed by the Speaker of the House, three members of the Senate to be appointed by the President of the Senate, and three members to be appointed by the Governor. The Director of the Department of Juvenile Justice, the Director of the Department of Social Services, the Director of the Department of Disabilities and Special Needs, the Superintendent of the Department of Education, the Director of the Department of Mental Health, the Director of the Department of Alcohol and Other Drug Abuse Services, the Director of the Department of Health and Environmental Control, the Director of the Department of Health and Human Services, and the Director of the Office of South Carolina First Steps to School Readiness serve as ex officio, nonvoting members of the committee. Members appointed by the Governor must not be employees of the State. Members serve at the pleasure of the appointing authority. The committee shall study issues relating to children as the committee may undertake or as may be requested or directed by the General Assembly. The committee may contract for all necessary legal research and support services, subject to funding as provided in subsection (E)."

Sunset clause, repeal

SECTION 2. Section 63-1-50(F) of the 1976 Code is repealed.

Time effective

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

Ratified the 9th day of March, 2022.

Approved the 14th day of March, 2022.

No. 124

(R130, H3308)

AN ACT TO AMEND SECTION 50-21-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS, SO AS TO DEFINE "WAKE SURF"; AND TO AMEND SECTION 50-21-870, RELATING TO PERSONAL WATERCRAFT SAFETY, SO AS TO INCREASE DISTANCE LIMITS BETWEEN A WATERCRAFT OPERATING IN EXCESS OF IDLE SPEED UPON CERTAIN WATERS OF THIS STATE AND A WHARF, DOCK, BULKHEAD, OR PIER.

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

Definitions

SECTION 1. Section 50-21-10 of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) 'Wake surf' means to operate a vessel that is ballasted in the stern so as to create a wake that is, or is intended to be, surfed by another person."

Personal watercraft and boating, applicability

SECTION 2. Section 50-21-870(B)(6) of the 1976 Code is amended to read:

"(6)(a) operate a personal watercraft, specialty propcraft, or vessel while upon the waters of Lake Greenwood, Lake Hartwell, Lake Jocassee, Lake Keowee, Lake Marion, Lake Monticello, Lake Murray, Lake Robinson, Lake Russell, Lake Secession, Lake Thurmond, Lake Wateree, Fishing Creek Reservoir, Parr Reservoir, or the portion of the Savannah River from the Interstate 20 Savannah River Bridge to the New Savannah River Bluff Lock and Dam in excess of idle speed within one hundred feet of a wharf, dock, bulkhead, or pier or fifty feet of a moored or anchored vessel or person in the water;

(b) operate a personal watercraft, specialty propcraft, or vessel while upon all other waters of this State in excess of idle speed within 50 feet of a moored or anchored vessel, wharf, dock, bulkhead, pier, or person in the water, or within 100 yards of the Atlantic Ocean coast line. The prohibitions contained in this item do not apply to an unoccupied,

moored vessel or watercraft or to a person behind a vessel or watercraft who is on water skis or a floating device with the permission of the operator of the vessel or watercraft;

(c) the provisions of this item do not apply to Lake Moultrie;"

Personal watercraft and boating, prohibitions

SECTION 3. Section 50-21-870(B) of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) wake surf in excess of idle speed within two hundred feet of a moored vessel, wharf, dock, bulkhead, pier, or person in the water."

Time effective

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

Ratified the 9th day of March, 2022.

Approved the 14th day of March, 2022.

No. 125

(R131, H4495)

AN ACT TO AMEND SECTION 7-7-350, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN LANCASTER COUNTY, SO AS TO REVISE THE NAMES OF SIX PRECINCTS, AND TO UPDATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

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

Lancaster Voting Precinct

SECTION 1. Section 7-7-350 of the 1976 Code, as last amended by Act 150 of 2018, is further amended to read:

"Section 7-7-350. (A) In Lancaster County there are the following voting precincts:

521 North
Antioch
Black Horse Run
Buford
Camp Creek
Carmel
Chesterfield Avenue
College Park
Douglas
Elgin
Erwin Farm
Flat Creek
Gold Hill
Harrisburg
Heath Springs
Hyde Park
Kershaw North
Kershaw South
Lake House
Lancaster East
Lancaster West
McIlwain
Osceola
Pleasant Hill
Pleasant Valley
Possum Hollow
Rich Hill
River Road
Riverside
Shelley Mullis
Springdale
The Lodge
Tradesville
Unity
University
Van Wyck

(B) The precinct lines defining the above precincts are as shown on maps filed with the clerk of court of the county and also on file with the State Election Commission as provided and maintained by the Revenue and Fiscal Affairs Office designated as document P-57-22.

(C) The polling places for the precincts provided in this section must be established by the Board of Voter Registration and Elections of Lancaster County subject to approval by a majority of the Lancaster County Legislative Delegation."

Time effective

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

Ratified the 9th day of March, 2022.

Approved the 14th day of March, 2022.

No. 126

(R133, S947)

AN ACT TO AMEND SECTION 56-23-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXEMPTING DRIVER TRAINING COURSES OFFERED BY CERTAIN INSTITUTIONS AND EMPLOYERS FROM THE DEPARTMENT OF MOTOR VEHICLES REGISTRATION AND LICENSING REQUIREMENTS, SO AS TO PROVIDE THIS EXEMPTION ALSO APPLIES TO DRIVER EDUCATION COURSES OFFERED BY ASSOCIATIONS FORMED BY GROUPS OF ELECTRIC COOPERATIVES THAT PROVIDE INSTRUCTION TO EMPLOYEES OF THEIR MEMBER ORGANIZATIONS; AND BY ADDING SECTION 56-23-95 SO AS TO PROVIDE DRIVER TRAINING SCHOOLS MAY OFFER FINANCIAL ASSISTANCE TO CERTAIN HIGH SCHOOL STUDENTS TO COVER THE FEES ASSOCIATED WITH TRAINING OR EDUCATING PERSONS TO DRIVE OR OPERATE MOTOR VEHICLES.

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

Driver training education courses

SECTION 1. Section 56-23-20 of the 1976 Code is amended to read:

"Section 56-23-20. Classroom courses offered by state institutions and duly accredited and approved colleges, public, parochial, and private high schools in which classroom driver education is part of the curriculum, instruction offered by an entity described in Section 33-49-160(A) that is providing instruction to employees of its member organizations, or to employers giving instruction to their licensed employees shall be exempt from registration and license under this chapter. Courses offered to adults under adult education programs shall not qualify for the exemption."

Driver training school financial assistance

SECTION 2. Chapter 23, Title 56 of the 1976 Code is amended by adding:

"Section 56-23-95. All driver training schools licensed pursuant to the provisions of this chapter may offer financial assistance to students who attend public South Carolina high schools to cover the fees associated with the business of training or educating persons to drive or operate motor vehicles."

Time effective

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

Ratified the 29th day of March, 2022.

Approved the 4th day of April, 2022.

No. 127

(R134, S973)

AN ACT TO ADOPT REVISED CODE VOLUME 21 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO THE EXTENT OF ITS CONTENTS, AS THE ONLY GENERAL PERMANENT STATUTORY LAW OF THE STATE AS OF JANUARY 1, 2022.

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

Revised Code volume, authorization

SECTION 1. (A) Section 2-13-90 of the 1976 Code authorizes the Legislative Council and the Code Commissioner to contract to be prepared and published under their supervision and direction revised volumes of the Code of Laws.

(B) The Legislative Council and the Code Commissioner have determined that Volume 21 is appropriate for revision.

(C) Section 2-13-90 of the 1976 Code also provides that the revised volumes must be submitted to the General Assembly for its consideration.

Revised Code volume, adopted

SECTION 2. (A) Revised Volume 21 containing Titles 60 through 62, Code of Laws of South Carolina, 1976, is substituted for original Volume 21 which contained Titles 60 through 62.

(B) Revised Volume 21 is adopted as part of the Code of Laws and, to the extent of its contents, is the only general permanent statutory law of the State as of January 1, 2022.

Time effective

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

Ratified the 29th day of March, 2022.

Approved the 4th day of April, 2022.

No. 128

(R136, H3821)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 5, TITLE 63 SO AS TO ENACT THE "SOUTH CAROLINA UNIFORM TRANSFERS TO MINORS ACT"; TO PROVIDE FOR THE UNIFORM MANNER IN WHICH AND

PROCEDURES AND REQUIREMENTS UNDER WHICH TRANSFERS OF CUSTODIAL PROPERTY MAY BE MADE FOR THE BENEFIT OF A MINOR; TO AMEND SECTIONS 62-1-201, 62-1-302, AND 62-5-103, ALL RELATING TO THE SOUTH CAROLINA PROBATE CODE, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL ARTICLE 5 OF CHAPTER 5, TITLE 63 RELATING TO THE "SOUTH CAROLINA UNIFORM GIFTS TO MINORS ACT".

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

South Carolina Uniform Transfers to Minors Act

SECTION 1. Chapter 5, Title 63 of the 1976 Code is amended by adding:

"Article 6

South Carolina Uniform Transfers to Minors Act

Section 63-5-601. This act shall be known and may be cited as the 'South Carolina Uniform Transfers to Minors Act'.

Section 63-5-605. In this article:

(1) 'Adult' means an individual who has attained the age of twenty-one years.

(2) 'Benefit plan' means an employer's plan for the benefit of an employee or partner or an individual retirement account.

(3) 'Broker' means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) 'Conservator' means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) 'Court' means the probate court where the minor resides, or if the minor is not a resident of this State, the probate court in the county where the custodian resides or has his principal place of business or where the custodial property is located.

(6) 'Custodial property' means (i) any interest in property transferred to a custodian under this article and (ii) the income from and proceeds of that interest in property.

(7) 'Custodian' means a person so designated under Section 63-5-645 or a successor or substitute custodian designated under Section 63-5-690.

(8) 'Financial institution' means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) 'Legal representative' means an individual's personal representative or conservator.

(10) 'Member of the minor's family' means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) 'Minor' means an individual who has not attained the age of twenty-one years.

(12) 'Person' means an individual, corporation, organization, or other legal entity.

(13) 'Personal representative' means an executor, administrator, successor, personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) 'Transfer' means a transaction that creates custodial property under Section 63-5-645.

(16) 'Transferor' means a person who makes a transfer under this article.

(17) 'Trust company' means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

COMMENT

To reflect the broader scope and the unlimited types of property to which the new Act will apply, a number of definitional changes have been made from the 1966 Act. In addition, several definitions specifically applicable to the limited types of property (cash, securities and insurance policies) subject to the 1966 Act have been eliminated as unnecessary. These include the definitions of "bank," "issuer," "life insurance policy or annuity contract," "security," and "transfer agent." No change in the meaning or construction of these terms as used in this Act is intended by such deletions.

The definitions of "domestic financial institution" and "insured financial institution" have been eliminated because few if any states limit deposits by custodians to local institutions, and the prudent person rule of Section

63-5-660(b) of this Act may dictate the use of insured institutions as depositories, without having the Act so specify.

The principal changes or additions to the remaining definitions are discussed below.

Item (2). The definition of "benefit plan" is intentionally very broad and is meant to cover any contract, plan, system, account or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement or, stock bonus, option or profit sharing plan.

Item (4). The term "conservator" rather than "guardian of the estate" has been employed in the Act to conform to Uniform Probate Code terminology. The term includes a guardian of the minor's property, whether general, limited or temporary, and includes a committee, tutor, or curator of the minor's property.

Item (6). The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interests in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the Act specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see Section 63-5-615). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the Act to, for example, real estate "located in this state," since a conveyance recorded in the state of the property's location, if done with proper formalities, should be effective even if that state has not enacted this Act. The rights, duties and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under Section 63-5-610 between that state and the transferor, the minor or the custodian.

Item (11). This definition of "minor" retains the historical age of twenty-one as the age of majority, even though most states have lowered the age for most other purposes, as well as in their versions of the 1966 Act. Nevertheless, because the Internal Revenue Code continues to permit "minority trusts" under Section 2503(c), IRC, to continue in

effect until age twenty-one, and because it is believed that most donors creating minority trusts or custodianships prefer to retain the property under management for the benefit of the young person as long as possible, it is strongly suggested that the age of twenty-one be retained as the age of majority under this Act. For states that have reduced the age of majority in their versions of the 1966 Act, SECTION 22(c) of this Act provides that a change back to twenty-one will not affect custodianships that have already terminated at an earlier age. South Carolina did not include the optional subsection (c) of that section, codified herein as Section 63-5-710, in its act.

Item (13). The definition of the term "personal representative" is based upon that definition in Sec. 1-201(30) of the Uniform Probate Code.

Item (15). The new definition of "transfer" is necessary to reflect the application of the Act not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by this Act.

Item (16). The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in this Act requires that a transferor be an "adult." If permitted under other law of the enacting state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

Item (17). Only entities authorized to exercise "general" trust powers qualify as "trust companies"; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

Section 63-5-610. (a) This article applies to a transfer that refers to 'The South Carolina Uniform Transfers to Minors Act' in the designation under Section 63-5-645(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this article despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this article is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

COMMENT

This section has no counterpart in the 1966 Act. It attempts to resolve uncertainties and conflicts-of-laws questions that have frequently arisen because of the present non-uniformity of UGMA in the various states and which may continue to arise during the transition from UGMA to this Act.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under Section 63-5-645(a). This section provides that a choice of the UTMA of the enacting state is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. This Act continues to govern, and subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of the enacting state for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) recognizes that residents of the enacting state may elect to have the law of another state apply to a transfer. That choice is valid if a nexus with the chosen state exists at the time of the transfer. If personal jurisdiction can be obtained in the enacting state under other law apart from this Act, the custodianship may be enforced in its courts, which are directed to apply the law of the state elected by the transferor. If the choice of law under subsection (a) or (c) is ineffective because of the absence of the required nexus, the transfer may still be effective under the Act of another state with which a nexus does exist. See Section 63-5-705.

Section 63-5-615. (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’. The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named,

if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 63-5-645(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 63-5-645. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to Section 63-5-645.

COMMENT

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. Account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under this Act and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests ownership of the interest in the minor under Section 63-5-655(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see Section 63-5-625(b)) and on insurance companies and other obligors who contract to pay in the future (see Section 63-5-635(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated ... under Section 63-5-615" to whom the transfer must be made under Sections 63-5-625(b) and 63-5-635(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See Section 63-5-690.

Section 63-5-620. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 63-5-645.

COMMENT

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in Sections 63-5-620, 63-5-625, 63-5-630, and 63-5-635. This section in part corresponds to Section 2(a) of the 1966 Act and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 Act. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under Section 63-5-615.

Section 63-5-625. (a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 63-5-645 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 63-5-615 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 63-5-615, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian, subject to the approval of the court from among those eligible to serve as custodian for property of that kind under Section 63-5-645(a).

COMMENT

This section is new and has no counterpart in the 1966 Act. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under Section 63-5-615 (and any alternate named) fails to qualify.

Section 63-5-630. (a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 63-5-645, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 63-5-645.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, (iii) the transfer is authorized by the court if it exceeds $15,000 in value, and (iv) the custodian nominated by the personal representative, trustee, or conservator, as the case may be, is approved by the court.

COMMENT

This section is new and has no counterpart in the 1966 Act. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the 1966 Act, to permit custodianships to be used as guardianship or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred (as measured by its value) must be of such relatively small amount that the lack of court supervision and the

typically stricter investment standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority of the enacting state apart from this Act, i.e., at the same age a conservatorship of the minor would end. See Section 63-5-700(b) and the Comment thereto.

Section 63-5-635. (a) Subject to subsections (b) and (c), a person not subject to Section 63-5-625 or 63-5-630 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 63-5-645.

(b) If a person having the right to do so under Section 63-5-615 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 63-5-615, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $15,000 in value.

COMMENT

This section is new and, like Section 63-5-630, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by Sections 63-5-625 and 63-5-630. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Use of this section is mandatory when a future custodian has been nominated under Section 63-5-615 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment. It allows the

obligor to transfer to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

Section 63-5-640. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

COMMENT

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also Section 63-5-680 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the 1966 Act. This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under Section 63-5-635, to settle or release a claim of the minor against a third party. Only a conservator, guardian ad litem or other person authorized under other law to act for the minor may release such a claim.

Section 63-5-645. (a) Custodial property is created and a transfer is made whenever:

(1) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act'; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b);

(2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: 'as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act';

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance

by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’;

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’;

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’;

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: ‘as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act’; or

(7) an interest in any property not described in items (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of items (1)(ii) and (7) of subsection (a):

‘TRANSFER UNDER THE SOUTH CAROLINA
UNIFORM TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:_____

_____
(Signature)
_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the South Carolina Uniform Transfers to Minors Act.
Dated: _____

_____
(Signature of Custodian)'

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

COMMENT

The 1966 Act contained optional bracketed language permitting an adopting state to limit the class of eligible initial custodians to an adult member of the minor's family or a guardian of the minor. This optional limitation has been deleted because it would preclude the use of an individual and uncompensated custodian if no qualified or willing family member is available.

Otherwise, with respect to transfers of securities, cash, and insurance or annuity contracts, this section tracks the cognate provisions of subsection 2(a) of the 1966 Act, with one exception. Under subsection (a)(1)(ii) of this section, a transfer of securities in registered form may be accomplished without registering the transfer in the name of the custodian so that transfers may be accomplished more expeditiously, and so that securities may be held by custodians in street name. In other words, subsection (a)(1)(i) is not the exclusive manner for making effective transfers of securities in registered form.

In addition, subsection (a) creates new procedures for handling the additional types of property now subject to the Act; specifically:

Item (3) covers the irrevocable transfer of ownership of life and endowment insurance policies and annuity contracts.

Item (4) covers the *irrevocable* exercise of a power of appointment and the *irrevocable* present assignment of future payment rights, such as royalties, interest and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans. The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification. See Section 63-5-615 and the Comment thereto for the procedure for revocably "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.

Item (5) is the exclusive method for the transfer of real estate and includes a disposition effected by will. Under the law of those states in which a devise of real estate vests in the devisee without the need for a deed from the personal representative of the decedent, a document such as the will must still be "recorded" under this provision to make the transfer effective. For inter vivos transfers, of course, a conveyance in recordable form would be employed for dispositions of real estate to a custodian.

Item (6) covers the transfer of personal property such as automobiles, aircraft, patent rights, and other property subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

Item (7) is a residual classification, covering all property not otherwise covered in the preceding items. Examples would include nonregistered securities, partnership interests, and tangible personal property not subject to title certificates.

The form of transfer document recommended and set forth in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under subsection (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acknowledgment, consent, and acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under subsection (a)(1)(ii), insurance and annuity contracts under (a)(3)(ii), and titled personalty under (a)(6)(ii), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of the transferor as custodian renders the transfer invalid under Section 63-5-655(a)(2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if he appoints himself custodian and dies while serving in that capacity before the minor attains the age of twenty-one. Rev. Rul. 57-366, C.B. 1957-2, 618; Rev. Rul. 59-357, C.B. 1959-2, 212; Rev. Rul. 70-348, C.B. 1970-2, 193; *Estate of Prudowsky v. Comm'r,* 55 T.C. 890 (1971), *affd. per curiam,* 465 F.2d 62 (7th Cir. 1972).

This Act has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See Sections 63-5-665 and 63-5-670 and the Comments thereto. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian remains. Therefore, despite the fact that this section of the Act permits it in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 I.R.C. and Rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see Section 2036(b), I.R.C., overruling *U.S. v. Byrum,* 408 U.S. 125 (1972), rehearing denied 409 U.S. 898.

Subsection (c) tracks in substance Section 2(c) of the 1966 Act. However, it replaces the requirement that the transferor "promptly do all things within his power" to complete the transfer, with the requirement that such action must be taken "as soon as practicable." This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term "promptly" may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since "prompt" transfer of dominion is usually practicable. Section 63-5-645(a)(2) amended in 1986.

Section 63-5-650. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

COMMENT

The first sentence follows Section 2(b) of the 1966 Act. The second sentence states what was implicit in the 1966 Act, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships.

This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under Section 63-5-690 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made "under this Act." Gifts previously made under the enacting state's UGMA or under the UGMA or UTMA of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made "under this Act" and a single custodianship results, custodial property transferred under Sections 63-5-630 and 63-5-635 must be accounted for separately from property transferred under Sections 63-5-620 and 63-5-625 because the custodianship will terminate sooner with respect to the former property if the enacting state has a statutory age of majority lower than twenty-one. See Section 63-5-700 and the Comment thereto.

Section 63-5-655. (a) The validity of a transfer made in a manner prescribed in this article is not affected by:

(1) failure of the transferor to comply with Section 63-5-645(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 63-5-645(a); or

(3) death or incapacity of a person nominated under Section 63-5-615 or designated under Section 63-5-645 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 63-5-645 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this article, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this article.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this article.

COMMENT

Subsection (a) generally tracks Section 2(c) of the 1966 Act, except that the transferor's designation of himself as custodian of property for which he is not eligible to serve under Section 63-5-645(a) makes the transfer ineffective. See Comment to Section 63-5-645.

The balance of this section generally tracks Section 3 of the 1966 Act with a number of necessary, and perhaps significant, changes required

by the new kinds of property subject to custodianships. The 1966 Act provides that a transfer made in accordance with its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under this Act, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, powers, duties and authority" of the custodian under this Act, a concept that may have been implicit and intended in the 1966 Act, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer such property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see Section 63-5-680 and the Comment thereto.

Because a custodianship under this Act can extend beyond the age of majority in many states, or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 Act nor its predecessors had such a provision, because spendthrift protection would extend only until twenty-one in any event and judgments against the minor would then be enforceable, and because the spendthrift qualification on the interest of the minor in the property may be inconsistent with the theory of the Act to convey the property indefeasibly to the minor.

Section 63-5-660. (a) A custodian shall:

(1) take control of custodial property;

(2) register or record title to custodial property if appropriate; and

(3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise

or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words:

'as a custodian for _____ (name of minor) under the South Carolina Uniform Transfers to Minors Act'.

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

COMMENT

Subsection (a) expands Section 4(a) of the 1966 Act to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subsection (b) restates and makes somewhat stricter the prudent man fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property *of another"* rather than one "who is seeking a reasonable income and the preservation of *his* capital," as under the 1966 Act. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels section 7-302 of the Uniform Probate Code in order to refer to the existing and growing body of law interpreting that standard. The 1966 Act permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

In order to eliminate any uncertainty that existed under the 1966 Act, subsection (c) grants specific authority to invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate, or the custodian in his custodial capacity is made the beneficiary of such policies.

Subsection (d) generally tracks Section 4(g) of the 1966 Act but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the Act does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 Act, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

Section 63-5-665. (a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 63-5-660.

COMMENT

Subsection (a) replaces the specific list of custodian's powers in Section 4(f) of the 1966 Act which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the Act and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in Section 63-5-660. This approach permits the

Act to be self-contained and more readily understandable by volunteer, non-professional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in his capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, I.R.C.; but compare *Terriberry v. U.S.,* 517 F.2d 286 (5th Cir. 1975), and *Rose v. U.S.,* 511 F.2d 259 (5th Cir. 1975).

Section 63-5-670. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

COMMENT

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 Act, but with two significant changes. The standard for expenditure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 Act. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

The IRS has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev. Rul. 56-484, C.B. 1956-2, 23; Rev. Rul. 59-357, C.B. 1959-2, 212. However, Reg. 1.662(a)-4 provides that the term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. Thus, if under local law a parent may use the resources of a child for the child's support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child's resources are adequate. See, Bittker, *Federal Taxation of Income Estates and Gifts,* Paragraph 80.4.4 (1981).

For this reason, new subsection (c) has been added to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. Other possible methods of avoiding the attribution of custodial property income to the person obligated to support the minor would be to prohibit the use of custodial property or its income for that purpose, or to provide that any such use gives rise to a cause of action by the minor against his parent to the extent that custodial property or income is so used. The first alternative was rejected as too restrictive, and the second as too cumbersome.

The "use and benefit" standard in subsections (a) and (b) is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims.

An "interested person" entitled to seek court-ordered distributions under subsection (b) would include not only the parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

Section 63-5-675. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 63-5-620, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in Section 63-5-690(f), a custodian need not give a bond.

COMMENT

This section parallels and restates Section 5 of the 1966 Act. It deletes the statement that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This provision is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship.

This section deletes as surplusage the bracketed optional standards contained in the 1966 Act for determining "reasonable compensation" which included, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under this Act because property requiring increased management may now be subject to custodianship, compensation can still be determined by agreement, by reference to a statute or by court order, without the need to so state in this Act.

Section 63-5-680. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of, or the authority under this article for, any act of the purported custodian;

(3) the validity or propriety under this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

COMMENT

This section carries forward, but shortens and simplifies, Section 6 of the 1966 Act, with no substantive change intended. The 1966 revision permitted a fourteen-year-old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (Section 63-5-605(7)), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "person," it is not necessary to specify here or in Section 63-5-655(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 Act. See the definition of "person" in Section 63-5-605(12).

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 Act. See, *e.g., State ex rel Paden v. Currel,* 597 S.W.2d 167 (Mo. App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

Section 63-5-685. (a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

COMMENT

This section has no counterpart in the 1966 Act and is based upon Section 5-429 of the Uniform Probate Code, relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under this Act can give rise to liabilities as well as benefits *(e.g.,* general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Committee believes it is necessary to protect the minor and other assets he might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section generally limits the claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subsection (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subsection (c) only for actual fault. When custodial property is subjected to claims of third parties under this section, the minor or his legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See Section 63-5-695 and the Comment thereto.

Section 63-5-690. (a) A person nominated under Section 63-5-615 or designated under Section 63-5-645 as custodian may decline to serve by delivering a written renunciation to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 63-5-615, the person who made the nomination may nominate a substitute custodian under Section 63-5-615; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 63-5-645(a). The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 63-5-620 as successor custodian by executing and dating an instrument of designation before a

subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 63-5-620 or to require the custodian to give appropriate bond.

COMMENT

This section tracks but condenses Section 7 of the 1966 Act to provide that the custodian, or if the custodian does not do so, the minor if he is fourteen, may appoint the successor custodian, or failing that, that the conservator of the minor or a court appointee shall serve. It also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

This Act broadens the category of persons who may be designated by the initial custodian as successor custodian from an adult member of the minor's family, his conservator, or a trust company to any adult or trust company. However, the minor's designation remains limited to an adult member of his family (expanded to include a spouse and a stepparent, see Section 63-5-605(10)), his conservator, or a trust company.

Section 63-5-695. (a) A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 63-5-685 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this article or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under Section 63-5-690(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

COMMENT

This section carries forward Section 8 of the 1966 Act, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to him (or any such person's legal representative), the minor's guardian of the person, and the successor custodian.

Subsection (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subsection (a) may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under Section 63-5-685, unless that issue has already been

adjudicated in an action under that section to which the minor was a party.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 Act has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

Section 63-5-700. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of twenty-one years of age with respect to custodial property transferred under Section 63-5-620 or 63-5-625;

(2) the minor's attainment of majority under the laws of this State other than this article with respect to custodial property transferred under Section 63-5-630 or 63-5-635; or

(3) the minor's death.

COMMENT

This section tracks Section 4(d) of the 1966 Act, but provides that custodianships created by fiduciaries without express authority from the donor of the property under Section 63-5-630 and by obligors of the minor under Section 63-5-635 terminate upon the minor's attaining the age of majority under the general laws of the state, since these custodianships are substitutes for conservatorships that would otherwise terminate at that time. Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to Section 63-5-650.

Section 63-5-705. This article applies to a transfer within the scope of Section 63-5-610 made after its effective date if:

(1) the transfer purports to have been made under the South Carolina Uniform Gifts to Minors Act; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation 'as custodian under the Uniform Gifts to Minors Act' or 'as custodian under the Uniform Transfers to Minors Act' of any other state, and the application of this article is necessary to validate the transfer.

COMMENT

This section is new and has two purposes. First, it operates as a "savings clause" to validate transfers made after its effective date which mistakenly refer to the enacting state's UGMA rather than to this Act. Second, it validates transfers attempted under the UGMA of another state which would not permit transfers from that source or of property of that kind or under the UTMA of another state with no nexus to the transaction, provided in each case that the enacting state has a sufficient nexus to the transaction under Section 63-5-610.

Section 63-5-710. (a) Any transfer of custodial property as now defined in this article made before the effective date of this article is validated notwithstanding that there was no specific authority in the South Carolina Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This article applies to all transfers made before the effective date of this article in a manner and form prescribed in the South Carolina Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this article.

COMMENT

Subsection (a) is new and is based on Section 45-109a of the Connecticut Act which validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under that Act. However, this provision goes further and purports also to validate prior transfers of the kind now covered by the Act, i.e., transfers from estates, trusts, guardianships, and obligors.

All states have previously enacted some version of UGMA, and it will be more orderly to subject gifts or other transfers under the prior Act to the procedures of this Act, rather than to keep both Acts in force, presumably for eighteen or twenty-one years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply this Act to prior gifts and existing custodianships insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed under the prior Act. Optional subsection (c) is also new and is based upon Section 45-109b of the Connecticut Act. It is intended for adoption in those states that amended their Acts to reduce the age of majority to eighteen, but which adopt the recommended return to twenty-one as the age at which custodianships

terminate. Its purpose is to avoid resurrecting custodianships for persons not yet twenty-one which terminated during the period that the age of eighteen governed termination. South Carolina did not include the optional subsection in its act.

Section 63-5-715. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it."

Definitions

SECTION 2. Section 62-1-201(49) is amended to read:

"(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 Transfers to Minors Act, Article 6, 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."

Subject matter jurisdiction

SECTION 3. Section 62-1-302(a)(2)(ii) is amended to read:

"(ii) gifts made pursuant to the South Carolina Uniform Transfers to Minors Act under Article 6, Chapter 5, Title 63;"

Protection of personal property of minors

SECTION 4. Section 62-5-103(A)(3) is amended to read:

"(3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Transfers to Minors Act and giving notice of the deposit to the minor."

Article name designation and meaning

SECTION 5. References to the "Uniform Gifts to Minors Act" means the "Uniform Transfers to Minors Act", except as provided in Section 59-4-40.

Severability clause

SECTION 6. If any provisions of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end provisions of this article are severable.

Repeal

SECTION 7. Article 5 of this chapter, known as the "South Carolina Uniform Gifts to Minors Act", is hereby repealed. To the extent that this article, by virtue of Section 63-5-710(b), does not apply to transfers made in a manner prescribed in the South Carolina Gifts to Minors Act or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the South Carolina Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 29th day of March, 2022.

Approved the 4th day of April, 2022.

No. 129

(R137, H4269)

AN ACT TO AMEND SECTION 7-7-510, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN UNION COUNTY, SO AS TO MERGE THE MONARCH BOX 1 PRECINCT WITH THE MONARCH BOX 2 PRECINCT WITH THE RESULTING COMBINED PRECINCT TO BE KNOWN AS THE MONARCH PRECINCT, TO ELIMINATE THE EAST BUFFALO VOTING PRECINCT, AND TO UPDATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

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

Union County voting precincts

SECTION 1. Section 7-7-510 of the 1976 Code is amended to read:

"Section 7-7-510. (A) In Union County there are the following voting precincts:

Adamsburg
Black Rock
Bonham
Buffalo, Box 1
Carlisle
Cross Keys
Excelsior
Jonesville, Box 1
Jonesville, Box 2
Kelton
Lockhart
Monarch
Putnam
Santuck
Union, Ward 1, Box 1
Union, Ward 1, Box 2
Union, Ward 2
Union, Ward 3

Union, Ward 4, Box 1
Union, Ward 4, Box 2
West Springs

(B) The precinct lines defining the precincts in subsection (A) are as shown on maps filed with the clerk of court of the county and also on file with the State Election Commission as provided and maintained by the Revenue and Fiscal Affairs Office designated as document P-87-21.

(C) The polling places for the precincts listed in subsection (A) must be determined by the Board of Voter Registration and Elections of Union County with the approval of a majority of the Union County Legislative Delegation."

Time effective

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

Ratified the 29th day of March, 2022.

Approved the 4th day of April, 2022.

No. 130

(R138, H4944)

AN ACT TO AMEND SECTION 59-136-140, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEETINGS OF THE COASTAL CAROLINA UNIVERSITY BOARD OF TRUSTEES, SO AS TO PROVIDE MANDATORY NOTICE OF BOARD MEETINGS MUST BE SENT EITHER ELECTRONICALLY OR THROUGH THE UNITED STATES MAIL TO EACH TRUSTEE NOT LESS THAN FIVE DAYS BEFORE EACH MEETING.

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

Notice of board meetings

SECTION 1. Section 59-136-140 of the 1976 Code is amended to read:

"Section 59-136-140. (A) The board shall meet in Conway not less than four times each year, the time and place to be fixed by the chairman or as the board provides. The chairman shall preside and, in his absence, a member shall preside as the board may select. The chairman or a majority of the members has the power to call a special meeting and fix the time and place of the meeting. A majority of the members constitutes a quorum for the transaction of all business of the board. A majority vote of the whole board is required for the election or removal of the president. The president, other officers, and faculty members shall attend meetings of the board when requested to do so.

(B) Notice of the time and place of all meetings of the board must be sent either electronically or through the United States mail by the secretary or his assistant to each trustee not less than five days before each meeting."

Time effective

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

Ratified the 29th day of March, 2022.

Approved the 4th day of April, 2022.

No. 131

(R140, S1167)

AN ACT TO AMEND SECTION 7-7-160, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN CHEROKEE COUNTY, SO AS TO UPDATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE, AND TO REMOVE ARCHAIC LANGUAGE.

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

Cherokee County voting precincts, map

SECTION 1. Section 7-7-160(B) of the 1976 Code is amended to read:

"(B) The polling places of the various voting precincts in Cherokee County must be designated by the Board of Voter Registration and Elections of Cherokee County. The precinct lines defining the above precincts are as shown on the official map designated as P-21-22 on file with the Revenue and Fiscal Affairs Office and as shown on copies provided to the Board of Voter Registration and Elections of Cherokee County by the Revenue and Fiscal Affairs Office. The official map may not be changed except by act of the General Assembly."

Time effective

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

Ratified the 7th day of April, 2022.

Approved the 11th day of April, 2022.

No. 132

(R142, H3730)

AN ACT TO AMEND SECTION 56-5-2710, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO A DRIVER OF A MOTOR VEHICLE OBEYING A SIGNAL THAT INDICATES AN APPROACHING TRAIN, SO AS TO PROVIDE ADDITIONAL CIRCUMSTANCES THAT REQUIRE A DRIVER TO STOP A VEHICLE APPROACHING RAILROAD GRADE CROSSINGS.

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

Required stops at railroad grade crossings

SECTION 1. Section 56-5-2710(a) of the 1976 Code is amended to read:

"(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section the driver of the vehicle shall stop within fifty feet, but not less than fifteen

feet, from the nearest rail of the railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or other on-track equipment.

(2) A crossing gate is lowered or when a flagman gives or continues to give a signal of the approach or passage of a railroad train or other on-track equipment.

(3) A railroad train or other on-track equipment approaching within approximately one thousand, five hundred feet of the highway crossing emits a signal audible from such distance and the train, by reason of its speed or nearness to the crossing, is an immediate hazard.

(4) An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to the crossing."

Time effective

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

Ratified the 7th day of April, 2022.

Approved the 11th day of April, 2022.

No. 133

(R143, H3889)

AN ACT TO AMEND SECTION 50-21-860, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RESTRICTIONS ON THE USE OF AIRBOATS, SO AS TO PROHIBIT THE OPERATION OF AN AIRBOAT ON CERTAIN RIVERS IN GEORGETOWN AND HORRY COUNTIES DURING THE SEASON FOR HUNTING DUCK.

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

Restrictions on use of airboats

SECTION 1. Section 50-21-860(B) of the 1976 Code is amended to read:

"(B) It is unlawful to operate an airboat on the waters of the Waccamaw, the Great Pee Dee, the Little Pee Dee, the Black, and the Sampit Rivers in Georgetown and Horry Counties from one hour before legal sunset to one hour after legal sunrise and anytime during the season for hunting duck."

Time effective

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

Ratified the 7th day of April, 2022.

Approved the 11th day of April, 2022.

No. 134

(R144, H4618)

AN ACT TO AMEND SECTION 56-5-2720, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REQUIRING CERTAIN VEHICLES TO STOP BEFORE CROSSING RAILROAD TRACKS, SO AS TO REVISE THE TYPES OF VEHICLES AND RAILROAD GRADE CROSSINGS SUBJECT TO THIS PROVISION, AND TO DEFINE THE TERMS "BUSINESS DISTRICT" AND "BUS".

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

Vehicles required to stop at railroad grade crossings

SECTION 1. Section 56-5-2720 of the 1976 Code is amended to read:

"Section 56-5-2720. (A) Except as provided in subsection (B), the driver or operator of every bus transporting passengers, or a vehicle permitted by the Department of Health and Environmental Control to carry hazardous waste, or any vehicle required by 49 C.F.R. Section 392.10 to stop at a railroad grade crossing, before crossing at grade any tracks of a railroad, shall stop the vehicle within fifty feet, but not less than fifteen feet, from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for an approaching

train and for signals indicating the approach of a train and shall not proceed until he can do so safely. After stopping and upon proceeding when it is safe to do so, the driver of the vehicle shall cross only in the gear of the vehicle that there is no necessity for manually changing gears while traversing the crossing and the driver shall not manually shift gears while crossing the tracks.

(B) The provisions of this section do not apply at:

(1) a streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district;

(2) a railroad grade crossing when a police officer or crossing flagman directs traffic to proceed;

(3) a railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the commercial motor vehicle to proceed across the railroad tracks without slowing or stopping;

(4) an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned; and

(5) an industrial or spur line railroad grade crossing marked with a sign reading 'Exempt'. 'Exempt' signs shall be erected only by or with the consent of the appropriate state or local authority.

(C) For purposes of the section, 'business district' means the territory contiguous to and including a highway when within any six hundred feet along a highway where there are buildings in use for business or industrial purposes including, but not limited to, hotels, banks, or office buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

(D) For purposes of this section, a 'bus' means:

(1) a motor vehicle designed or used to transport more than eight passengers, including the driver, for compensation; or

(2) a motor vehicle designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation.

(E) The provisions of Section 59-67-230 apply to school buses as defined in Section 56-5-190."

Time effective

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

Ratified the 7th day of April, 2022.

Approved the 11th day of April, 2022.

No. 135

(R145, H4904)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-11-90 SO AS TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES TO OBTAIN AND USE SCHEDULE III NONNARCOTICS AND SCHEDULE IV CONTROLLED SUBSTANCES FOR WILDLIFE MANAGEMENT; AND TO AMEND SECTION 47-3-420, RELATING TO METHODS OF ANIMAL EUTHANASIA, SO AS TO REMOVE REFERENCES TO THE DEPARTMENT OF NATURAL RESOURCES.

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

Controlled substances for the capture and immobilization of wildlife

SECTION 1. Article 1, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-90. The department may obtain and utilize Schedule III nonnarcotics and Schedule IV controlled substances for the capture and immobilization of wildlife. The department must apply for a Controlled Substance Registration Certificate from the federal Drug Enforcement and Administration (DEA) and a State Controlled Substances Registration from the Department of Health and Environmental Control (DHEC). The administration of tranquilizing agents must be done only by department employees trained and certified for this purpose. Department applicants issued a certificate by the DEA and a registration by DHEC are responsible for maintaining their respective records regarding the inventory, storage, and administration

of controlled substances and are subject to inspection and audit by DHEC and the DEA."

Controlled substances for euthanasia

SECTION 2. Section 47-3-420(A)(1)(i) of the 1976 Code is amended to read:

"(i) an animal shelter or governmental animal control agency may obtain sodium pentobarbital or a derivative or tranquilizing agent by direct licensing. The animal shelter or governmental animal control agency must apply for a Controlled Substance Registration Certificate from the federal Drug Enforcement Administration (DEA) and a State Controlled Substances Registration from the Department of Health and Environmental Control (DHEC). If an animal shelter or governmental animal control agency is issued a certificate by the DEA and a registration by DHEC pursuant to this subitem, the animal shelter or governmental animal control agency director or his designee are responsible for maintaining their respective records regarding the inventory, storage, and administration of controlled substances. An animal shelter or governmental animal control agency and its certified euthanasia technician are subject to inspection and audit by DHEC and the DEA regarding the recordkeeping, inventory, storage, and administration of controlled substances used under authority of this article;"

Time effective

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

Ratified the 7th day of April, 2022.

Approved the 11th day of April, 2022.

No. 136

(R146, H4906)

AN ACT TO AMEND SECTION 50-11-105, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO WILDLIFE DISEASE CONTROL, SO AS TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES TO TAKE ACTION REGARDING WILDLIFE DISEASE CONTROL.

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

Wildlife disease control

SECTION 1. Section 50-11-105 of the 1976 Code is amended to read:

"Section 50-11-105. (A) The department, after consulting with the Director of the State Livestock-Poultry Health Division, Clemson University and after a reasonable attempt at landowner notification, may carry out operations including quarantines, destruction of wildlife, or other measures to locate, detect, control, eradicate, or retard the spread of diseases of wildlife independently or in cooperation with counties, special purpose districts, municipalities, property owner's associations or similar organizations, individuals, federal agencies, or agencies of other states, by regulation, compliance agreement, judicial action, or other appropriate means. The State shall not be required to indemnify the property owner for any wildlife taken as a result of this action. For the purposes of this section, landowner notification can occur by means of a telephone call, in person, or in writing.

(B) The department, in accordance with the Administrative Procedures Act and in order to ensure the continued health and safety of wildlife, may promulgate and enforce reasonable regulations to prevent the introduction or distribution of a disease. The department may prohibit the importation, intrastate movement, possession or use, of any wildlife, carcasses, or associated parts or products of any nature.

(C) The department, upon declaration of a wildlife disease emergency by the Director of the Department of Natural Resources, after consulting with the Director of the State Livestock-Poultry Health Division, Clemson University, may promulgate regulations to:

(1) delineate disease management zones at any geographic scale;

(2) declare temporary emergency open seasons, methods of take, increased bag limits, mandatory reporting or check-in of harvested game

and biological samples, or restrictions on baiting and feeding of wildlife for no more than one year at any given time in any area of the State provided that appropriate public notice is given describing the declaration and delineating the affected area; and

(3) permit landowners or their designees to take protected wildlife as specified by the department.

(D) Department personnel and their designees are authorized to euthanize sick or injured wildlife.

(E) Unless otherwise specified, a person violating any of the provisions of this section or any regulation established pursuant to this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five 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 7th day of April, 2022.

Approved the 11th day of April, 2022.

No. 137

(R147, H4907)

AN ACT TO AMEND SECTION 50-1-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF FRESHWATER GAME FISH, SO AS TO INCLUDE ALL BLACK BASS AND TROUT HYBRIDS; TO AMEND SECTION 50-13-10, RELATING TO DEFINITIONS, SO AS TO DEFINE "LANDING NET (DIP NET)" AND TO ADD BARTRAM'S BASS, ALABAMA BASS, AND TROUT HYBRIDS; TO AMEND SECTION 50-13-80, RELATING TO TAKING FISH BY SNAGGING, SO AS TO PROHIBIT ALL TAKING OF FISH BY SNAGGING; TO AMEND SECTION 50-13-210, RELATING TO DAILY POSSESSION LIMITS, SO AS TO ADD BARTRAM'S BASS AND ALABAMA BASS; TO AMEND SECTION 50-13-310, RELATING TO GAME FISH CAUGHT WITH NETS AND OTHER NONGAME FISHING DEVICES, SO AS TO ALLOW

FOR THE TAKING OF GAME FISH WITH A LANDING NET; TO AMEND SECTION 50-13-620, RELATING TO FLOATING MARKERS FOR FISHING DEVICES, SO AS TO REQUIRE THE INSPECTION OR REMOVAL OF A TROTLINE AFTER TWENTY-FOUR HOURS; TO AMEND SECTION 50-13-635, RELATING TO PERMISSIBLE FISHING DEVICES, SO AS TO ALLOW FOR THE USE OF A LANDING NET; TO AMEND SECTION 50-13-670, AS AMENDED, RELATING TO THE POSSESSION OF GAME FISH, SO AS TO PROVIDE THAT THE SECTION DOES NOT APPLY TO THE USE OF A LANDING NET; TO AMEND SECTION 50-13-675, AS AMENDED, RELATING TO PERMITTED NONGAME FISHING DEVICES, SO AS TO INCLUDE LANDING NETS, AMONG OTHER THINGS; AND TO AMEND SECTION 50-13-1610, RELATING TO THE PROHIBITION OF THE SALE OR TRAFFIC OF CERTAIN GAME FISH, SO AS TO PROHIBIT CERTAIN ACTIVITIES RELATED TO THE TAKING OF FISH FROM THE FRESHWATERS OF THIS STATE.

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

Freshwater game fish

SECTION 1. Section 50-1-30(5) of the 1976 Code is amended to read:

"(5) Freshwater game fish: Bream: bluegill, flier, green sunfish; pumpkinseed, redbreast, redear (shellcracker), spotted sunfish; warmouth; Black Bass; striped bass or rockfish; white bass; hybrid striped bass-white bass; white crappie, black crappie; Trout: rainbow, brown, brook, and their hybrids, chain pickerel (jackfish), redfin pickerel, sauger, walleye, and yellow perch."

Definitions

SECTION 2. Section 50-13-10(A) of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) 'Landing net (dip net)' means a handheld fishing gear consisting of a cone or bag of soft, flexible mesh material kept open by a rigid, generally circular frame attached to one rigid handle, but does not include skimbow nets or pump nets."

Definitions

SECTION 3. Section 50-13-10(C) of the 1976 Code is amended to read:

"(C) Species definitions:

(1) 'Black bass' means fish in the genus Micropterus to include, but not limited to, largemouth (Micropterus salmoides) bass, smallmouth (Micropterus dolomieu) bass, redeye (Micropterus coosae) bass, Bartram's (Micropterus sp. cf. cataractae) bass, spotted (Micropterus punctulatus) bass, and Alabama (Micropterus henshalli) bass.

(2) 'Hybrid bass' means those fish produced by crossing striped bass (Morone saxatilis) with white bass (Morone chrysops).

(3) 'Striped bass' or 'rockfish' means the species Morone saxatilis.

(4) 'Trout' means rainbow, brook, brown, or other species of cold-water trout of the family Salmonidae and their hybrids."

Taking fish by snagging

SECTION 4. Section 50-13-80(A) of the 1976 Code is amended to read:

"(A) It is unlawful to take fish by snagging. Nothing in this section prohibits the use of lures or baited hooks."

Daily possession limits of game fish

SECTION 5. Section 50-13-210(A) of the 1976 Code is amended to read:

"(A) Except as otherwise provided, the daily possession limit for game fish is an aggregate of forty of which:

(1) not more than five may be largemouth, redeye (coosae), Bartram's bass, or smallmouth bass or their hybrids or any combination;

(2) not more than fifteen may be spotted bass or Alabama bass;

(3) not more than ten may be hybrid bass or striped bass or a combination;

(4) not more than ten may be white bass;

(5) not more than eight may be walleye or sauger or a combination;

(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;

(7) not more than twenty may be crappie;

(8) not more than fifteen may be redbreast; and

(9) not more than thirty may be other freshwater game fish species not listed in this section."

Gamefish caught with nets or other nongame fishing devices

SECTION 6. Section 50-13-310 of the 1976 Code is amended to read:

"Section 50-13-310. A game fish taken by net or other nongame fishing device, except for landing nets (dip nets), must be returned immediately to the water from whence it came. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than two hundred dollars or imprisoned for not more than thirty days. Any equipment used in committing the offense must be seized and disposed of as provided by law."

Time limits for certain fishing devices

SECTION 7. Section 50-13-620 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) A trotline or any part of it may not remain in the freshwaters of this State more than twenty-four hours without inspection and removal of the fish taken on it."

Permissible fishing devices

SECTION 8. Section 50-13-635 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"( ) landing net (dip net)."

Possession of game fish while possessing or using nongame devices prohibited

SECTION 9. Section 50-13-670 of the 1976 Code is amended to read:

"Section 50-13-670. It is unlawful for a person to have in possession game fish, except live bream on those water bodies where permitted as live bait, while possessing or using nongame devices. The provisions of this section do not apply to a person using a cast net or landing net (dip net)."

Nongame fishing devices or gear permitted in certain bodies or fresh water

SECTION 10. The first undesignated paragraph of Section 50-13-675 of the 1976 Code is amended to read:

"Archery equipment, cast nets, crayfish traps, gigs, hand grabbing, landing nets (dip nets), minnow seines, minnow traps, and spears, may be used in freshwaters, except in lakes owned or managed by the department and the freshwaters of the State in Game Zone 1, to take nongame fish except for species-specific restrictions in this title. Where permitted, a recreational fisherman may fish one gill net not more than one hundred yards in length or not more than three gill nets, none of which exceeds thirty yards in length; a commercial fisherman may fish four or more gill nets. Notwithstanding other provisions of this chapter, it is unlawful to use or possess any nongame fishing device or gear or the number not authorized by this section on the particular body of water. Nongame fishing devices, except as provided in this section, must not be used in freshwater including tributaries of rivers or creeks unless listed and regulated in this section:"

Sale of traffic in certain game fish unlawful

SECTION 11. Section 50-13-1610 of the 1976 Code is amended to read:

"Section 50-13-1610. It is unlawful to sell, offer for sale, barter, traffic in, or purchase any fish classified as a game fish under the provisions of this title taken from the freshwaters of this State except as allowed by this title. A person violating this section is guilty of a misdemeanor and, upon conviction, must be punished as follows:

(1) for a first offense, by a fine of not more than five hundred dollars or imprisonment for not more than thirty days;

(2) for a second offense within three years of a first offense, by a fine of not less than three hundred dollars nor more than five hundred dollars or imprisonment for not more than thirty days;

(3) for a third or subsequent offense within three years of a second or subsequent offense, by a fine of not more than one thousand dollars or imprisonment for not more than thirty days;

(4) for a fourth and subsequent offense within five years of the date of conviction for the first offense must be punished as provided for a third offense."

Time effective

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

Ratified the 7th day of April, 2022.

Approved the 11th day of April, 2022.

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ASHLEY HARWELL-BEACH
Code Commissioner
P. O. Box 11489
Columbia, S.C. 29211