CHAPTER 9

Adoptions

CROSS REFERENCES

Compliance with federal law, disability affecting parent’s right to fulfill responsibilities, probable cause order, see Section 63‑21‑20.

ARTICLE 1

South Carolina Adoption Act

Subarticle 1

General Provisions

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑10 | 20‑7‑1646 |
| 63‑9‑20 | 20‑7‑1647 |
| 63‑9‑30 | 20‑7‑1650 |
| 63‑9‑40 | 20‑7‑1680 |
| 63‑9‑50 | 20‑7‑1660 |
| 63‑9‑60 | 20‑7‑1670 |

**SECTION 63‑9‑10.** Short title.

This article may be cited as the “South Carolina Adoption Act”.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Adoption 3.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 4 to 5, 7 to 9, 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 3, Statutory Authorization.

S.C. Jur. Adoption Section 4, Rules of Construction of Adoption Statutes.

S.C. Jur. Adoption Section 8, Who May Adopt.

LAW REVIEW AND JOURNAL COMMENTARIES

Addendum to adoption: Adjusting the adoption statutes in South Carolina. Jennie Rischbieter, 66 S.C. L. Rev. 841 (Summer 2015).

Note: South Carolina Adoption Law: out of the cradle into the twenty‑first century. 40 S.C. L. Rev. 767 (Spring 1989).

**SECTION 63‑9‑20.** Legislative purpose.

The purpose of this article is to establish fair and reasonable procedures for the adoption of children and to provide for the well‑being of the child, with full recognition of the interdependent needs and interests of the biological parents and the adoptive parents. However, when the interests of a child and an adult are in conflict, the conflict must be resolved in favor of the child. Children may be adopted by or placed for adoption with residents of South Carolina only, except in unusual or exceptional circumstances.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Library References

Adoption 3.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 4 to 5, 7 to 9, 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 4, Rules of Construction of Adoption Statutes.

S.C. Jur. Adoption Section 8, Who May Adopt.

S.C. Jur. Adoption Section 19, Requirements as to Contents.

LAW REVIEW AND JOURNAL COMMENTARIES

Note: South Carolina Adoption Law: out of the cradle into the twenty‑first century. 40 S.C. L. Rev. 767 (Spring 1989).

NOTES OF DECISIONS

In general 1

Out‑of‑state adoptive parents 2

1. In general

Adoption exists only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected, and, since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed. Brown v. Harper (S.C.App. 2014) 409 S.C. 470, 761 S.E.2d 779, rehearing denied, certiorari granted, affirmed 410 S.C. 446, 766 S.E.2d 375. Adoption 1; Adoption 3

Even if hospital breached a duty that existed between it and adoptee, adoptee could not satisfy the requirement that she prove her damages were proximately caused by the hospital; at the time adoptee was born, the hospital could not have foreseen that following mother’s instructions to release adoptee to her attorney would result in failed adoption by nomadic parents who sexually exploited adoptee. Bergstrom v. Palmetto Health Alliance (S.C.App. 2002) 352 S.C. 221, 573 S.E.2d 805, rehearing denied, certiorari granted, affirmed in part, vacated in part 358 S.C. 388, 596 S.E.2d 42. Adoption 20

The adoption of a child was a proceeding unknown to the common law and exists only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected; the method of adoption provided by statute is exclusive. Thus, a trial judge’s order finding that a de facto or equitable adoption had occurred would be reversed. Alley v. Bennett (S.C.App. 1989) 298 S.C. 218, 379 S.E.2d 294.

Since the adoption of the child was a proceeding unknown to the common law, adoption exists only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected. Hucks v. Dolan (S.C. 1986) 288 S.C. 468, 343 S.E.2d 613.

Since the right of adoption is not a natural right but wholly statutory, the statutory requirements must be strictly construed. Hucks v. Dolan (S.C. 1986) 288 S.C. 468, 343 S.E.2d 613. Adoption 3

The adoption statutes, Sections 20‑7‑1650 through 20‑7‑1890, do not permit any inquiry by a court into the motives of the adopting parents other than as it relates to the best interest of the child; accordingly, a trial court erred in refusing to grant an adoption upon its apparent belief that the adoption was being sought solely so the step‑grandparents could receive additional social security benefits. Frasier v. McClair (S.C.App. 1984) 282 S.C. 491, 319 S.E.2d 350. Adoption 13

2. Out‑of‑state adoptive parents

Sections 20‑7‑1670 and 20‑7‑1647 do not require that South Carolina couples be canvassed prior to the selection of an out‑of‑state couple as adoptive parents. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

Bonding between the adoptive parents and the child, the participation of the adoptive parents in the birth process, the selection of the adoptive parents by the biological parent, and the financial support for the biological parents’ medical and living expenses are sufficient to establish that unusual or exceptional circumstances exist as required by Sections 20‑7‑1647 and 20‑7‑1670 so as to allow the adoption of a South Carolina child by out‑of‑state parents. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

In determining the meaning of the phrase “unusual and exceptional circumstances” as used in Sections 20‑7‑1647 and 20‑7‑1670, focusing exclusively on the non‑residence of the prospective parents would violate the provisions of Section 20‑7‑2040. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

To avoid conflict with Section 20‑7‑2040, the determination of the meaning of the phrase “unusual and exceptional circumstances” as used in Sections 20‑7‑1647 and 20‑7‑1670 should turn on a best interests of the child standard. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404. Adoption 13

In an action for adoption by an out‑of‑state couple, the appellate court would remand the matter for a de novo hearing where the record was too limited for the appellate court to decipher the basis on which the family court based its decision; although there is no statutory mandate to make specific findings where there is no finding of unusual or exceptional circumstances, the better practice is for the family court to specifically detail the reasons for the denial. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

The statutes allow the family court to consider competing interests when an out‑of‑state resident attempts to adopt a South Carolina child: (1) the finding of unusual or exceptional circumstances such as would allow an out‑of state couple to adopt a child born in South Carolina, and (2) the express and implied state policy against baby selling. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

In an action for adoption by an out‑of‑state couple, it is within the discretion of the family court to require the testimony of all relevant parties to determine whether unusual or exceptional circumstances exist, and to examine, if necessary, the issue of whether the parties have engaged in baby selling. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404. Adoption 13

**SECTION 63‑9‑30.** Definitions.

As used in this article unless the context requires otherwise:

(1) “Adoptee” means a person who is proposed to be or who has been legally adopted.

(2) “Adoption” means the judicial act of creating the relationship of parent and child where it did not exist previously.

(3) “Adoptive parent” means an adult who has become a parent of a child through the legal process of adoption.

(4) “Child” means any person under eighteen years of age.

(5) “Child placing agency” or “agency” means the State Department of Social Services and any person or entity who holds legal or physical custody of a child for the purpose of placement for adoption or a person or entity who facilitates the placement of children for the purpose of adoption. For the purposes of this subsection, a person or entity who offers services for compensation where the intent of those services is to arrange or secure adoptions must be considered “facilitating the placement of children for adoption”, whether those services constitute counseling, referrals, searches, or any other form of adoption services. However, an attorney engaged in the practice of law who represents a client in an adoption or who otherwise facilitates an adoption in the course of that practice is exempt from this definition.

(6) “Consent” means the informed and voluntary release in writing of all parental rights with respect to a child by a parent for the purpose of adoption, or the informed and voluntary release in writing of all custodial or guardianship rights, or both, with respect to a child by the child placing agency or person facilitating the placement of the child for adoption where the child’s parent previously has executed a relinquishment to that agency or person.

(7) “Court” means any family court in this State.

(8) “Relinquishment” means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption and to whom the parent has given the right to consent to the adoption of the child.

(9) “South Carolina resident” means a person who has established a true, fixed principal residence and place of habitation in this State, and who intends to remain or expects to return upon leaving without establishing residence in another state. Temporary absences for short periods of time do not affect the establishment of residency.

(10) “Special needs child” means children who fall into one or more of the following categories:

(a) children who are members of a sibling group;

(b) children of mixed racial heritage;

(c) children aged six or older; or

(d) children with physical, mental, or emotional disabilities.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Application of definitions in this section to Child Placing Agencies Regulations, see S.C. Code of Regulations R. 114‑4910.

Definition of “child” as used in Children’s Code generally, see Section 63‑1‑40.

Definition of “child placing agency” as used in Persons with Disabilities Right to Parent Act, see Section 63‑21‑10.

Department of Social Services regulations pertaining to child placing agencies, see Regulations 114‑49‑10 et seq.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Provision allowing special needs children to be placed for adoption with persons who are not South Carolina residents, see Section 63‑9‑60.

Provision that no fee may be charged for placement of a child with special needs, as defined by the South Carolina Adoption Act of 1986, see Section 63‑9‑1370.

Referral of “special needs child” as defined in this section to regional and national adoption exchanges, see Section 63‑9‑1510.

Termination of parental rights to abandoned or abused children, see Section 63‑7‑2510 et seq.

Federal Aspects

International Adoption Simplification Act, see 8 U.S.C.A. Section 1101.

Library References

Adoption 3.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 4 to 5, 7 to 9, 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

S.C. Jur. Adoption Section 10, Adoption of an Adult.

S.C. Jur. Adoption Section 19, Requirements as to Contents.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

South Carolina Adoption Law: Out of the cradle into the twenty‑first century. 40 S.C. L. Rev. 767 (Spring 1989).

**SECTION 63‑9‑40.** Jurisdiction; venue.

(A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article. Proceedings for adoption by residents of this State may be brought in the family court of the county in which the petitioner resides or is in military service, or in the county in which the child resides or is born. For nonresidents of this State proceedings for adoption must be brought in the county in which the child resides, in which the child is born, or in which the agency having custody of the child is located.

(B) The family court may order a change of venue as in civil proceedings in this State.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Powers and jurisdiction of Circuit Courts and judges, generally, see Sections 14‑5‑310 et seq.

Venue, generally, see Sections 15‑7‑10 et seq.

Library References

Adoption 10.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 78 to 79.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 5, Jurisdiction of the Family Court.

S.C. Jur. Adoption Section 7, Venue.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina, 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

NOTES OF DECISIONS

In general 1

1. In general

Alabama maintained continuing jurisdiction over child custody matter, to exclusion of South Carolina adoption proceedings brought by foster parents, where there was no indication that Alabama had made any determination that the children or their parents no longer had significant connections to Alabama, and mother continued to reside in Alabama, even though children and foster parents resided in South Carolina. Brookshire v. Blackwell (S.C.App. 2009) 384 S.C. 333, 682 S.E.2d 295. Adoption 10; Child Custody 749

**SECTION 63‑9‑50.** Children who may be adopted.

Any child present within this State at the time the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Library References

Adoption 5.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 22 to 27.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 9, Who May be Adopted.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina, 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

**SECTION 63‑9‑60.** Persons who may adopt.

(A)(1) Any South Carolina resident may petition the court to adopt a child. Placement of children for adoption pursuant to this article is limited to South Carolina residents with exceptions being made in the following circumstances only:

(a) the child is a special needs child, as defined by Section 63‑9‑30;

(b) there has been public notoriety concerning the child or child’s family, and the best interests of the child would be served by placement outside this State;

(c) the child is to be placed for adoption with a relative related biologically or by marriage;

(d) at least one of the adoptive parents is in the military service stationed in South Carolina;

(e) there are unusual or exceptional circumstances such that the best interests of the child would be served by placement with or adoption by nonresidents of this State; or

(f) the child has been in foster care for at least six months after having been legally freed for adoption and no South Carolina resident has been identified as a prospective adoptive home.

(2) Before a child is placed within or outside the boundaries of this State for adoption with nonresidents of this State, compliance with Article 11 (Interstate Compact on the Placement of Children) is required, and a judicial determination must be made in this State that one of the circumstances in items (a) through (f) of subsection (A)(1) applies, whether or not the adoption proceedings are instituted in this State. Additionally, in order to determine if any of the circumstances in items (a) through (f) of subsection (A)(1) apply so as to permit placement with a nonresident for the purpose of adoption or adoption by a nonresident, a petition may be brought for the determination before the birth of the child or before placement of the child with the prospective adoptive parents. In ruling on this question the court must include in its order specific findings of fact as to the circumstances allowing the placement of a child with a nonresident or the adoption of a child by a nonresident. The court also must analyze the facts against the objective criteria established in Sections 16‑3‑1060 and 63‑9‑310(F) and make specific findings in accordance with the pertinent law and evidence presented. The order resulting from this action does not prohibit or waive the right to refuse to consent to a release of rights or relinquish rights at a later time or to withdraw a consent or relinquish at a later time as provided in this article. The order must be merged with and made a part of any subsequent adoption proceeding, which must be initiated and finalized in this State.

(B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption. Neither the department nor its contractors may delay or deny the placement of a child for adoption by a nonresident if that nonresident has been approved for adoption of the child by another state authorized to approve such placements pursuant to the Interstate Compact on Placement of Children. The department shall provide an opportunity for a hearing, in accordance with the department’s fair hearing procedures, to a nonresident who believes that the department, in violation of this section, has delayed or denied placement of a child for adoption.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Section 8, eff May 12, 2010.

Effect of Amendment

The 2010 amendment changed the last sentence of subparagraph (A)(2) to read, in part, “subsequent adoption proceeding, which must be initiated and finalized in this State”; and made other nonsubstantive changes throughout subparagraph (A)(2).

CROSS REFERENCES

Adoption by stepparent or relative, see Section 63‑9‑1110.

Department of Social Services fair hearing provisions relating to adoptions, see S.C. Code of Regulations R. 114‑150.

Findings which must be included in an order granting adoption if the petitioner is not a resident of this State, see Section 63‑9‑750.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Provision that a child placing agency which does not give its consent to adoption to a person eligible under this section must inform the person of his right to judicial review, see Section 63‑9‑310.

Library References

Adoption 4.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 15 to 21, 27.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina, 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

NOTES OF DECISIONS

In general 1

Standing 2

1. In general

Statute providing that “any South Carolina resident may petition the court to adopt a child,” was limited by subsection providing that statute did not apply to a child placed by the Department of Social Services (DSS) for purposes of placing that child for adoption, and thus former foster parents did not have standing under the statute to petition the court to adopt their former foster child after the child had been placed by DSS in another home for purposes of adoption; the plain meaning of the statute and intent of the legislature when enacting the subsection was to clarify that not just any resident can petition to adopt a child when the child has been placed by the DSS in another home for the purposes of adoption. Michael P. v. Greenville County Dept. of Social Services (S.C.App. 2009) 385 S.C. 407, 684 S.E.2d 211, rehearing denied, certiorari denied. Adoption 11

Sections 20‑7‑1670 and 20‑7‑1647 do not require that South Carolina couples be canvassed prior to the selection of an out‑of‑state couple as adoptive parents. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

Bonding between the adoptive parents and the child, the participation of the adoptive parents in the birth process, the selection of the adoptive parents by the biological parent, and the financial support for the biological parents’ medical and living expenses are sufficient to establish that unusual or exceptional circumstances exist as required by Sections 20‑7‑1647 and 20‑7‑1670 so as to allow the adoption of a South Carolina child by out‑of‑state parents. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

In determining the meaning of the phrase “unusual and exceptional circumstances” as used in Sections 20‑7‑1647 and 20‑7‑1670, focusing exclusively on the non‑residence of the prospective parents would violate the provisions of Section 20‑7‑2040. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

To avoid conflict with Section 20‑7‑2040, the determination of the meaning of the phrase “unusual and exceptional circumstances” as used in Sections 20‑7‑1647 and 20‑7‑1670 should turn on a best interests of the child standard. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404. Adoption 13

In an action for adoption by an out‑of‑state couple, the appellate court would remand the matter for a de novo hearing where the record was too limited for the appellate court to decipher the basis on which the family court based its decision; although there is no statutory mandate to make specific findings where there is no finding of unusual or exceptional circumstances, the better practice is for the family court to specifically detail the reasons for the denial. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

The statutes allow the family court to consider competing interests when an out‑of‑state resident attempts to adopt a South Carolina child: (1) the finding of unusual or exceptional circumstances such as would allow an out‑of state couple to adopt a child born in South Carolina, and (2) the express and implied state policy against baby selling. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404.

In an action for adoption by an out‑of‑state couple, it is within the discretion of the family court to require the testimony of all relevant parties to determine whether unusual or exceptional circumstances exist, and to examine, if necessary, the issue of whether the parties have engaged in baby selling. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404. Adoption 13

2. Standing

Statute governing the persons who could adopt did not confer standing upon foster parents to seek review of the denial of their petition to adopt child; statute provided that the grant of standing was inapplicable to a child placed for adoption by the Department of Social Services (DSS), and child was placed for adoption by DSS. Youngblood v. South Carolina Dept. of Social Services (S.C. 2013) 402 S.C. 311, 741 S.E.2d 515. Adoption 15

**SECTION 63‑9‑70.** Advertising prohibited to place or accept child for adoption; exception; penalties.

(A) No person or entity other than the Department of Social Services, a child placing agency licensed in this State, or an attorney licensed in this State may advertise that the person or entity will place or accept a child for adoption.

(B) Notwithstanding the provisions of subsection (A), a person is not prohibited from advertising that the person desires to adopt if the person has a current preplacement home investigation finding that the person is suitable to be an adoptive parent.

(C)(1) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(2) The family court shall enjoin a person or entity from violating a provision of this section.

(D) For purposes of this section, “advertise” means to communicate by newspaper, radio, television, hand bills, placards or other print, broadcast or electronic medium that originates within this State.

HISTORY: 2010 Act No. 160, Section 9, eff May 12, 2010.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

Subarticle 3

Consent and Relinquishment

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑310 | 20‑7‑1690 |
| 63‑9‑320 | 20‑7‑1695 |
| 63‑9‑330 | 20‑7‑1700 |
| 63‑9‑340 | 20‑7‑1705 |
| 63‑9‑350 | 20‑7‑1720 |
| 63‑9‑360 | 20‑7‑1750 |

**SECTION 63‑9‑310.** Persons who must give consent or relinquishment.

(A) Consent or relinquishment for the purpose of adoption is required of the following persons:

(1) the adoptee, if over fourteen years of age, except where the court finds that the adoptee does not have the mental capacity to give consent, or that the best interests of the adoptee are served by not requiring consent; and either

(2) the parents or surviving parent of a child conceived or born during the marriage of the parents; or

(3) the mother of a child born when the mother was not married; and either

(4) the father of a child born when the father was not married to the child’s mother, if the child was placed with the prospective adoptive parents more than six months after the child’s birth, but only if the father has maintained substantial and continuous or repeated contact with the child as demonstrated by:

(a) payment by the father toward the support of the child of a fair and reasonable sum, based on the father’s financial ability; and either

(b) visits by the father to the child at least monthly when the father is physically and financially able to do so, and when the father is not prevented from doing so by the person or agency having lawful custody of the child; or

(c) regular communication by the father with the child or with the person or agency having lawful custody of the child, when the father is physically and financially unable to visit the child, or when the father is prevented from visiting the child by the person or agency having lawful custody of the child.

The subjective intent of the father, if unsupported by evidence of the acts specified in subitems (a), (b), and (c) of this item (4) of subsection (A) of this section, does not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making this determination, the court may not require a showing of diligent efforts by any person or agency having lawful custody of the child to encourage the father to perform the acts. A father of a child born when the father was not married to the child’s mother, who openly lived with the child for a period of six months within the one‑year period immediately preceding the placement of the child for adoption, and who during the six‑months period openly held himself out to be the father of the child is considered to have maintained substantial and continuous or repeated contact with the child for the purpose of this item (4) of subsection (A) of this section; or

(5) the father of a child born when the father was not married to the child’s mother, if the child was placed with the prospective adoptive parents six months or less after the child’s birth, but only if:

(a) the father openly lived with the child or the child’s mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or

(b) the father paid a fair and reasonable sum, based on the father’s financial ability, for the support of the child or for expenses incurred in connection with the mother’s pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.

(B) Consent or relinquishment for the purpose of adoption is required of the legal guardian, child placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and:

(1) both the parents of the child are deceased; or

(2) the parental rights of both the parents have been judicially terminated.

(C) Consent is required of the child placing agency or person facilitating the placement of the child for adoption if the child has been relinquished for adoption to the agency or person.

(D) If the consent of a child placing agency required by this subsection is not provided to any person eligible under Section 63‑9‑60, the agency has an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial.

(E) Consent or relinquishment for the purpose of adoption given by a parent who is a child is not subject to revocation by reason of the parent’s minority.

(F) Under no circumstances may a child‑placing agency or any person receive a fee, compensation, or any other thing of value as consideration for giving a consent or relinquishment of a child for the purpose of adoption and no child‑placing agency or person may receive a child for payment of such fee, compensation, or any other thing of value.

However, costs may be assessed and payment made, subject to the court’s approval, for the following:

(1) reimbursements for necessary, actual medical, and reasonable living expenses incurred by the mother and child for a reasonable period of time;

(2) the fee for obtaining investigations and reports as required by Section 63‑9‑520;

(3) the fee of the individuals required to take the consent or relinquishment, as required by Section 63‑9‑340(A);

(4) the fee of a guardian ad litem appointed pursuant to Section 63‑9‑720;

(5) reasonable attorney’s fees and costs for actual services rendered;

(6) reasonable fees to child‑placing agencies; and

(7) reasonable fees to sending agencies as defined in Section 63‑9‑2200(2)(b), the Interstate Compact on the Placement of Children.

The court may approve an adoption while not approving unreasonable fees and costs.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Application to become adoptive parent, right to appeal, see S. C. Code of Regulations R. 114‑150.

Appointment of guardian ad litem in child abuse and neglect proceedings, see Section 63‑7‑1620.

Form and content of a consent or relinquishment for the purpose of adoption, see Section 63‑9‑330.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Persons from whom consent or relinquishment is not required, see Section 63‑9‑320.

Persons who are entitled to notice of proceedings initiated pursuant to this subarticle, see Section 63‑9‑730.

Receipts for reasonable living expenses incurred by mother and child assessed as costs under this section, as required to be included in accounting made by petitioner at final hearing on adoption, see Section 63‑9‑740.

Representation of child in emergency protective custody proceedings, see Section 63‑7‑620.

Requirement that court find that notice has been given to all persons entitled to receive it before issuing order granting adoption, see Section 63‑9‑750.

Service on minors, generally, see SCRCP, Rule 4.

Library References

Adoption 7.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 49 to 76.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

S.C. Jur. Adoption Section 12, Notice and Service on Necessary Parties.

S.C. Jur. Adoption Section 14, Determination of Abandonment.

S.C. Jur. Adoption Section 15, Effect of Abandonment.

S.C. Jur. Adoption Section 16, When Consent Required.

S.C. Jur. Adoption Section 18, Revocability of Consent.

S.C. Jur. Adoption Section 22, Factors to be Considered in Adoption Proceeding.

S.C. Jur. Children and Families Section 55.1, Unwed Father.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Unmarried natural mother may deny natural father permission to adopt child. 39 S.C. L. Rev. 80, Autumn 1987.

NOTES OF DECISIONS

In general 1

Consent by unwed father 2

Construction with other laws 1.5

Involvement with child 3

Notice 4

Review 5

Standing 4.5

1. In general

Consent lies at the foundation of the adoption process, and, therefore, in order for the court to issue a valid adoption decree, it must appear that the parent has consented or otherwise forfeited his or her parental rights. Brown v. Baby Girl Harper (S.C. 2014) 410 S.C. 446, 766 S.E.2d 375. Adoption 7.2(1)

There was no requirement that guardian ad litem be appointed for minor mother before she consented to adoption of her child. Hagy v. Pruitt (S.C. 2000) 339 S.C. 425, 529 S.E.2d 714. Adoption 7.5

The opportunity interest of an unwed father to claim custody is of limited duration as a constitutionally significant interest because of the child’s need for early permanence and stability in parental relationships. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25. Child Custody 22

By enacting Section 20‑7‑1690, the legislature contemplated establishing general minimum standards by which an unwed father may timely demonstrate his commitment to the child and his desire to grasp the opportunity to assume full responsibility for his child. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25. Adoption 7.4(6)

An unwed father is entitled to constitutional protection not only when he meets the literal requirements of Section 20‑7‑1690(A)(5)(b), but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute; to mandate strict compliance with Section 20‑7‑1690(A)(5)(b) would make an unwed father’s right to withhold his consent to adoption dependent upon the whim of the unwed mother. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25.

An unwed father undertook sufficient prompt and good faith efforts to assume parental responsibility and to comply with Section 20‑7‑1690(A)(5)(b) where he attempted to provide monetary support to the child’s mother, which the mother refused to accept. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25.

Time and circumstances may limit the protectibility of an unwed father’s interest in his child; the values that underlie protection require that the father take advantage of his opportunity to develop a relationship with the child early and completely. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25. Child Custody 22

Consent of mother was required in order for the natural father to adopt an illegitimate child of the parties. Hucks v. Dolan (S.C. 1986) 288 S.C. 468, 343 S.E.2d 613.

Consent lies at the foundation of the adoption process and, in order for the court to issue a valid adoption decree, it must appear that the parent has consented or otherwise forfeited his or her parental rights. Gardner v. Baby Edward (S.C. 1986) 288 S.C. 332, 342 S.E.2d 601.

The Department of Social Services failed to prove that a minor had not been served, and that the trial court therefore was without jurisdiction, pursuant to Sections 15‑9‑480 and 20‑7‑1690, where the minor, through her guardian ad litem, had filed an answer to petitions for her adoption, asking that the court assume jurisdiction; moreover, the Department of Social Services would not be heard to complain about the court’s jurisdiction, where it had voluntarily placed itself under that jurisdiction and agreed that the court should determine the ultimate issue of the minor’s adoption. Morgan v. South Carolina Dept. of Social Services (S.C.App. 1984) 280 S.C. 577, 313 S.E.2d 350.

Failure of the Family Court to appoint a guardian ad litem prior to the hearing of a natural father’s motion to withdraw his consent to adoption of his child, pursuant to Section 20‑7‑1690, was error, since the child had a substantial interest in any proceeding that adjudicated the right of its natural parent to participate in a contested adoption. McLaughlin v. Strickland (S.C.App. 1983) 279 S.C. 513, 309 S.E.2d 787. Infants 1238(8)

Consent to adopt not technically “filed” prior to requested withdrawal, but filed and part of record when matter was heard by master, gave court discretion to accept or reject attempted withdrawal of consent and to find that it would be in best interest of child for adoption to be finalized. Ellison v. Camby (S.C. 1977) 269 S.C. 48, 236 S.E.2d 197.

Adoption statutes providing for a procedure or method by which one person may be adopted as the child of another are in derogation of the common law and, therefore, to be strictly construed in favor of the parent and the preservation of the relationship of parent and child. Goff v. Benedict (S.C. 1969) 252 S.C. 83, 165 S.E.2d 269.

Consent lies at the foundation of statutes of adoption. Goff v. Benedict (S.C. 1969) 252 S.C. 83, 165 S.E.2d 269.

Where a natural parent has freely and knowingly given the required consent to the adoption of his or her child, and the proposed adoptive parents have acted upon such consent by bringing adoption proceedings, the consent is ordinarily binding upon the natural parent and cannot be arbitrarily withdrawn so as to bar the court from decreeing the adoption. Driggers v. Jolley (S.C. 1951) 219 S.C. 31, 64 S.E.2d 19. Adoption 7.6(1)

1.5. Construction with other laws

Indian Child Welfare Act’s (ICWA) placement preferences did not apply in situation in which no alternative party had formally sought to adopt the Indian child, and therefore preferences did not apply to warrant placement of child with biological father, rather than with prospective adoptive parents, where father did not attempt to adopt child, but rather merely asserted that his parental rights should not have been terminated. Adoptive Couple v. Baby Girl (S.C. 2013) 404 S.C. 483, 746 S.E.2d 51, order vacated on rehearing 404 S.C. 490, 746 S.E.2d 346, stay denied 134 S.Ct. 32. Indians 138

2. Consent by unwed father

Family court was required to determine whether birth father timely demonstrated his commitment to child and thus was entitled to more than “John Doe” notice of child’s adoption, in proceeding to set aside adoption and termination of birth father’s parental rights; if birth father timely demonstrated his commitment to child, constitutional protections attached and his consent for adoption was required. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Adoption 16; Infants 2070

Unwed father failed to demonstrate sufficient prompt and good faith efforts to assume parental responsibility and comply with the statute governing when consent of unwed father is required for adoption, where unwed father had information with which he could have sought the exact location of his child and made efforts to cultivate a relationship with the child and assume parental responsibility for three months before he took any action, father never offered any financial support or assistance to mother in connection with the expenses of the pregnancy and birth after learning of the child’s birth, and father never offered any financial support for the child after learning of the child’s birth. Parag v. Baby Boy Lovin (S.C.App. 1998) 333 S.C. 221, 508 S.E.2d 590. Adoption 7.2(3)

In order for consent of unwed father to be required for adoption based on father’s sufficient prompt and good faith efforts to assume parental responsibility, and to comply with the statute governing when consent is required, it is incumbent upon the father to demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of the child before he may acquire substantial constitutional protection, and the mere existence of a biological link does not merit equivalent constitutional protection. Parag v. Baby Boy Lovin (S.C.App. 1998) 333 S.C. 221, 508 S.E.2d 590. Adoption 7.2(3)

While the unwed father possesses an opportunity to develop a relationship with his offspring under statute governing when consent is required by unwed father to adoption, this opportunity is of limited duration as a constitutionally significant interest because of the child’s need for early permanence and stability in parental relationships. Parag v. Baby Boy Lovin (S.C.App. 1998) 333 S.C. 221, 508 S.E.2d 590. Adoption 7.2(3)

Alleged natural father of child who intervened in an adoption proceeding failed to furnish sufficient evidence to overcome the strong presumption of legitimacy of the child who was born in wedlock. Chandler v. Merrell (S.C. 1987) 291 S.C. 224, 353 S.E.2d 133.

Father’s consent was necessary for adoption of child by ex wife’s second husband where preponderance of testimony sustained conclusion that father did not wilfully fail to visit and support his child, that father was prevented from doing so by remarriage of mother and her removal of child to New Jersey and Pennsylvania and antagonistic attitudes of respondents made visitation inadvisable if not impossible. D’Augustine v. Bush (S.C. 1977) 269 S.C. 342, 237 S.E.2d 384.

3. Involvement with child

Evidence was insufficient to establish that biological father of out of wedlock child undertook a sufficient effort to assume parental responsibility, and thus his consent to adoption was not required; father advised mother to have an abortion and to stop bothering him when she initially told him of her pregnancy, he later told her he was fine with mother giving the baby up for adoption, and during mother’s pregnancy the only support mother refused was father’s one‑time offer of $100, and thus mother did not thwart father’s attempts to form a relationship with child, and father paid no medical or living expenses for mother during her pregnancy. Roe v. Reeves (S.C. 2011) 392 S.C. 143, 708 S.E.2d 778, rehearing denied, certiorari denied, certiorari denied 132 S.Ct. 760, 565 U.S. 1059, 181 L.Ed.2d 483. Adoption 7.4(1); Adoption 7.4(6)

Unwed biological father failed to undertake sufficient prompt and good faith efforts to assume parental responsibility and to comply with statute governing financial support requirements, and thus, father’s consent to adoption of child was not necessary; father’s contributions to mother were insubstantial and inconsistent, mother never refused father’s help but, rather, requested it, mother never demonstrated a disinterest in having father involved and supportive during pregnancy, and mother attempted to reach father on several occasions, but he was apparently avoiding her, and thus, father failed to evince a commitment to child deserving of protection. Doe v. Roe (S.C.App. 2006) 369 S.C. 351, 631 S.E.2d 317, rehearing denied, certiorari denied. Adoption 7.4(1); Adoption 7.4(6)

Unwed father demonstrated sufficient prompt and good faith efforts to assume parental responsibility, such that his literal compliance with statute mandating that father provide for support of child before state is compelled to seek his consent to adoption of child was excused; given mother’s representations that she had obtained an abortion, coupled with her extraordinary efforts to conceal her pregnancy from father, father’s failure to support during the pregnancy was through no fault of his own, and father had established a nursery, arranged for health insurance and began a savings account for the child. Doe v. Queen (S.C. 2001) 347 S.C. 4, 552 S.E.2d 761, rehearing denied. Adoption 7.2(3)

The opportunity interest of a birth father is of limited duration as a constitutionally significant interest because of the child’s need for early permanence and stability in parental relationships. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Parent And Child 103

Biological father failed to demonstrate willingness to develop full custodial relationship with his daughter, and, therefore, his consent was not required in action to adopt daughter; although father allegedly initiated paternity tests and took steps to assert his paternal rights, he failed to make prompt good‑faith effort to assume responsibility for either financial contribution to child’s welfare or assistance in paying for birth mother’s pregnancy or childbirth expenses. Ex parte Black (S.C.App. 1998) 330 S.C. 431, 499 S.E.2d 229, rehearing denied. Adoption 7.2(3)

Unwed father can establish right to have his interest in child afforded legal protection through statutory requirement for adoption of consent or relinquishment of parental rights not only where he meets literal language of statute governing financial support requirements, but also when he undertakes sufficient prompt and good‑faith efforts to assume parental responsibility and to comply with statute. Doe v. Brown (S.C. 1997) 331 S.C. 491, 489 S.E.2d 917. Adoption 7.2(3)

An unwed father’s consent to adoption is required even where he does not meet the literal requirement of Section 20‑7‑1690(A)(5)(b), mandating that a father provide for the support of his child before the state is compelled to seek consent to the adoption of the child, where his attempts to comply with the statute are thwarted by the child’s mother. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25.

An unwed father must demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child before his interest in personal contact with his child acquires substantial constitutional protection; the mere existence of a biological link does not merit equivalent constitutional protection. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25. Adoption 7.2(3); Child Custody 22

The specific acts undertaken by an unwed father to preserve his inchoate relationship with his child, as well as the nature of the relationship he wishes to foster with the child, are of considerable importance in determining whether the unwed father has evinced a commitment to his child deserving of protection. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25. Child Custody 22

When a child is first born, an unwed father possesses an opportunity no other male possesses to develop a relationship with his offspring; however, this opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects. Abernathy v. Baby Boy (S.C. 1993) 313 S.C. 27, 437 S.E.2d 25. Child Custody 22

Unmarried natural father’s rights under due process and equal protection clauses are not violated by failure to give notice and opportunity to be heard before his child is adopted, where father has had no significant custodial, personal, or financial relationship with child. Lehr v. Robertson, U.S.N.Y.1983, 103 S.Ct. 2985, 463 U.S. 248, 77 L.Ed.2d 614.

4. Notice

Family court was required to determine whether the particular publication used by adoptive parents provided adequate notice to birth father of impending adoption proceedings, in action to set aside adoption and termination of birth father’s parental rights, where notice was issued in county adjacent to birth father’s county of residence. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Adoption 16; Infants 2070

4.5. Standing

Statute governing the persons who must give consent or relinquishment for the purpose of adoption did not give foster parents standing to seek to adopt child; foster parents were not persons eligible to adopt child, as the Department of Social Services (DSS) had denied their petition for adoption. Youngblood v. South Carolina Dept. of Social Services (S.C. 2013) 402 S.C. 311, 741 S.E.2d 515. Adoption 4; Adoption 11

5. Review

The Supreme Court’s scope of review of whether a biological parent’s consent to adoption was induced by extrinsic fraud extends to the Court’s own view of the preponderance of the evidence. Hagy v. Pruitt (S.C. 2000) 339 S.C. 425, 529 S.E.2d 714. Adoption 16

**SECTION 63‑9‑320.** Persons not required to give consent or relinquishment.

(A) Notwithstanding the provisions of Section 63‑9‑310, consent or relinquishment for the purpose of adoption is not required of the following persons:

(1) a parent whose rights with reference to the adoptee have been terminated pursuant to Article 7, Chapter 7;

(2) a parent whom the family court finds to be mentally incapable of giving consent or relinquishment for the purpose of adoption and whom the court finds to be unlikely to provide minimally acceptable care of the adoptee and whose capacity is unlikely to be restored for a reasonable period of time, and, in the court’s judgment, it would be detrimental to the adoptee to delay adoption. The court shall appoint a guardian ad litem for an incompetent parent for whom there has been no prior appointment and shall appoint independent counsel for an incompetent parent who is indigent. However, upon good cause shown, the court may waive the requirement for the appointment of independent counsel for an incompetent and indigent parent;

(3) the biological parent of a child conceived as a result of that parent’s criminal sexual conduct or incest as found by a court of competent jurisdiction unless, with respect to a conviction for criminal sexual conduct, the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

(B) A parent who has executed a relinquishment pursuant to Section 63‑9‑330 to a person facilitating the adoption or to a child placing agency for the purpose of adoption of his child is not required to execute a separate consent document also.

HISTORY: 2008 Act No. 361, Section 2.

Editor’s Note

2005 Act No. 168, Section 1, provides as follows:

“This act may be cited as ‘Autumn’s Law’ “.

CROSS REFERENCES

As to criminal domestic violence, see Section 16‑25‑10 et seq.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Persons who are entitled to notice of proceedings initiated pursuant to this subarticle, see Section 63‑9‑730.

Library References

Adoption 7.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 49 to 76.

RESEARCH REFERENCES

Encyclopedias

159 Am. Jur. Proof of Facts 3d 173, Ineffective Assistance of Counsel in Parental Termination Cases.

S.C. Jur. Adoption Section 11, Necessary Parties to Adoption Proceeding.

S.C. Jur. Adoption Section 12, Notice and Service on Necessary Parties.

S.C. Jur. Adoption Section 16, When Consent Required.

LAW REVIEW AND JOURNAL COMMENTARIES

Unmarried natural mother may deny natural father permission to adopt child. 39 S.C. L. Rev. 80 (Autumn 1987).

NOTES OF DECISIONS

In general 1

1. In general

Under adoption statutes as they existed prior to 2005, there was no per se exclusion of parents of children conceived as result of criminal act from statutory requirement for adoption that parents consent or relinquish their parental rights or have already had their rights terminated. Doe v. Brown (S.C. 1997) 331 S.C. 491, 489 S.E.2d 917. Adoption 7.3

**SECTION 63‑9‑330.** Form and content of consent and relinquishment.

(A) Consent or relinquishment for the purpose of adoption, pursuant to Section 63‑9‑310, must be made by a sworn document, signed by the person or the head of the agency giving consent or relinquishment after the birth of the adoptee, and must specify the following:

(1) the permanent address of the person or agency making the sworn written statement;

(2) the date, time, and place of the signing of the statement;

(3) the date of birth, race, and sex of the adoptee and any names by which the adoptee has been known;

(4) the relationship of the adoptee to the person or agency giving consent or relinquishment;

(5) the name and address of the adoptee’s mother or father;

(6) that the consent or relinquishment by the person or agency forfeits all rights and obligations of the person or agency with respect to the named adoptee, including any future child support obligation. Giving consent or relinquishment does not relieve a person from the obligation to pay a child support arrearage unless approved by the court;

(7) that consent or relinquishment once given must not be withdrawn except by order of the court upon a finding that it is in the best interests of the child, and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion; and that the entry of the final decree of adoption renders any consent or relinquishment irrevocable;

(8) that the person or agency giving the consent or relinquishment understands that consent or relinquishment must not be given if psychological or legal advice, guidance, or counseling is needed or desired and that none is needed or desired;

(9) that the person or agency giving the consent or relinquishment waives further notice of the adoption proceedings, unless the proceedings are contested by another person or agency;

(10) that the person or agency giving the consent or relinquishment is doing so voluntarily, and the consent or relinquishment is not being obtained under duress or through coercion; and

(11) that the person or agency giving the consent or relinquishment has received a copy of the document.

(B) When a child placing agency accepts a relinquishment for the purpose of adoption, which gives the agency the right to consent to an adoption of the child, and which contains the information required in subsection (A) of this section, the consent of the agency for the purpose of adoption is not required to meet the requirements of subsection (A). However, the sworn document relinquishing the child must be filed with the court pursuant to subsection (C) of Section 63‑9‑710.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Provision that no separate consent document is required from a person who has executed a relinquishment to a child placing agency for the purpose of adoption of his child, see Section 63‑9‑320.

Provisions relative to signing the sworn document provided for in this section, see Section 63‑9‑340.

Service of summonses and other papers, generally, see SCRCP, Rules 3 et seq.

Library References

Adoption 7.3, 7.5.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 56 to 58, 62, 70 to 73.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 11, Necessary Parties to Adoption Proceeding.

S.C. Jur. Adoption Section 17, Requisites of Valid Consent.

S.C. Jur. Adoption Section 18, Revocability of Consent.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Unmarried natural mother may deny natural father permission to adopt child. 39 S.C. L. Rev. 80 (Autumn 1987).

Notes of Decisions

In general 1

1. In general

Transfer of custody from adoptive mother to birth mother was in the child’s best interests, where nothing in the record conclusively rebutted the presumption that it was in a child’s best interests to be in the custody of her biological parent. Brown v. Baby Girl Harper (S.C. 2014) 410 S.C. 446, 766 S.E.2d 375. Child Custody 42; Child Custody 460

**SECTION 63‑9‑340.** Signing consent and relinquishment.

(A) The sworn document provided for in Section 63‑9‑330, which gives consent or relinquishment for the purpose of adoption, must be signed in the presence of two witnesses one of whom must be one of the following:

(1) a judge of any family court in this State;

(2) an attorney licensed to practice law in South Carolina who does not represent the prospective adoption petitioners;

(3) a person certified by the State Department of Social Services, pursuant to Section 63‑9‑360, to obtain consents or relinquishments;

(4) when the consent or relinquishment is obtained outside of this State, by an attorney licensed to practice law in that state, by a person designated by an agency of that state, by a person or agency authorized by that state’s law to obtain consents or relinquishments or to conduct investigations for adoptions, or by a qualified resident of that state authorized by a South Carolina family court. When a consent or relinquishment is obtained outside of this State, it may be accepted as valid in this State, provided the court determines:

(a) the consent or relinquishment complies with the laws of the state where it is obtained; and

(b) the relinquishing party or agency is domiciled in that state at the time of the signing of the consent or relinquishment; or

(c) the content of the consent or relinquishment is in substantial compliance with the intent of Section 63‑9‑330(A).

(B) The persons who witness the signing of the sworn document, as provided for in subsection (A) of this section shall attach to the document written certification signed by each witness that before the signing of the document, the provisions of the document were discussed with the person giving consent or relinquishment, and that based on this discussion, it is each witness’ opinion that consent or relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.

(C) A copy of the document must be delivered to the person giving the consent or relinquishment at the time of the signing of the document.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Persons from whom consent or relinquishment for the purpose of adoption is required, see Section 63‑9‑310.

Requirement that, with the exception of certain persons provided for in this section, persons obtaining a consent or relinquishment for the purpose of adoption must be certified by the Children’s Bureau, see Section 63‑9‑360.

Library References

Adoption 7.3, 7.5.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 56 to 58, 62, 70 to 73.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 17, Requisites of Valid Consent.

LAW REVIEW AND JOURNAL COMMENTARIES

Unmarried natural mother may deny natural father permission to adopt child. 39 S.C. L. Rev. 80 (Autumn 1987).

Notes of Decisions

In general 1

Review 2

1. In general

Substantial compliance with statute requiring birth mother’s consent to adoption could not cure failure to comply with execution requirements for birth mother to sign consent in the presence of two witnesses, and for witnesses to be present for the lawyer’s discussion with birth mother; mandatory language of statute weighed against adopting a substantial compliance paradigm with respect to the formalities of execution of a consent to adoption, and a finding of substantial compliance would not have furthered the purposes of the Adoption Act to establish fair and reasonable procedures for the adoption of children. Brown v. Baby Girl Harper (S.C. 2014) 410 S.C. 446, 766 S.E.2d 375. Adoption 7.5

The legislature intended that strict compliance with the procedures set forth in the statute governing consent to and relinquishment for the purpose of adoption be required in order to reduce litigation, promote finality, and ensure consent documents are voluntary. Brown v. Baby Girl Harper (S.C. 2014) 410 S.C. 446, 766 S.E.2d 375. Adoption 7.5

Birth mother’s execution of consent to adoption and relinquishment was ineffective, where attorney witness was not in room when birth mother signed consent, and neither witness observed statutorily mandated discussion with mother about provisions in consent document before she signed it, and, thus, did not have personal knowledge of discussion. Brown v. Harper (S.C.App. 2014) 409 S.C. 470, 761 S.E.2d 779, rehearing denied, certiorari granted, affirmed 410 S.C. 446, 766 S.E.2d 375. Adoption 7.3; Adoption 7.5

Strict compliance with the procedures for consent or relinquishment for the purpose of adoption is required in order to reduce litigation, promote finality, and ensure consent documents are voluntary. Brown v. Harper (S.C.App. 2014) 409 S.C. 470, 761 S.E.2d 779, rehearing denied, certiorari granted, affirmed 410 S.C. 446, 766 S.E.2d 375. Adoption 7.3; Adoption 7.5

2. Review

Trial court’s order invalidating birth mother’s consent to adoption for failure to strictly comply with statutory requirements for same was final order that was immediately appealable. Brown v. Harper (S.C.App. 2014) 409 S.C. 470, 761 S.E.2d 779, rehearing denied, certiorari granted, affirmed 410 S.C. 446, 766 S.E.2d 375. Adoption 15

**SECTION 63‑9‑350.** Withdrawal of consent or relinquishment.

Withdrawal of any consent or relinquishment is not permitted except by order of the court after notice and opportunity to be heard is given to all persons concerned, and except when the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. Any person attempting to withdraw consent or relinquishment shall file the reasons for withdrawal with the family court. The entry of the final decree of adoption renders any consent or relinquishment irrevocable.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Library References

Adoption 7.6.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 56, 74 to 76.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 18, Revocability of Consent.

S.C. Jur. Adoption Section 26, Natural Parent’s Rights.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

NOTES OF DECISIONS

In general 1

Best interest of child 2

Burden of proof 6

Duress 3

Scope of review 7

Voluntariness of consent 4

Waiting period 5

1. In general

A mother’s consent to the termination of her parental rights would not be withdrawn, even though the mother had no legal counsel present at the time of consent, where the mother had an 11th grade education and was able to understand the documents she was signing, she was not under the influence of incapacitating drugs nor in any unusual emotional state at the time of consent, she was incapable of caring for her children in the past due to drug abuse, insufficient parenting skills and voluntary unemployment, she twice failed to cooperate in counseling plans designed to rehabilitate her and reunite the family, she was still incapable of having custody returned to her at the time of the hearing, and the children had been placed together with a relative for adoption. Johnson v. Horry County Dept. of Social Services (S.C. 1989) 298 S.C. 355, 380 S.E.2d 830.

**SECTION 20‑7‑1720 did not apply to a purported consent to adoption signed by the natural father, who, in reserving the right of visitation, did not agree to relinquish all rights to the child within the meaning of Section 20‑7‑1770(b).** McLaughlin v. Strickland (S.C.App. 1983) 279 S.C. 513, 309 S.E.2d 787.

Master’s findings that statutory filing requirements had been sufficiently met where consent to adopt was not filed until 1 day after requested withdrawal of consent and therefore permitted court to accept or reject attempted withdrawal were well within scope of discretion statutorily granted to him; findings had evidentiary support in record and were not against preponderance of evidence. Ellison v. Camby (S.C. 1977) 269 S.C. 48, 236 S.E.2d 197.

When, in adoption proceedings, the natural parents withdrew their consent, and the petitioners joined in with the withdrawal of consent and withdrew their petition for adoption, the children’s court of Spartanburg County lost jurisdiction, notwithstanding the provision of Section 15‑1391 that when once the children’s court obtains jurisdiction, such jurisdiction continues during the minority of the child. Driggers v. Jolley (S.C. 1951) 219 S.C. 31, 64 S.E.2d 19.

2. Best interest of child

In custody matters, there is a rebuttable presumption that it is the best interest for a child to be placed with a biological parent over a third party. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Child Custody 460

Best interest of the child remains, always, the paramount consideration in every adoption. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 4

Withdrawal of biological mother’s consent to relinquish child for adoption was in child’s best interest, as required for such withdrawal, even though child spent first 11 weeks of life with prospective adoptive parents, and adoptive parents appeared to be fit, obviously loved child very much, and had sufficient housing, financial resources, extended support systems, and child‑care options; mother had an equal ability to care for child, and mother’s consent for relinquishment was involuntary. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.6(2)

A family court judge properly denied a natural mother’s petition to withdraw her consent to the adoption of her infant child under Section 20‑7‑1720 since his conclusion that the child’s best interest would unquestionably be served by the child’s remaining with the adoptive parents was supported by the evidence. Phillips v. Baker (S.C. 1985) 284 S.C. 134, 325 S.E.2d 533.

3. Duress

Duress is only one consideration for a court in making a determination of whether to allow withdrawal of consent to relinquish a child for adoption on the ground that the consent was obtained involuntarily, and the court may look to other factors, including the totality of the circumstances. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.6(2)

Duress, for purposes of the statute providing that a withdrawal of consent to relinquish a child for adoption is not permitted unless, inter alia, the consent was not given voluntarily or was obtained under duress or through coercion, is viewed with a subjective test, looking at the individual characteristics of the person allegedly influenced, and duress does not occur if the person has a reasonable alternative to succumbing and fails to avail themselves of the alternative. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.6(2)

“Duress,” within meaning of the statute providing that a withdrawal of consent to relinquish a child for adoption is not permitted unless, inter alia, the consent was not given voluntarily or was obtained under duress or through coercion, is a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.6(2)

4. Voluntariness of consent

Biological mother proved that her consent to relinquish child for adoption was involuntary, as a ground for withdrawal of consent; mother had several emotional stressors, including recent deaths of her boyfriend and her father, when she delivered child in hospital, there was abundant evidence that mother’s stressors and suffering caused impaired functioning, including evaluators’ opinions that mother was incapable of giving her voluntary consent for adoption when she was in hospital, and, inter alia, mother was encouraged by others regarding her adoption decision and was led to believe by counseling form that she had a two‑week period in which to consider her decision. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.6(2)

While the trial judge, in an adoption proceeding, must determine whether consent has been obtained from the proper persons and whether adoption is in the best interest of the child, the trial judge has no authority to question the voluntariness of parental consent in the absence of a petition by one or both of the natural parents to withdraw consent. Gardner v. Baby Edward (S.C. 1986) 288 S.C. 332, 342 S.E.2d 601. Adoption 13

5. Waiting period

In South Carolina, there is no waiting period before a consent to relinquish a child for adoption becomes effective; thus, once a parent signs a consent, there is no contemplation time or waiting period during which the consent can be revoked. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.5; Adoption 7.6(3)

6. Burden of proof

In a proceeding to revoke consent to relinquish a child for adoption on the ground that the consent was obtained involuntarily, the burden of showing that the consent was obtained involuntarily is on the person seeking to revoke the consent. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 7.8(1)

7. Scope of review

Broad scope of review applicable in appeals concerning adoption proceedings does not require the Supreme Court to disregard the findings of the family court judge, who saw and heard the witnesses and was in a better position to evaluate their credibility; this degree of deference is especially true in cases involving the welfare and best interests of a minor child. McCann v. Doe (S.C. 2008) 377 S.C. 373, 660 S.E.2d 500. Adoption 15

**SECTION 63‑9‑360.** Consent and relinquishment certification.

(A) With the exception of the persons provided for in Section 63‑9‑340(A)(1), (2), and (4), any person obtaining a consent or relinquishment for the purpose of adoption must be certified by the State Department of Social Services. Any person conducting an investigation for the adoption of a child pursuant to Section 63‑9‑520 also must be certified by the department. However, where the adoption petitioner or prospective adoption petitioner is a nonresident of this State, a South Carolina family court may authorize a qualified nonresident to conduct any investigations required under Section 63‑9‑520.

(B) The department shall promulgate regulations to provide for the following: certification of investigators; issuance, monitoring, and revocation of certificates; and sanctioning of noncompliance with regulations. Any person certified by the department may charge a fee which may not exceed the reasonable costs of the services rendered. The fee must be approved by the department during the certification process.

(C) The department shall develop, revise, and publish quarterly a directory of persons certified pursuant to this section. A reasonable fee may be charged by the department for copies of this directory.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Confidentiality of files and records maintained by persons certified by the Children’s Bureau pursuant to this section, see Section 63‑9‑780.

Department of Social Services regulations pertaining to child placing agencies, see S.C. Code of Regulations R. 114‑4910 et seq.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Provision that a person certified to obtain consents or relinquishments pursuant to this section may act as a witness to the signing of such documents, see Section 63‑9‑340.

Requirement that all certified Adoption Investigators and persons certified to take relinquishments must requirements of this section, see S.C. Code of Regulations R. 114‑4960.

Library References

Adoption 7.5, 13.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 46 to 47, 56, 70 to 73, 93 to 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 24.5, Domestication of Foreign Adoption.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Subarticle 5

Investigations and Reports

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑510 | 20‑7‑1738 |
| 63‑9‑520 | 20‑7‑1740 |

**SECTION 63‑9‑510.** Temporary placement and custody of adoptee.

Once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner has temporary custody of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including necessary medical or surgical treatment, except as provided in Article 7. A postplacement investigation and report of this investigation pursuant to Section 63‑9‑520 must be completed before the final hearing. Unless the adoptee is removed pursuant to Subarticle 3, Article 3, Chapter 7, when adoptive parents have received the adoptee into their home for the purpose of adoption but no petition has been filed pursuant to Section 63‑9‑710, the child‑placing agency shall secure an order from the family court before removal of the child from the adoptive parents. At the hearing the burden of proof is on the child‑placing agency to prove that continued placement with the adoptive family is not in the adoptee’s best interest.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Library References

Adoption 9.1, 13.

Child Custody 310.

Infants 192.

Westlaw Topic Nos. 17, 76D, 211.

C.J.S. Adoption of Persons Sections 46 to 47, 77, 93 to 102, 143.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

Attorney General’s Opinions

H.3669 would apply to adoptive placements between time placement agreements are signed and petition for adoption is filed. Legislation would be inapplicable between time petition is filed and court issues adoption decree. 1993 Op. Atty Gen No. 93‑47.

**SECTION 63‑9‑520.** Investigations and reports.

(A) Before the final hearing for adoption of a child, investigations and reports must be completed in accordance with the following:

(1) Before the placement of any child by any agency or by any person with a prospective adoptive parent, a preplacement investigation, a background investigation, and reports of these investigations must be completed:

(a) preplacement investigations must answer all of the following:

(i) whether the home of the prospective adoptive parent is a suitable one for the placement of a child;

(ii) how the emotional maturity, finances, health, relationships, and any other relevant characteristics of the prospective adoptive parent affect the parent’s ability to accept, care, and provide a child with an adequate environment as the child matures;

(iii) whether the prospective adoptive parent has ever been involved in any proceeding concerning allegedly neglected, abandoned, abused, or delinquent children;

(iv) whether the prospective adoptive parent has completed a course or counseling in preparation for adoption;

(v) whether the prospective adoptive parent is approved for placement of a child for purposes of adoption, and if not approved, a statement of the reasons for not approving the prospective adoptive parent; and

(vi) any other information that is disclosed by the investigation that would be of value to or would assist the court in deciding the case;

(b) if the waiting period for an adoptive placement exceeds one year from the date the preplacement investigation report is completed, the report must be updated before the placement of a child for the purpose of adoption to determine any change in circumstances;

(c) a background information investigation and a report of this investigation may not disclose the identity of the biological parents of the adoptee and shall provide the following:

(i) a medical history of the biological family of the adoptee, including parents, siblings, and other family members related to the adoptee including ages, sex, race, and any known genetic, psychological, metabolic, or familial disorders; and

(ii) a medical and developmental history of the adoptee.

(d) notwithstanding any provision of this section, upon good cause shown, the court in its discretion may permit the temporary custody and placement of a child with a prospective adoptive parent before the completion of the preplacement or background investigation and reports required pursuant to this article.

(2) A postplacement investigation and report of this investigation must be completed after the filing of the adoption petition. Copies of this report must be provided to the adoption petitioner and must be filed with the court at the final hearing on the adoption provided for in Section 63‑9‑750. A postplacement investigation and report of this investigation must:

(a) answer all of the following:

(i) the race, sex, and age of the adoptee and whether the child is a suitable child for adoption by the prospective adoptive parent;

(ii) the reason for the adoptee’s placement away from the biological parents;

(iii) whether the adoptee, if of appropriate age and mental capacity, desires to be adopted;

(b) review and where indicated, investigate the allegations of the adoption petition and its attachments and of the accounting of disbursements required under Section 63‑9‑740;

(c) evaluate the progress of the placement of the adoptee; and

(d) determine whether adoption by the petitioner is in the best interests of the adoptee.

(B) The investigators and all persons participating in, conducting, or associated with the preparation of reports required under this section must be available for examination and cross‑examination by any party to an adoption proceeding concerning the contents of and recommendations contained in the reports.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Certification of persons who conduct investigations relative to adoption of children, see Section 63‑9‑360.

Department of Social Services regulations pertaining to child placing agencies, see S.C. Code of Regulations R. 114‑4910 et seq.

Examination by court of report required by this section, see Sections 63‑9‑360, 63‑9‑750.

Inapplicability of certain requirements of this section where the adoptee is the petitioner’s spouse’s child or is related to the petitioner by blood or marriage, see Section 63‑9‑1110.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Issuance of order granting adoption upon satisfactory examination by the court of the record, including the reports required by this section, see Section 63‑9‑750.

Notice to department, agency or individual making the investigation required by this section of the time and date of hearing on petition for adoption, see Section 63‑9‑750.

Persons from whom consent or relinquishment for the purpose of adoption is required, see Section 63‑9‑310.

Requirement that child placing agency ensure that a report pursuant to this section be made prior to finalization of adoption, see S.C. Code of Regulations R. 114‑4970.

Requirement that the postplacement investigation report be completed prior to the final hearing, see Section 63‑9‑510.

Library References

Adoption 13.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 46 to 47, 93 to 102.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Subarticle 7

Judicial Procedures

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑710(A)‑(C) | 20‑7‑1730 |
| 63‑9‑710(D) | 20‑7‑1736 |
| 63‑9‑720 | 20‑7‑1732 |
| 63‑9‑730 | 20‑7‑1734 |
| 63‑9‑740 | 20‑7‑1775 |
| 63‑9‑750 | 20‑7‑1760 |
| 63‑9‑760 | 20‑7‑1770 |
| 63‑9‑770 | 20‑7‑1800 |
| 63‑9‑780 | 20‑7‑1780 |
| 63‑9‑790 | 20‑7‑1790 |

**SECTION 63‑9‑710.** Petition for adoption; use of fictitious names.

(A) A petition for adoption shall specify:

(1) the full name, age, address, and place of residence of each petitioner, and, if married, the place and date of the marriage;

(2) when the petitioner acquired, or intends to acquire, custody or placement of the child and from what person or agency;

(3) the date and place of birth of the child, if known;

(4) the name used for the child in the proceeding, and if a change in name is desired, the new name;

(5) that it is the desire of the petitioner to establish the relationship of parent and child between the petitioner and the child, and that the petitioner is a fit and proper person and able to care for the child and to provide for the child’s welfare;

(6) a full description and statement of value of all real property and of any personal property of value owned or possessed by the child;

(7) facts, if any, which excuse consent on the part of a parent to the adoption or which excuse notice of the adoption proceedings to a parent;

(8) facts, if any, which may permit placement with or adoption by nonresidents of this State, pursuant to Section 63‑9‑60;

(9) the existence and nature of any prior court orders known to the petitioner which affect the custody, support, or visitation of the child;

(10) the relationship, if any, of each petitioner to the child; and

(11) the name and address of the child placing agency or the person facilitating placement of the child for adoption, if any.

(B) The petition must be filed within sixty days of the date the adoptee is placed for the purpose of adoption in the home of the petitioner.

(C) All of the following must be filed at the time the adoption petition is filed or, after the filing, upon good cause shown:

(1) any consent or relinquishment required by Section 63‑9‑310;

(2) the preplacement investigation report;

(3) the background investigation report;

(4) a statement of all payments of money or anything of value made within the past five years or agreed to be made in the future by or on behalf of the petitioner to any person, agency, or organization connected with the adoption that is not a disbursement made and reported pursuant to Section 63‑9‑740.

(D) For purposes of this article, the petitioner may employ the use of fictitious names where necessary to avoid disclosure of identities of parties or persons, so long as service of process or notice is considered sufficient by the court.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Provision that a child placing agency which has accepted a relinquishment for the purpose of adoption must file the document with the court pursuant to this section, see Section 63‑9‑330.

Requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from adoptive parents but no petition has been filed pursuant to this section, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Library References

Adoption 11.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 80 to 83.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

S.C. Jur. Adoption Section 11, Necessary Parties to Adoption Proceeding.

S.C. Jur. Adoption Section 19, Requirements as to Contents.

**SECTION 63‑9‑720.** Appointment of guardian ad litem.

Before any hearing is held on the adoption or any matter related to the adoption, the court shall appoint a guardian ad litem for the adoptee as in other family court actions, and the adoptee must be served with a copy of the pleadings. However, if the adoptee is fourteen years of age or younger, the child may be served by service upon his guardian ad litem or other person with whom he resides.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Persons from whom consent or relinquishment for the purpose of adoption is required, see Section 63‑9‑310.

Library References

Adoption 12.

Infants 78(1).

Westlaw Topic Nos. 17, 211.

C.J.S. Adoption of Persons Sections 84 to 92.

C.J.S. Infants Sections 321 to 323, 325 to 330.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 11, Necessary Parties to Adoption Proceeding.

S.C. Jur. Adoption Section 12, Notice and Service on Necessary Parties.

**SECTION 63‑9‑730.** Notice of adoption proceedings.

(A) Notice of any proceeding initiated pursuant to this article must be given to the persons or agencies specified in subsection (B) of this section, unless the person has given consent or relinquishment or parental rights have been terminated.

(B) The following persons or agencies are entitled to notice as provided in subsection (A):

(1) a person adjudicated by a court in this State to be the father of the child;

(2) a person or agency required to give consent or relinquishment pursuant to Section 63‑9‑310(A) or (B) from whom consent or relinquishment cannot be obtained;

(3) a person who has properly registered with the Responsible Father Registry at the time of the filing of the petition for termination of parental rights or adoption;

(4) a person who is recorded on the child’s birth certificate as the child’s father. The Department of Health and Environmental Control shall release this information to any attorney representing a party in an adoption or termination of parental rights action pursuant to a subpoena;

(5) a person who is openly living with the child or the child’s mother, or both, at the time the proceeding is initiated and who is holding himself out to be the child’s father;

(6) a person who has been identified as the child’s father by the mother in a sworn, written statement; and

(7) a person from whom consent or relinquishment is not required pursuant to Section 63‑9‑320(A)(2).

(C) Persons specified in subsection (B) of this section are not entitled to notice if the child who is the subject of the adoption proceeding was conceived as a result of criminal sexual conduct or incest.

(D) Any person or agency entitled to notice pursuant to this section must be given notice that adoption proceedings have been initiated. Notice must be given in the manner prescribed by law for personal service of summons in civil actions. If notice cannot be effected by personal service, notice may be given by publication or by the manner the court decides will provide notice.

(E) Notice given pursuant to this section must include notice of the following:

(1) within thirty days of receiving notice the person or agency shall respond in writing by filing with the court in which the adoption is pending notice and reasons to contest, intervene, or otherwise respond;

(2) the court must be informed of the person’s or agency’s current address and of any changes in address during the adoption proceedings; and

(3) failure to file a response within thirty days of receiving notice constitutes consent to adoption of the child and forfeiture of all rights and obligations of the person or agency with respect to the child.

(F) When notice of intent to contest, intervene, or otherwise respond is filed with the court within the required time period, the person or agency must be given an opportunity to appear and to be heard before the final hearing on the merits of the adoption.

(G) Petitioners must be notified by the court of notice and reasons to contest, intervene, or otherwise respond, and petitioners also must be given the opportunity to be represented or to appear and to be heard at any hearing held relating to the adoption.

HISTORY: 2008 Act No. 361, Section 2; 2009 Act No. 41, Section 2, eff July 1, 2009.

Editor’s Note

2009 Act No. 41 Section 6 provides as follows:

“This act takes effect July 1, 2009, except that those provisions of Section 1 of this act pertaining to the establishment of the Responsible Father Registry and the receipt of claims of paternity by the registry take effect January 1, 2010, and those provisions of Section 1 of this act and Section 63‑9‑730 of the 1976 Code, as amended by Section 2 of this act, affecting an unmarried biological father’s right to receive notice in a termination of parental rights or an adoption action by filing a claim of paternity and Section 63‑7‑2550(B) of the 1976 Code, as added by Section 4 of this act, apply to termination of parental rights actions and adoption actions filed on or after July 1, 2010.”

Effect of Amendment

The 2009 amendment, in subsection (B), rewrote subparagraph (3), added the second sentence of subparagraph (4) relating to release of information by the Department of Health and Environmental Control, and made nonsubstantive changes throughout.

CROSS REFERENCES

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Requirement that court find that notice has been given to all persons entitled to receive it before issuing order granting adoption, see Section 63‑9‑750.

Library References

Adoption 12.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 84 to 92.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 12, Notice and Service on Necessary Parties.

S.C. Jur. Adoption Section 15, Effect of Abandonment.

S.C. Jur. Adoption Section 22, Factors to be Considered in Adoption Proceeding.

S.C. Jur. Children and Families Section 48, Service of the Pleadings.

NOTES OF DECISIONS

In general 1

Criminal sexual conduct 2

Service by publication 3

1. In general

Biological father was not entitled to notice of final adoption proceeding, where father’s parental rights were properly terminated. Doe v. Roe (S.C.App. 2006) 369 S.C. 351, 631 S.E.2d 317, rehearing denied, certiorari denied. Adoption 12

2. Criminal sexual conduct

Under adoption statutes, there is no per se exclusion of parents of children conceived as result of criminal act from statutory requirement for adoption that parents consent or relinquish their parental rights or have already had their rights terminated. Doe v. Brown (S.C. 1997) 331 S.C. 491, 489 S.E.2d 917. Adoption 7.3

Father of child conceived as result of statutory rape fell within statutory requirement for adoption that parents consent or relinquish their parental rights. Doe v. Brown (S.C. 1997) 331 S.C. 491, 489 S.E.2d 917. Adoption 7.3

When “criminal father” of child conceived as result of criminal act is unknown, “John Doe” proceeding as to consent, relinquishment of parental rights, and adoption is appropriate. Doe v. Brown (S.C. 1997) 331 S.C. 491, 489 S.E.2d 917. Adoption 11

3. Service by publication

Absent fraud or collusion, once the issuing officer is satisfied with the supporting affidavit to provide notice of an adoption, the decision to order service by publication is final unless the order of publication is premised upon a facially defective affidavit. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Adoption 12

Family court was required to determine whether the particular publication used by adoptive parents provided adequate notice to birth father of impending adoption proceedings, in action to set aside adoption and termination of birth father’s parental rights, where notice was issued in county adjacent to birth father’s county of residence. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Adoption 16; Infants 2070

Order of publication that gave “John Doe” notice of a pending adoption was not procured through fraud or collusion or premised on a facially defective affidavit, even though birth mother designated the wrong county as birth father’s residence; birth mother did not intentionally misrepresent county of birth father’s residence, county designated by birth mother and actual county of birth father’s residence were minutes apart, and birth mother did not intentionally misrepresent birth father’s failure to accept parental responsibility for child. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Adoption 12

Where a father’s consent is not needed for an adoption due to the father’s lack of accepting any of the responsibilities of fatherhood pursuant to Section 20‑7‑1690, the father’s due process rights are not violated by the publishing of a “John Doe” notice when the identity of the father is unknown because the mother refuses to reveal it. Evans v. South Carolina Dept. of Social Services (S.C. 1990) 303 S.C. 108, 399 S.E.2d 156.

**SECTION 63‑9‑740.** Itemized accounting of disbursements.

(A) At the final hearing on the adoption, the petitioner shall file a full, itemized accounting of disbursements of anything of value made, agreed to be made, or anticipated being made by or on behalf of the petitioner for expenses incurred or fees for services rendered in connection with the adoption. The accounting must be verified by the petitioner under penalty of perjury.

(B) The accounting by the petitioner must include:

(1) dates and amounts of disbursements made, agreed to be made, or anticipated being made and by whom the disbursements were or are to be made;

(2) names and addresses of persons to whom the disbursements were made or are to be made;

(3) services received for the disbursements and by whom the services were received;

(4) receipts for reasonable living expenses incurred by the mother and child assessed as costs under Section 63‑9‑310(F)(1). No assessment is allowed for a cost which does not have a corresponding receipt or which is unreasonable.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Filing and contents of a petition for adoption, see Section 63‑9‑710.

Inapplicability of certain requirements of this section where the adoptee is the petitioner’s spouse’s child or is related to the petitioner by blood or marriage, see Section 63‑9‑1110.

Requirement that court find that disbursements made and accounted for are reasonable before issuing order granting adoption, see Section 63‑9‑750.

Requirement that the postplacement investigation report include verification of allegations of the accounting of disbursements, see Section 63‑9‑520.

Library References

Adoption 9.1, 13.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 46 to 47, 77, 93 to 102.

**SECTION 63‑9‑750.** Final hearing.

(A) The final hearing on the adoption petition must not be held before ninety days and no later than six months after the filing of the adoption petition. In the case of a special needs child, the hearing must not be held before ninety days and no later than twelve months after the filing of the adoption petition. In its discretion, upon good cause shown, the court may extend, or in the case of a special needs child extend or shorten the time within which the final hearing on the adoption petition may be held.

(B) Upon satisfactory examination by the court of the record, including the reports required in Section 63‑9‑520, and following the final hearing on the adoption petition the court shall issue an order granting the adoption if it finds that:

(1) the adoptee has been in the actual custody of the petitioner for a period of ninety days unless the court finds as provided in subsection (A) that there is good cause for modifying the time within which the final hearing may be held;

(2) all necessary consents or relinquishments for the purpose of adoption have been obtained;

(3) notice of the adoption proceeding has been given to all persons entitled to receive notice under Sections 63‑9‑310 and 63‑9‑730, and any hearing resulting from the notice has been held and handled according to the satisfaction of the court;

(4) the disbursements made and accounted for pursuant to Section 63‑9‑740 are reasonable costs for expenses incurred or for fees for services rendered;

(5) the petitioner is a fit and proper person and able to care for the child and to provide for the child’s welfare, and the petitioner desires to establish the relationship of parent and child with the adoptee;

(6) the best interests of the adoptee are served by the adoption; and

(7) if the petitioner is a nonresident of this State, the findings pursuant to Section 63‑9‑50 are included in the order, and there has been compliance with Article 11 (Interstate Compact on the Placement of Children).

(C) The court shall enter its findings in a written decree which shall also include the new name of the adoptee, if appropriate, and may not include any other name by which the adoptee has been known or the names of the biological or presumed parents of the adoptee. The final adoption decree shall order what effect, if any, the adoption has on the legal rights and responsibilities of the adoptee’s biological parents, that the adoptee is the child of the petitioner, and that the adoptee must be accorded the status provided for in Section 63‑9‑760.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Filing of copies of postplacement investigation report at the final hearing on adoption, see Section 63‑9‑520.

Hearings and records being held confidential, see Section 63‑9‑780.

Inapplicability of certain requirements of this section where the adoptee is the petitioner’s spouse’s child or is related to the petitioner by blood or marriage, see Section 63‑9‑1110.

Inapplicability of the provisions of this section to adoptions of adult persons, see Section 63‑9‑1120.

Library References

Adoption 13.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 46 to 47, 93 to 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

S.C. Jur. Adoption Section 22, Factors to be Considered in Adoption Proceeding.

S.C. Jur. Adoption Section 23, Final Order.

LAW REVIEW AND JOURNAL COMMENTARIES

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Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Attorney General’s Opinions

Natural parents who consent to adoption are not necessary parties in adoption proceeding. 1964‑65 Op. Atty Gen, No. 1801, p 45.

NOTES OF DECISIONS

In general 1

Consent 3

Grandparents 2

1. In general

In proceedings on petition for adoption, remand with direction for entry of order finalizing adoption and terminating biological father’s parental rights was appropriate, on remand from the United States Supreme Court, where United States Supreme Court reversed original determination that Indian Child Welfare Act (ICWA) applied to permit biological father to block child’s adoption by non‑Indian family, lower courts consistently held that biological father’s parental rights were subject to termination under state law based upon his irrefutable lack of support, interest and involvement in child’s life, and adoption of child by prospective adoptive parents was in child’s best interest in light of urgent need for resolution. Adoptive Couple v. Baby Girl (S.C. 2013) 404 S.C. 490, 746 S.E.2d 346, stay denied 134 S.Ct. 32. Indians 138

Pursuant to Sections 20‑7‑1750 and 20‑7‑1760, the Family Court was required to determine whether an adoption was in the best interest of the child following the natural father’s withdrawal of consent to the adoption and his refusal to relinquish visitation rights. McLaughlin v. Strickland (S.C.App. 1983) 279 S.C. 513, 309 S.E.2d 787.

2. Grandparents

The evidence was sufficient to support a determination that the child’s best interests would be served by permitting her foster parents, rather than her grandparents, to adopt her, where the child had been placed with the foster parents when she was less than 4 months old, she was 2 1⁄2 years old at the time of the hearing, there was overwhelming evidence that the child had bonded with the foster parents and her foster siblings, the child viewed the foster parents as her parents, and a child psychiatrist, a marriage and family therapist and the child’s guardian ad litem testified that the foster parents were capable parents who provided a stable home with an appropriate mixture of love and discipline. Although the grandparents’ home was not found to be unsuitable, the grandparents were not entitled to any preferences; their status, as blood relatives, was but one factor in determining the child’s best interests. McCutcheon v. Charleston County Dept. of Social Services (S.C.App. 1990) 302 S.C. 338, 396 S.E.2d 115.

Family Court did not err in failing to grant paternal grandparents’ petition to adopt 3 minor grandchildren, and in awarding custody to the maternal grandparents, based upon the finding that such disposition was in the best interests of the children. Chandler v. Merrell (S.C. 1987) 291 S.C. 224, 353 S.E.2d 133.

3. Consent

While the trial judge, in an adoption proceeding, must determine whether consent has been obtained from the proper persons and whether adoption is in the best interest of the child, the trial judge has no authority to question the voluntariness of parental consent in the absence of a petition by one or both of the natural parents to withdraw consent. Gardner v. Baby Edward (S.C. 1986) 288 S.C. 332, 342 S.E.2d 601. Adoption 13

**SECTION 63‑9‑760.** Effect of final decree.

(A) After the final decree of adoption is entered, the relationship of parent and child and all the rights, duties, and other legal consequences of the natural relationship of parent and child exist between the adoptee, the adoptive parent, and the kindred of the adoptive parent.

(B) After a final decree of adoption is entered, the biological parents of the adoptee are relieved of all parental responsibilities and have no rights over the adoptee.

(C) Notwithstanding any other provision to the contrary in this section, the adoption of a child by an adoptive parent does not in any way change the legal relationship between the child and either biological parent of the child whose parental responsibilities and rights are not expressly affected by the final decree.

(D) The validity of the final decree of adoption is not affected by an agreement entered into before the adoption between adoptive parents and biological parents concerning visitation, exchange of information, or other interaction between the child and any other person. Such an agreement does not preserve any parental rights with the biological parents and does not give to them any rights enforceable in the courts of this State.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Application of this section in determining rights and obligations of the parties under a foreign decree of adoption, see Section 63‑9‑920.

Effect of orders, etc., terminating parental rights on basis of children being abused, neglected, or abandoned, see Section 63‑7‑2610.

Entry, with respect to the adoption of an adult person, of a decree of adoption which has the legal consequences stated in this section, see Section 63‑9‑1120.

Legal consequences of decree of adoption entered for adoption of adult, see Section 63‑9‑1110.

Requirement that the final adoption decree order that the adoptee must be accorded the status provided for in this section, see Section 63‑9‑750.

Library References

Adoption 6, 14, 18, 20.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 28 to 45, 103 to 108, 130 to 138, 140 to 150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 10, Adoption of an Adult.

S.C. Jur. Adoption Section 19, Requirements as to Contents.

S.C. Jur. Adoption Section 26, Natural Parent’s Rights.

LAW REVIEW AND JOURNAL COMMENTARIES

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Adoption in South Carolina. 9 SC LQ 210.

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Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Selected Substantive Provisions of the South Carolina Probate Code: a Comparison with Previous South Carolina Law. 38 S.C. L. Rev. 611.

NOTES OF DECISIONS

In general 1

Adult adoption 4

Grandparents 2

Inheritance 5

Visitation 3

1. In general

Family court, once it determined biological father’s consent to adoption was not required and declared child to be legal child of adoptive parents, had no obligation to determine whether biological father was entitled to custody. Ex parte Black (S.C.App. 1998) 330 S.C. 431, 499 S.E.2d 229, rehearing denied. Child Custody 310

Adoption of an illegitimate child by its natural father would terminate the parental rights of the child’s mother. Hucks v. Dolan (S.C. 1986) 288 S.C. 468, 343 S.E.2d 613. Adoption 20

2. Grandparents

Issues presented by grandfather’s appeal from a denial of visitation rights and an injunction against continuance of adoption proceeding had been effectively mooted by the final adoption decree, since the appeal had not stayed the adoption proceeding, and the grandfather had neither petitioned the Supreme Court for supersedeas and a reinstatement of the previous temporary injunction as to the adoption proceeding nor did he petition to intervene in the adoption action. Whetstone v. Whetstone (S.C.App. 1986) 289 S.C. 403, 346 S.E.2d 532.

Grandparents are not precluded from visitation rights under Section 20‑7‑1770 when their son or daughter has not consented to adoption. Accordingly, where the natural father of a child died, the mother remarried, and the mother’s new husband adopted the child, the grandparent relationship of the deceased father’s parents was not obliterated, and there was no abuse of discretion in granting visitation rights to them. Chavis v. Witt (S.C. 1985) 285 S.C. 77, 328 S.E.2d 74.

3. Visitation

**SECTION 20‑7‑1720 did not apply to a purported consent to adoption signed by the natural father, who, in reserving the right of visitation, did not agree to relinquish all rights to the child within the meaning of Section 20‑7‑1770(B).** McLaughlin v. Strickland (S.C.App. 1983) 279 S.C. 513, 309 S.E.2d 787.

In view of statute providing that upon final adoption the adoptive parents have all the rights and obligations which the natural parent previously had, and that the rights and obligations of the natural parent are terminated, an enforcement decree forecloses the enforcement of any agreement between natural parent and adoptive parents regarding visitation rights of the natural parent. Lowe v. Clayton (S.C. 1975) 264 S.C. 75, 212 S.E.2d 582. Judgment 735

Where order denying visitation rights was based upon a conclusive effect of adoption statute, but court also stated that testimony had made it clear that the adoption decree was not contingent upon any vested visitation rights, such statement was a gratuitous finding by the court and was not a basis for judgment, and thus could not form the basis of an estoppel to plead fraud in a subsequent proceeding. Lowe v. Clayton (S.C. 1975) 264 S.C. 75, 212 S.E.2d 582.

4. Adult adoption

Insurance agent did not, by means of adult adoption, legally qualify as “parent” of designated producer, for purposes of reinsurance facility statute allowing a designated producer to transfer his or her designated producer status to a parent; although adult adoption rendered agent a parent for purposes of intestate succession, he did not assume “all the rights, duties and other legal consequences” connected with the natural relationship of parent and child. Gorman v. South Carolina Reinsurance Facility (S.C.App. 1999) 333 S.C. 696, 511 S.E.2d 98, rehearing denied, certiorari granted. Insurance 1625

5. Inheritance

Section 20‑7‑1770(a) places an adopted child in the same position as a natural child for purposes of “inheritance”—that is, taking under the statute of descent and distribution on the intestate death of an ancestor. The statute did not apply where a remainder interest passed by devise, not inheritance. Bagwell v. Alexander (S.C.App. 1985) 285 S.C. 331, 329 S.E.2d 771.

Where inheritance is by will, South Carolina Code Section 10‑2587.13 (1962) [Section 15‑45‑130 [1976]], denying adopted child right to inherit from natural parents by intestacy is not controlling. Dismukes v. Carletta (S.C. 1977) 269 S.C. 110, 236 S.E.2d 421. Wills 10

A final decree of adoption completely severs all ties between the adopted child and the natural parents and effectively bars any right of the child to inherit from them. Cox v. Cox (S.C. 1974) 262 S.C. 8, 202 S.E.2d 6. Adoption 18; Adoption 21

**SECTION 63‑9‑770.** Attacks on final orders; appeals.

(A) Except as provided in subsection (B), after the final order, judgment, or decree of adoption is entered, no party to an adoption proceeding, and no one claiming under a party, may question the validity of the adoption because of any defect or irregularity, jurisdictional or otherwise, in the proceeding, and a party, and anyone claiming under a party, is fully bound by the order. No adoption may be attacked either directly or collaterally because of any procedural or other defect by anyone who was not a party to the adoption. The failure on the part of the court or an agency to perform duties or acts within the time required by this article does not affect the validity of any adoption proceeding.

(B) A party to an adoption proceeding may appeal a final order, judgment, or decree of adoption in the manner provided for appeals from the court in other family court matters. In addition, this section may not be construed to preclude a court’s inherent authority to grant collateral relief from a judgment on the ground of extrinsic fraud. For purposes of this subsection, “extrinsic fraud” is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. However, a court is under no obligation to grant a person relief from a judgment based upon extrinsic fraud if the person might have prevented the judgment by the exercise of proper diligence.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Adoption 15, 16.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 109 to 129.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 31, Revocation of Adoption.

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Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

NOTES OF DECISIONS

In general 1

1. In general

Mother’s allegation that her consent to adoption was induced by adoptive parents’ fraudulent statements concerning permanency thereof sufficiently alleged “extrinsic fraud,” which avoided application of one‑year time‑bar to mother’s action to set aside adoption. Hagy v. Pruitt (S.C. 2000) 339 S.C. 425, 529 S.E.2d 714. Adoption 16

**SECTION 63‑9‑780.** Confidentiality of hearings and records.

(A) Unless the court otherwise orders, all hearings held in proceedings under this article and Article 7 are confidential and must be held in closed court without admittance of any person other than those persons involved in the proceedings and their counsel.

(B) All papers and records pertaining to the adoption and filed with the clerk of court are confidential from the time of filing and upon entry of the final adoption decree must be sealed and kept as a permanent record of the court and withheld from inspection. No person may have access to the records except for good cause shown by order of the judge of the court in which the decree of adoption was entered.

(C) All files and records pertaining to the adoption proceedings in the State Department of Social Services, or in any authorized agency, or maintained by any person certified by the department under the provisions of Section 63‑9‑360, are confidential and must be withheld from inspection except upon court order for good cause shown.

(D) The provisions of this section must not be construed to prevent any adoption agency from furnishing to adoptive parents, biological parents, biological grandparents, biological siblings, or adoptees nonidentifying information when in the sole discretion of the chief executive officer of the agency the information would serve the best interests of the persons concerned either during the period of placement or at a subsequent time nor must the provisions of this article and Article 7 be construed to prevent giving nonidentifying information to any other person, party, or agency who in the discretion of the chief executive officer of the agency has established a sufficient reason justifying the release of that nonidentifying information. As used in this subsection “nonidentifying information” includes, but is not limited to, the following:

(1) the health and medical histories of the biological parents, biological grandparents, or biological siblings;

(2) the health and medical history of the adoptee;

(3) the adoptee’s general family background without name references or geographical designations; and

(4) the length of time the adoptee has been in the care and custody of the adoptive parent.

(E)(1) The public adoption agency responsible for the placement shall furnish to an adoptee the identity of the adoptee’s biological parents, biological grandparents, and biological siblings and to the biological parents, biological grandparents, and biological siblings the identity of the adoptee under the following conditions:

(a) for an adoptee applying for identifying information about a biological parent or biological grandparent:

(i) the adoptee must be twenty‑one years of age or older, and must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological parent or biological grandparent, as applicable, agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address;

(b) for an adoptee applying for identifying information about a biological sibling:

(i) the adoptee and the biological sibling must be twenty‑one years of age or older, and the adoptee must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological sibling agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address;

(c) for a biological parent or biological grandparent applying for identifying information about an adoptee:

(i) the adoptee must be twenty‑one years of age or older, and the biological parent or biological grandparent must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological parent or biological grandparent, as applicable, agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address; and

(d) for a biological sibling applying for identifying information about an adoptee:

(i) the biological sibling and adoptee must be twenty‑one years of age or older, and the biological sibling must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological sibling, agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address.

(2) The adoption agency shall establish and maintain a confidential register containing the names and addresses of the adoptees and the biological parents, biological grandparents, and biological siblings who have filed affidavits. It is the responsibility of a person whose name and address are in the register to provide the agency with his current name and address. The adoption agency shall release the identifying information requested pursuant to this subsection of only those adoptees, biological parents, biological grandparents, and biological siblings who have provided an affidavit pursuant to item (1).

(3) The adoptee and the biological parent, biological grandparent, or biological sibling, as applicable, shall undergo counseling by the adoption agency concerning the effects of the disclosure. The adoption agency may charge a fee for the services, but services must not be denied because of inability to pay.

(4) No disclosure may be made within thirty days after compliance with these conditions. The director of the adoption agency may waive the thirty‑day period in extreme circumstances.

(5) The adoption agency may delay disclosure for twenty days from the expiration of the thirty‑day period to allow time to apply to a court of competent jurisdiction to enjoin the disclosure for good cause shown.

(F)(1) It is unlawful for a person having custody of or access to the papers, records, or files described in subsection (B) or (C) to disseminate or permit dissemination of information contained in them except as otherwise authorized in this section.

(2) A person who violates the provisions of 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 six months, or both.

HISTORY: 2008 Act No. 361, Section 2; 2017 Act No. 79 (H.3898), Section 1, eff May 19, 2017.

Effect of Amendment

2017 Act No. 79, Section 1, in (D), inserted “biological grandparents, biological siblings” twice, and made nonsubstantive changes; and rewrote (E), revising provisions relating to access to and disclosure of nonidentifying and identifying information about adoptees, biological parents, and biological siblings, to also apply to biological grandparents.

CROSS REFERENCES

Child placing agencies and their personnel subject to this section, see S.C. Code of Regulations R. 114‑4950.

Department of Social Services regulations pertaining to child placing agencies, see S.C. Code of Regulations R. 114‑4910 et seq.

Library References

Records 32.

Westlaw Topic No. 326.

C.J.S. Bankruptcy Sections 830 to 834.

C.J.S. Records Sections 80, 82 to 88.

RESEARCH REFERENCES

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163 ALR 1358 , Governmental Control of Actions or Speech of Public Officers or Employees in Respect of Matters Outside the Actual Performance of Their Duties.

Encyclopedias

22 Am. Jur. Proof of Facts 3d 203, Termination or Demotion of a Public Employee in Retaliation for Speaking Out as a Violation of Right of Free Speech.

77 Am. Jur. Trials 1, Representing Law Enforcement Officers in Personnel Disputes and Employment Litigation.

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Annual Survey of South Carolina Law: Adult adoptee’s right to confidential adoption records. 34 S.C. L. Rev. 45 (August 1982).

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

When love is not enough: Toward a unified wrongful adoption tort. 105 Harvard Law Rev 1761 (May 1992).

Attorney General’s Opinions

By law, adopted persons must obtain a court order to have access to information in their files at the Children’s Bureau. 1975‑76 Op. Atty Gen, No. 4442, p 301.

NOTES OF DECISIONS

In general 1

Adoptee’s need to know 3

Constitutional issues 1.5

Law firm records 4

Mother’s identity 2

Review 5

1. In general

Adoptive parents demonstrated good cause as to why releasing information pertaining to child’s adoption was in child’s best interests, and thus, parents were entitled to view all papers and records pertaining to adoption from clerk of court; apart from child’s physical difficulties with respiratory problems and a cyst on his brain, parents demonstrated need to obtain information for child’s mental health, and child’s behavioral history showed him to be dangerous to himself and his immediate family. Doe v. Ward Firm, P.A. (S.C. 2003) 353 S.C. 509, 579 S.E.2d 303. Records 32

Routine disclosure of the identity of the child’s natural parents in an agency adoption would seriously compromise the confidentiality which is imperative to the adoption process. Gardner v. Baby Edward (S.C. 1986) 288 S.C. 332, 342 S.E.2d 601.

Order compelling disclosure of names of child’s natural parents, issued in an adoption proceeding without any showing of compelling reasons of such disclosure would be reversed and the case remanded. Gardner v. Baby Edward (S.C. 1986) 288 S.C. 332, 342 S.E.2d 601.

The sanctity of the adoption process is to be jealously guarded, and disclosure of the identity of the child’s natural parents will be authorized only for compelling reasons. Gardner v. Baby Edward (S.C. 1986) 288 S.C. 332, 342 S.E.2d 601.

1.5. Constitutional issues

Deputy clerk of court who lost election to incumbent county clerk of court, her boss, was a public employee in a confidential, policymaking, or public contact role who spoke out as a private citizen on a matter of public concern but in a manner that communicated a lack of political loyalty to county clerk, which could have interfered with or undermined the operation of the clerk’s office, and therefore party affiliation or political allegiance was to be considered in analyzing deputy clerk’s Section 1983 claim that she was terminated for exercising her freedom of speech; county clerk appointed deputy clerk, and deputy clerk was a direct representative of county clerk in her role as supervisor within the family court division of clerk’s office. Lawson v. Gault, 2014, 63 F.Supp.3d 584, vacated and remanded 828 F.3d 239, as amended. Clerks of Courts 6; Constitutional Law 1947

2. Mother’s identity

Children’s guardian ad litem in adoption proceeding failed to demonstrate compelling need to identify biological mother of children in “John Doe” publication providing notice of adoption proceedings to any unknown biological fathers, where identity of biological father had been judicially determined and his parental rights had been terminated; fact that adjudicated biological father’s paternity was not established by means of paternity test did not establish good cause for disclosure of identity of biological mother. Jones v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 550, 534 S.E.2d 713. Adoption 12

Good cause did not exist for requiring biological mother’s name to be included in service by publication upon putative father so as to terminate his parental rights in connection with adoption proceeding; mother had identified man as the biological father and his parental rights had been terminated, but parties agreed that notice should be published so as to terminate rights of any putative father, and thus, notification was precautionary in nature and was based on possibility that mother did not know father’s identity. South Carolina Dept. of Social Services v. Doe (S.C.App. 2000) 338 S.C. 618, 527 S.E.2d 771, rehearing denied, certiorari denied. Infants 2070

The South Carolina Department of Social Services could not be compelled to reveal a birth mother’s name and address to the adoptive couple’s attorney as this would undermine the confidentiality that is the foundation of the adoption process and would violate the mother’s right to privacy. Evans v. South Carolina Dept. of Social Services (S.C. 1990) 303 S.C. 108, 399 S.E.2d 156.

3. Adoptee’s need to know

Adoptee did not establish “good cause” under Section 15‑45‑140(c) entitling him to information pertaining to the identities of his natural parents where, although he claimed that the deep personal need to know the truth had made him emotionally unstable, he had not required medical assistance but had enjoyed steady employment and a stable family life of his own; Section 15‑45‑140(c) does not violate the adoptee’s equal protection rights since there is a reasonable basis for the recognition of separate classifications in the substantial interest of the state in an ongoing adoption institution based upon confidentiality. Bradey v. Children’s Bureau of South Carolina (S.C. 1981) 275 S.C. 622, 274 S.E.2d 418.

4. Law firm records

Assuming law firm was an agency within meaning of statute allowing an agency to furnish adoption records when information would serve best interests of persons concerned, firm was not required to release adoption records to adoptive parents pursuant to such statute, where statute vested decision whether to release information to sole discretion of chief executive officer of agency and firm consistently exercised its discretion to deny release of adoption file. Doe v. Ward Firm, P.A. (S.C. 2003) 353 S.C. 509, 579 S.E.2d 303. Records 32

5. Review

While adoption proceeding is statutory, it is equitable in nature, and review of judgments in such cases is controlled in general by the principles which govern review of judgments in equity matters. Hamby v. Hamby (S.C. 1975) 264 S.C. 614, 216 S.E.2d 536. Adoption 15

Findings of fact by a trial judge will not be disturbed by Supreme Court unless it appears that such findings are without evidentiary support or are against the clear preponderance of the evidence. Hamby v. Hamby (S.C. 1975) 264 S.C. 614, 216 S.E.2d 536. Adoption 15

**SECTION 63‑9‑790.** Amended birth certificates.

(A) For each adoption handled through a child placing agency as defined in Section 63‑9‑30, the attorney for the petitioner shall, within fifteen days of the filing of the final decree, transmit to the appropriate agency a certified copy of the adoption decree and a Certificate of Adoption with Part II completed and verified by the adoptive parent and Part III certified by the clerk of court. The agency shall complete Part I of the Certificate of Adoption and transmit the form to the State Registrar of Vital Statistics within thirty days of the filing of the final decree.

(B) For other adoptions, the attorney for the petitioner shall complete Parts I and II of the Certificate of Adoption form provided by the State Registrar of Vital Statistics and file with the clerk of court at the time of filing of the final decree. The clerk of court shall certify Part III of the Certificate of Adoption and transmit the form to the State Registrar within thirty days of the filing of the final decree.

(C) In the case of a person who was born in a foreign country and who was not a United States citizen at birth, the court shall require evidence from sources determined to be reliable by the court as to the date and place of birth of the person and shall set forth in the order of the court the date and place of birth as established by the evidence. The court order and evidence submitted to the court must be attached to the Certificate of Adoption and transmitted to the State Registrar.

(D) The Certificate of Adoption form provided by the State Registrar must not be used in conjunction with any legal procedure affecting a birth certificate other than adoption.

(E) The State Registrar, upon receipt of a certified Certificate of Adoption, shall take action as provided by Section 44‑63‑140 with respect to the issuance and filing of an amended certificate.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Issuance of supplementary or amended birth certificates, see Section 44‑63‑140.

Library References

Adoption 18.

Health 397.

Westlaw Topic Nos. 17, 198H.

C.J.S. Adoption of Persons Sections 136, 146 to 150.

C.J.S. Health and Environment Sections 24, 74.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 24, Issuance of Amended Birth Certificate.

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Adoption in South Carolina. 9 SC LQ 210.

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Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Subarticle 8

Responsible Father Registry

**SECTION 63‑9‑810.** State interest; purpose of registry.

The State has a compelling interest in promptly providing stable and permanent homes for adoptive children and in preventing the disruption of adoptive placements. It is the purpose of the Responsible Father Registry to provide notice to unmarried biological fathers who affirmatively assume responsibility for children they may have fathered by registering with the Responsible Father Registry.

HISTORY: 2009 Act No. 41, Section 1, eff January 1, 2010.

Editor’s Note

2009 Act No. 41 Section 6 provides as follows:

“This act takes effect July 1, 2009, except that those provisions of Section 1 of this act pertaining to the establishment of the Responsible Father Registry and the receipt of claims of paternity by the registry take effect January 1, 2010, and those provisions of Section 1 of this act and Section 63‑9‑730 of the 1976 Code, as amended by Section 2 of this act, affecting an unmarried biological father’s right to receive notice in a termination of parental rights or an adoption action by filing a claim of paternity and Section 63‑7‑2550(B) of the 1976 Code, as added by Section 4 of this act, apply to termination of parental rights actions and adoption actions filed on or after July 1, 2010.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 12, Notice and Service on Necessary Parties.

**SECTION 63‑9‑820.** Registry established; definitions; claims of paternity; promulgation of regulations; unauthorized use.

(A) There is established within the Department of Social Services the Responsible Father Registry, which the department shall maintain.

(B) As used in this section:

(1) “Department” means the Department of Social Services.

(2) “Registrant” means an unmarried biological father or a male who claims to be the unmarried biological father of a child.

(3) “Registry” means the Responsible Father Registry as established by this section.

(4) “Unmarried biological father” means a male who is not married to the biological mother of a child of whom he is or claims to be the natural father.

(C) Except as set forth in Section 63‑9‑730(B), in order to preserve the right to notice of an adoption proceeding or the right to notice of a petition for termination of parental rights, a registrant must file a claim of paternity with the registry. A claim of paternity filed with the registry must not be deemed to be an acknowledgment of paternity, and a claim of paternity filed with the registry, as well as any other information contained in the registry, is not admissible as evidence in any proceeding.

(D) Except for a person who is required to receive notice pursuant to Section 63‑9‑730(B), an unmarried biological father’s failure to file a claim of paternity with the registry constitutes an implied irrevocable waiver of the father’s right to notice of any proceedings pertaining to the termination of his parental rights and to the child’s adoption. Such waiver includes a waiver of any right of the parent to be named as a party in or served with a summons or any other document prepared in conjunction with a termination of parental rights proceeding or an adoption proceeding.

(E) A claim of paternity must be signed by the registrant and must include:

(1) the registrant’s name, address, and date of birth;

(2) the mother’s name and, if known, her address and date of birth;

(3) if known, the child’s name, place of birth, and date of birth;

(4) if known, the date, county, and state of conception of the child; and

(5) the date the claim is filed.

(F) The claim of paternity may be filed with the registry before or after the birth of the child; however, a claim of paternity filed with the registry is null and void if it is filed on or after the date a petition for termination of parental rights or a petition for adoption is filed.

(G) Only the registrant may file the claim of paternity. No other person may file the claim of paternity on behalf of the registrant. The registrant must notify the registry of any change of address in the manner prescribed by the department. Failure to notify the registry of a change of address in the manner prescribed by the department is deemed to be a waiver of a right to notice or to any other right to which the registrant may be entitled as a result of filing a claim of paternity pursuant to this section, including, but not limited to, notice by publication.

(H) The department shall issue a certificate to the registrant verifying that the claim of paternity, revocation, or change of address has been filed.

(I) No fee may be charged for filing a claim of paternity, a revocation, or a change of address with the registry. No fee may be charged to the department for its searches of the registry. The department may charge a fee for processing searches of the registry to a child‑placing agency or an attorney assisting in the adoption or termination of parental rights of a child in accordance with a fee schedule established in the annual appropriations act.

(J) A registrant may at any time revoke a claim of paternity and shall file the revocation with the department in the manner prescribed by the department. The filing of a revocation of a claim of paternity with the registry in the manner prescribed by the department makes the prior claim of paternity filed by the registrant null and void.

(K) Except as set forth in Section 63‑9‑730(B), no unmarried biological father who fails to file a claim of paternity with the registry is entitled to notice of any adoption proceeding or of any termination of parental rights proceeding concerning the unmarried biological father’s child.

(L) An unmarried biological father’s failure to file a claim of paternity with the registry is deemed to be a lack of proper diligence under Section 63‑9‑770(B). An unmarried biological father’s lack of knowledge of the biological mother’s pregnancy does not excuse an unmarried biological father’s failure to file a claim of paternity pursuant to this chapter. An unmarried biological father’s sexual intercourse or his consent to artificial insemination with the biological mother is deemed to be notice to the unmarried biological father of the biological mother’s pregnancy.

(M)(1) The registry is not available for public inspection and is not subject to disclosure under the Freedom of Information Act pursuant to Chapter 4, Title 30 except that:

(a) the department may file a written request with the registry regarding a child for whom the department has an open case for child welfare services;

(b) the department shall provide the names and addresses of all registrants who have filed a claim of paternity for the child in question upon written request of a child‑placing agency or an attorney assisting in the adoption or termination of parental rights of a child. The written request may be filed with the registry before or after the birth of the child and must include:

(i) the mother’s name and, if known, her address and date of birth;

(ii) if known, the child’s date of birth and place of birth; and

(iii) if known, the date, county, and state of conception of the child.

(2) If a written request is submitted by or to the department pursuant to item (a) or (b) of subsection (M)(1), and no claim of paternity for the registrant is found, the department shall issue a certificate of diligent search verifying that a search of the registry has been conducted and that no claim of paternity regarding that registrant or child was found.

(N) A registrant who has filed a claim of paternity must be served with notice of any adoption proceeding and any termination of parental rights proceeding involving any child identified in the registrant’s filed claim of paternity within ten days of receipt of the registrant’s name and address by the attorney or child‑placing agency pursuant to item (b) of subsection (M)(1).

(O) Should the department issue a certificate of diligent search, the attorney for the requesting party in an adoption proceeding or in a termination of parental rights proceeding shall file the certificate of diligent search with the court in which the proceeding is pending within ten days of receipt of the certificate.

(P) A registrant’s claim of paternity shall remain on the registry until nineteen years after the claim of paternity has been filed with the registry, at which time the information may be purged from the registry. A registrant’s claim of paternity shall be purged from the registry if the registrant revokes his claim of paternity pursuant to subsection (J).

(Q) The department may promulgate regulations and forms necessary to implement the provisions of this section. The department shall produce and distribute a pamphlet or publication informing the public of the Responsible Father Registry. The pamphlet or publication shall indicate the procedure for registering and the consequences for failure to register.

(R)(1) Any unauthorized use, or attempted unauthorized use, of the registry is expressly prohibited, and any person or organization seeking, receiving, using, or publishing, or attempting to do so, any information contained in the registry in violation of 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, or both.

(2) A person who knowingly, maliciously, or in bad faith files a false claim of paternity with the registry 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, or both.

HISTORY: 2009 Act No. 41, Section 1, eff January 1, 2010.

Editor’s Note

2009 Act No. 41 Section 6 provides as follows:

“This act takes effect July 1, 2009, except that those provisions of Section 1 of this act pertaining to the establishment of the Responsible Father Registry and the receipt of claims of paternity by the registry take effect January 1, 2010, and those provisions of Section 1 of this act and Section 63‑9‑730 of the 1976 Code, as amended by Section 2 of this act, affecting an unmarried biological father’s right to receive notice in a termination of parental rights or an adoption action by filing a claim of paternity and Section 63‑7‑2550(B) of the 1976 Code, as added by Section 4 of this act, apply to termination of parental rights actions and adoption actions filed on or after July 1, 2010.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 48, Service of the Pleadings.

Subarticle 9

Foreign Adoptions

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑910 | 20‑7‑1795 |
| 63‑9‑920 | 20‑7‑1810 |

**SECTION 63‑9‑910.** Foreign adoptions.

(A) Notwithstanding the provisions of Section 63‑9‑790(A) and (B), in the case of a child born in a foreign country who was not a United States citizen at birth and whose adoption was finalized in a foreign country, the court shall review the documentation as required by this section and, if it finds the documentation to be satisfactory, shall issue an order stating that the documentation required by this section has been submitted and is satisfactory and that the foreign adoption must be recognized and domesticated in South Carolina. The court shall transmit the order and the certificate of adoption to the State Registrar of Vital Statistics without the necessity of a hearing unless the court finds the documentation submitted pursuant to subsection (B) is unsatisfactory and such finding is stated in the order resulting from the hearing.

(B) Documentation required to be submitted to the court includes, but is not limited to:

(1) a verified petition seeking domestication of the foreign adoption;

(2) a post foreign adoption home study completed by a person certified pursuant to Section 63‑9‑360 which evaluates the adjustment and progress of the child and family since adoption;

(3) naturalization papers, if available;

(4) other documentation as the court may request as stated in materials developed pursuant to subsection (C).

(C) Court administration in consultation with the Department of Health and Environmental Control shall develop petition forms, including documentation required to be filed with the petition, and guidelines for obtaining the domestication of a foreign adoption. These forms and guidelines must be available to the public upon request at all county clerks of court offices and at Department of Health and Environmental Control offices.

(D) The state registrar, upon receipt of the order and certificate of adoption shall take action as provided in Section 44‑63‑140 with respect to the issuance and filing of an amended certificate of birth.

HISTORY: 2008 Act No. 361, Section 2.

Federal Aspects

International Adoption Simplification Act, see 8 U.S.C.A. Section 1101.

Library References

Adoption 25.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 139, 155.

C.J.S. Conflict of Laws Section 57.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 24.5, Domestication of Foreign Adoption.

**SECTION 63‑9‑920.** Effect of foreign decrees of adoption.

When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this State must be determined by Section 63‑9‑760.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Adoption 25.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 139, 155.

C.J.S. Conflict of Laws Section 57.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Subarticle 11

Stepparent, Relative, and Adult Adoptions

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑1110 | 20‑7‑1820 |
| 63‑9‑1120 | 20‑7‑1825 |

**SECTION 63‑9‑1110.** Adoption by stepparent or relative.

Any person may adopt his spouse’s child, and any person may adopt a child to whom he is related by blood or marriage. In the adoption of these children:

(1) no investigation or report required under the provisions of Section 63‑9‑520 is required unless otherwise directed by the court;

(2) no accounting by the petitioner of all disbursements required under the provisions of Section 63‑9‑740 is required unless the accounting is ordered by the court;

(3) upon good cause shown, the court may waive the requirement, pursuant to Section 63‑9‑750, that the final hearing must not be held before ninety days after the filing of the adoption petition;

(4) upon good cause shown, the court may waive the requirement, pursuant to Section 63‑9‑320(A)(2), of the appointment of independent counsel for an indigent parent; and

(5) upon good cause shown, the court may waive the requirement, pursuant to Section 63‑9‑60(A)(2), that the adoption proceeding must be finalized in this State.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Section 10, eff May 12, 2010.

Effect of Amendment

The 2010 amendment added subsection (5), relating to the waiver of finalization of adoption proceedings in South Carolina.

CROSS REFERENCES

Provisions relative to adoption of adult persons, which formerly appeared in this section, see Section 63‑9‑1120.

Library References

Adoption 4, 13.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 15 to 21, 27, 46 to 47, 93 to 102.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

NOTES OF DECISIONS

In general 1

1. In general

Section 20‑7‑1820 does not give a “preference” to blood relatives; the best interest of the child remains the paramount consideration in every adoption. Dunn v. Dunn (S.C. 1989) 298 S.C. 365, 380 S.E.2d 836. Adoption 4

**SECTION 63‑9‑1120.** Adult adoption.

An adult person may be adopted by another adult person with the consent of the person to be adopted or his guardian and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. The provisions of Section 62‑2‑109 and Sections 63‑9‑30 through 63‑9‑760, excluding Section 63‑9‑740, do not apply to the adoption of an adult person. A petition for the adoption must be filed with the family court in the county where the adoptive parents reside. After a hearing on the petition and after those investigations as the court considers advisable, if the court finds that it is in the best interests of the persons involved, a decree of adoption may be entered which has the legal consequences stated in Section 62‑2‑109.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Meaning of child and related terms for purpose of intestate succession and wills, see Section 62‑2‑109.

Library References

Adoption 4, 5, 7.1, 11, 13.

Westlaw Topic No. 17.

C.J.S. Adoption of Persons Sections 15 to 27, 46 to 47, 49 to 54, 56, 80 to 83, 93 to 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 10, Adoption of an Adult.

S.C. Jur. Adoption Section 19, Requirements as to Contents.

S.C. Jur. Descent and Distribution Section 15, Adopted Persons‑Adults.

LAW REVIEW AND JOURNAL COMMENTARIES

Adoption. 22 S.C. L. Rev. 546.

Adoption in South Carolina. 9 SC LQ 210.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 28 S.C. L. Rev. 321.

Annual Survey of South Carolina Law: Domestic Relations: Adoption. 29 S.C. L. Rev. 112.

Selected Substantive Provisions of the South Carolina Probate Code: a Comparison with Previous South Carolina Law. 38 S.C. L. Rev. 611.

NOTES OF DECISIONS

In general 1

1. In general

Adult adoption statute limits the legal effect of adult adoption to intestate succession. Gorman v. South Carolina Reinsurance Facility (S.C.App. 1999) 333 S.C. 696, 511 S.E.2d 98, rehearing denied, certiorari granted. Adoption 5; Adoption 21; Adoption 22; Adoption 23

ARTICLE 3

State Adoption Services

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑1310 | 20‑7‑2300 |
| 63‑9‑1320 | 20‑7‑1897 |
| 63‑9‑1330 | 20‑7‑2310 |
| 63‑9‑1340 | 20‑7‑2305 |
| 63‑9‑1350 | 20‑7‑2307 |
| 63‑9‑1360 | 20‑7‑2323 |
| 63‑9‑1370 | 20‑7‑2340 |

**SECTION 63‑9‑1310.** Declaration of purpose.

It is the purpose of this article to achieve the objective of the best interests of the child, as the primary client. Adoption programs must be structured so that all questions of interpretation are resolved with that objective in mind. To achieve this objective, adoption services must be delivered in the most effective and cost‑efficient manner with assurances for the provision of quality services.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Exemption of certain agencies, homes and institutions from provisions governing child welfare agencies, see Section 63‑11‑20.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1320.** Department of Social Services adoption program only state public adoption program.

The Adoption and Birth Parent Services Program within the South Carolina Department of Social Services is the only public adoption program in South Carolina.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 112, Continuum of Care for Emotionally Disturbed Children.

**SECTION 63‑9‑1330.** Department of Social Services to administer program.

The Department of Social Services shall administer an adoption program on behalf of the State. Adoption services must be available statewide. The adoption program provided by the department must be a centrally administered state program. The department shall designate regions which will be administered by the state office. The adoption unit shall constitute a separate and distinct unit within the department so as to assure specialization of effort and effective access to the department director. This unit must be staffed with qualified personnel professionally trained in the social work or other related fields. The department shall continually evaluate its staffing, functions, policies, and practices on the basis of nationally recognized standards. A committee to advise the department on all children’s services must be appointed by the department director. Persons appointed to the committee must be knowledgeable on adoption, protective services, foster care, and other children’s services.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1340.** Children’s Bureau transferred; monitoring placements.

(A) The General Assembly finds that there should no longer be two public adoption agencies in South Carolina and that a single system within a comprehensive children’s services agency is needed to assure that public adoption services are provided in the most effective and efficient manner. Therefore, the functions of the Children’s Bureau of South Carolina are transferred to the adoption program within the Department of Social Services.

(B) The public adoption agency shall monitor and evaluate all public placements so as to insure that placements are suitable and in the best interests of the child. Any administrative costs savings accrued through the establishment of a single public adoptive system must be directed into the provision of adoption services.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1350.** Department of Social Services to obtain accreditation.

The department shall take all actions necessary to achieve accreditation of its adoption program by a nationally recognized accreditation organization, such as the Council on Accreditation of Services for Families and Children, as soon as practicable.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1360.** Birth parent informational brochure; waiting period.

(A) The Department of Social Services, before it may accept as a client a parent or parents, or prospective parent or parents who wish to relinquish their child for adoption, must first provide them with an informational brochure which outlines the services available from and the procedure used to select adoptive parents by the department and by the licensed private adoption agencies in this State. It must also contain a listing of the licensed private adoption agencies in this State. The information contained in the brochure relating to the private adoption agencies must be jointly authored by the private adoption agencies and furnished to the department.

(B) The department may not accept in subsection (A) persons as clients until a period of forty‑eight hours has elapsed from the time they are furnished this brochure, and the department upon accepting these persons as clients must have them sign an affirmative statement that they have received this brochure and this statement must be kept in the adoption file maintained by the department.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1370.** Adoption services fees.

(A) The department shall establish fees for certain adoption and related services. The fees must be charged on a scale related to income as established by the state board, but the inability to pay a fee does not preclude the providing of any service.

(B) A fee may not be charged for the placement of a child with special needs, as defined in Section 63‑9‑30, into an adoptive home.

(C) Fees collected under this section must be forwarded to the State Treasurer who shall hold them in a separate account. These funds may be expended only as provided for by the General Assembly. Of the funds authorized to be expended, not less than seventy‑five percent must be used for the sole purpose of paying for the medical and maternity home expenses incurred by clients:

(1) who are pregnant;

(2) who have requested the services of the Department of Social Services in planning for permanence for their child; and

(3) for whom other public or private funds are not available, and the remainder of the funds may be used to defray other operating expenses related to adoption service delivery.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

South Carolina Adoption Act of 1986, see Sections 63‑9‑10 et seq.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

ARTICLE 5

Statewide Adoption Exchange

Showing the section in former Chapter 7, Title 20 from which the section in this article was derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑1510 | 20‑7‑1895 |

**SECTION 63‑9‑1510.** Statewide adoption exchange.

(A) The State Department of Social Services shall establish, either directly or through purchase of services, a statewide adoption exchange with a photograph listing component.

(B) The adoption exchange must be available to serve all authorized, licensed child‑placing agencies in the State as a means of recruiting adoptive families for any child who meets one or more of the following criteria:

(1) the child is legally free for adoption;

(2) the child has been permanently committed to the department or to a licensed child‑placing agency;

(3) the court system requires identification of an adoptive family for the child before ties to the biological parents are severed;

(4) the department has identified adoption as the child’s treatment plan.

(C) The department shall register with the adoption exchange each child in its care who meets any one or more of the above criteria and for whom no adoptive family has been identified. This registration must be made at least thirty days from the determination date of the child’s adoptable status and updated at least monthly.

(D) If an adoption plan has not been made within at least three months from the determination date of the child’s adoptable status, the department shall provide the adoption exchange with a photograph, description of the child, and any other necessary information for the purpose of recruitment of an adoptive family for the child, including registration with the photograph listing component of the exchange which must be updated monthly. The department shall establish criteria by which a determination may be made that recruitment or photograph listing is not required for a child. The department also shall establish procedures for monitoring the status of children for whom that determination is made.

(E) In accordance with guidelines established by the department, the adoption exchange may accept from licensed child‑placing agencies, referrals and registration for recruitment and photograph listing of children meeting the criteria of this section.

(F) The department shall refer appropriate children to regional and national exchanges when an adoptive family has not been identified within one hundred eighty days of the determination of the child’s adoptable status. The department shall establish criteria by which a determination may be made that a referral to regional or national exchanges is not necessary, and the department shall monitor the status of those children not referred.

(G) The department shall provide orientation and training to appropriate staff regarding the adoption exchange procedures and utilization of the photograph listing component.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

ARTICLE 7

Supplemental Benefits to Assure Adoption

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
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|  |  |
| New  Section | Former  Section |
| 63‑9‑1700 | 20‑7‑1910 |
| 63‑9‑1710 | 20‑7‑1900 |
| 63‑9‑1720 | 20‑7‑1920 |
| 63‑9‑1730 | 20‑7‑1930 |
| 63‑9‑1740 | 20‑7‑1958 |
| 63‑9‑1750 | 20‑7‑1925 |
| 63‑9‑1760 | 20‑7‑1940 |
| 63‑9‑1770 | 20‑7‑1950 |
| 63‑9‑1780 | 20‑7‑1955 |
| 63‑9‑1790 | 20‑7‑1960 |
| 63‑9‑1800 | 20‑7‑1965 |
| 63‑9‑1810 | 20‑7‑1970 |

**SECTION 63‑9‑1700.** Short title.

This article may be cited as the “South Carolina Adoption Supplemental Benefits Act”.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1710.** Purpose.

The purpose of this article is to supplement the South Carolina adoption law by making possible through public supplemental benefits the most appropriate adoption of each child certified by the Department of Social Services as requiring a supplemental benefit to assure adoption.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Definitions of terms used in this subarticle, see Section 63‑9‑30.

Responsibilities of petitioner as temporary custodian of adoptee, see Section 63‑9‑510.

Supplemental benefits for adoption and medical assistance, see S.C. Code of Regulations R. 114‑4380.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

**SECTION 63‑9‑1720.** Definitions.

As used in this article:

(1) “Child” means an individual up to twenty‑one years of age.

(2) “Supplemental benefits” means payments made by the State Department of Social Services to provide services, including medical subsidies for payment for treatment pursuant to Section 63‑9‑1780, for children who without these services may not have been adopted.

(3) “Department” means the Department of Social Services.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child meeting criteria specified in this section being eligible for supplemental benefits program, see Section 63‑9‑1760.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1730.** Program established.

The department shall establish and administer an ongoing program of supplemental benefits for adoption. Supplemental benefits and services for children under this program must be provided out of funds appropriated to the department for these purposes.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1740.** Notice to adoptive parents.

At the time of placement for adoption, the department shall inform in writing the prospective adoptive parents of the:

(1) availability of supplemental benefits;

(2) conditions for which the supplemental benefits are available;

(3) procedure for application for supplemental benefits.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1750.** Eligibility criteria.

In order for a child to be eligible for supplemental benefits the department shall determine that the child legally is free for adoption, the child has been placed for adoption by the department, and one of the following provisions applies to the child:

(1) is a special needs child pursuant to Section 63‑9‑30;

(2) is at high risk of developing a physical, mental, or emotional disability;

(3) is one for whom other factors, as determined by the department, interfere with the child’s ability to be placed for adoption;

(4) has established significant emotional ties with prospective adoptive parents while in their care as a foster child, and it is considered by the agency to be in the best interest of the child to be adopted by the foster parents.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Eligible children in need of supplemental benefits, see Section 63‑9‑1760.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1760.** Eligible children.

A child meeting criteria specified in Section 63‑9‑1750 for whom the department believes supplemental benefits are necessary to improve opportunities for adoption is eligible for the program. The agency shall document that reasonable efforts have been made to place the child in adoption without supplemental benefits through the use of adoption resource exchanges, recruitment, and referral to appropriate specialized adoption agencies.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1770.** Adoptive parents; nature of supplemental benefits.

(A) When the department determines that a child is eligible for supplemental benefits, a written agreement must be executed between the parents and the department.

(B) In individual cases supplemental benefits may begin with the adoptive placement or at the appropriate time after the adoption decree and will vary with the needs of the child as well as the availability of other resources to meet the child’s needs.

(C) The supplemental benefits may be for special services only, or for money payments, and either for a limited period, for a long term, or for a combination of them. The amount of time‑limited, long‑term supplemental benefits may not exceed that which currently would be allowable for the child under foster family care or, in the case of a special service, the reasonable fee for the service rendered.

(D) When supplemental benefits last for more than one year the adoptive parents shall certify that the child remains under the parents’ care and that the child’s need for supplemental benefits continues. Based on the certification and investigation by the agency and available funds, the agency may approve continued supplemental benefits. These benefits may be extended so long as the continuing need of the child is verified and the child is the legal dependent of the adoptive parents.

(E) A child who is certified as eligible for supplemental benefits remains eligible and shall receive supplemental benefits, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption, or after adoption.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1780.** Eligibility for supplemental benefits.

Only certain children who have been certified as eligible for supplemental benefits may receive payments for medical, rehabilitative, or other treatment services under their supplemental benefits certification. To receive these payments, a child shall fall into one of the following categories:

(1) receiving payments for medical, rehabilitative, or other treatment services immediately before adoption for a physical, mental, or emotional condition;

(2) identified before adoption as being at a high risk for developing a physical, mental, or emotional condition in the future; or

(3) with a physical, mental, or emotional condition diagnosed after adoption if the condition existed before adoption but was not recognized or if substantial risk factors for the condition existed before adoption but were not recognized.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1790.** Review of decisions.

A decision concerning supplemental benefits by the department which the adoptive parents consider adverse to the child is reviewable according to department regulations.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 8.15, 8.20, 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 34, 38 to 49, 207, 227 to 230.

**SECTION 63‑9‑1800.** Benefits to substitute caregivers.

Supplemental benefits may not end solely because the death or disability of the adoptive parents requires placement of the adopted child with another caregiver. The caregiver of the adopted child has the rights and duties imposed on the adoptive parents in this article.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Social Security and Public Welfare 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230.

**SECTION 63‑9‑1810.** Authority to promulgate regulations.

The department shall promulgate regulations to carry out the provisions of this article.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Requirement of compliance with this subarticle before a child may be placed for adoption with persons who are not South Carolina residents, see Section 63‑9‑60.

Requirement that, before issuing an order granting adoption by a nonresident, the court must find that there has been compliance with this subarticle, see Section 63‑9‑750.

Library References

Social Security and Public Welfare 6, 194.30.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 20 to 25, 207, 227 to 230.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

ARTICLE 9

Interstate Compact for Adoption and Medical Assistance

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑2000 | 20‑7‑2610 |
| 63‑9‑2010 | 20‑7‑2620 |
| 63‑9‑2020 | 20‑7‑2630 |
| 63‑9‑2030 | 20‑7‑2640 |
| 63‑9‑2040 | 20‑7‑2650 |
| 63‑9‑2050 | 20‑7‑2660 |

**SECTION 63‑9‑2000.** Compact authorized.

(A) The Department of Social Services may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this State with other states to implement one or more of the purposes set forth in this article. The compact has the effect of law.

(B) For the purposes of this article:

(1) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

(2) “Adoption assistance state” means the state that is signatory to an adoption assistance agreement in a particular case.

(3) “Residence state” means the state of which the child is a resident by virtue of the residence of the adoptive parents.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Supplemental benefits for adoption and medical assistance, see S.C. Code of Regulations R. 114‑4380.

Library References

Health 460 to 512(6).

Social Security and Public Welfare 194.30.

States 6.

Westlaw Topic Nos. 198H, 356A, 360.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230, 247 to 269.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2010.** Compact contents.

A compact entered into pursuant to the authority conferred by this article must contain:

(1) a provision making it available for joinder by all states;

(2) a provision for withdrawal from the compact upon written notice to the parties but one year between the date of the notice and the effective date of the withdrawal;

(3) a requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) a requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance;

(5) other provisions as may be appropriate to implement the proper administration of the compact.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Health 460 to 512(6).

Social Security and Public Welfare 194.30.

States 6.

Westlaw Topic Nos. 198H, 356A, 360.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230, 247 to 269.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2020.** Additional provisions.

A compact entered into pursuant to the authority conferred by this article may contain provisions in addition to those required by Section 63‑9‑2010 as follows:

(1) establishing procedures and entitlements to medical, developmental, child care, or other social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services;

(2) other provisions as may be appropriate or incidental to the proper administration of the compact.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Health 460 to 512(6).

Social Security and Public Welfare 194.30.

States 6.

Westlaw Topic Nos. 198H, 356A, 360.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230, 247 to 269.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2030.** Medical assistance identification.

(A) A child with special needs who is a resident in the State who is the subject of an adoption assistance agreement with another state may receive medical assistance identification from this State upon the filing with the Department of Social Services of a certified copy of the agreement obtained from the adoption assistance state. In accordance with regulations of the department, the adoptive parents at least annually shall show that the agreement is still in force or has been renewed.

(B) The Department of Health and Human Services shall consider the holder of medical assistance identification pursuant to this section as any other holder of medical assistance identification under the laws of this State and shall process and make payment on claims on account of the holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(C) The Department of Health and Human Services or the Department of Social Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and must be reimbursed for them. However, there is no reimbursement for services or benefit amounts covered under insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall promulgate regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection are for the costs of services for which there is no federal contribution, or which, if federally aided, are not provided by the residence state. The regulations must include, but are not limited to, procedures to be followed in obtaining prior approval for services in those instances where required for the assistance.

(D) The provisions of this section apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this State under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this State. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this State are eligible to receive assistance in accordance with the laws and procedures applicable to the agreements.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Health 460 to 512(6).

Social Security and Public Welfare 194.30.

States 6.

Westlaw Topic Nos. 198H, 356A, 360.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230, 247 to 269.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2040.** Compliance with federal law.

Consistent with federal law, the Department of Social Services in connection with the administration of this article and a compact pursuant to it must include in a state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, Public Law 96‑272, Titles IV (e) and XIX of the Social Security Act, and other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with the law.

HISTORY: 2008 Act No. 361, Section 2.

Federal Aspects

Adoption Assistance and Child Welfare Act of 1980, Public Law 96‑272, Titles IV (e) and XIX of the Social Security Act, see 42 U.S.C.A. Sections 670 et seq.

Library References

Health 460 to 512(6).

Social Security and Public Welfare 194.30.

States 6.

Westlaw Topic Nos. 198H, 356A, 360.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230, 247 to 269.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2050.** Penalties.

A person who submits a claim for payment or reimbursement for services or benefits pursuant to this article or makes a statement in connection with payment or reimbursement, which he knows or should know to be false, misleading, or fraudulent, is guilty of a misdemeanor. Upon conviction, the person must be fined not more than ten thousand dollars or imprisoned not more than two years, or both.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Health 460 to 512(6).

Social Security and Public Welfare 194.30.

States 6.

Westlaw Topic Nos. 198H, 356A, 360.

C.J.S. Social Security and Public Welfare Sections 207, 227 to 230, 247 to 269.

C.J.S. States Sections 13, 67 to 71, 257.

ARTICLE 11

Interstate Compact on the Placement of Children

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑9‑2200 | 20‑7‑1980 |
| 63‑9‑2210 | 20‑7‑1990 |
| 63‑9‑2220 | 20‑7‑2000 |
| 63‑9‑2230 | 20‑7‑2010 |
| 63‑9‑2240 | 20‑7‑2020 |
| 63‑9‑2250 | 20‑7‑2030 |
| 63‑9‑2260 | 20‑7‑2040 |
| 63‑9‑2270 | 20‑7‑2050 |
| 63‑9‑2280 | 20‑7‑2060 |
| 63‑9‑2290 | 20‑7‑2070 |

**SECTION 63‑9‑2200.** Compact enacted.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Subsection 1. Purpose and Policy:

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Subsection 2. Definitions:

As used in this compact:

(a) “Child” means a person who, by reason of minority, is legally subject to parental guardianship or similar control.

(b) “Sending agency” means a party state, officer or employee thereof, a subdivision of a party state, or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) “Placement” means the arrangement for the care of a child in a family free or boarding home or in a child‑caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Subsection 3. Conditions for Placement:

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this subsection and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state.

The notice shall contain:

(1) the name, date and place of birth of the child;

(2) the identity and address or addresses of the parents or legal guardian;

(3) the name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child;

(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to item (b) of this subsection may request of the sending agency, or any other appropriate officer or agency of or in the sending agency’s state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Subsection 4. Penalty for Illegal Placement:

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Subsection 5. Retention of Jurisdiction:

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency’s state, until the child is adopted, reaches majority, becomes self‑supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Subsection 6. Institutional Care of Delinquent Children:

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. equivalent facilities for the child are not available in the sending agency’s jurisdiction;

2. institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Subsection 7. Compact Administrator:

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Subsection 8. Limitations:

This compact shall not apply to:

(a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(b) any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between states which has the force of law.

Subsection 9. Enactment and Withdrawal:

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Subsection 10. Construction and Severability:

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party, state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Agreement with agency in another state including requirements for visitation, inspection or supervision of children, homes institutions or agencies, see Section 63‑9‑2250.

Definition of “appropriate authority in receiving state” as used in subsection 5 of this section, see Section 63‑9‑2230.

Definition of “appropriate public authorities” as used in subsection 3 of this section, see Section 63‑9‑2220.

Financial responsibility for child placed pursuant to provisions of the Interstate Compact on the Placement of Children, see Section 63‑9‑2210.

Further definition of “executive head” as used in subsection 7 of this section, see Section 63‑9‑2280.

Further provisions as to agreements with officers and agencies of other compact states, see Section 63‑9‑2240.

Persons from whom consent or relinquishment for the purpose of adoption is required, see Section 63‑9‑310.

Placement of delinquent children in another state and retaining jurisdiction over them, see Section 63‑9‑2270.

Library References

Infants 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

Attorney General’s Opinions

Provisions of Interstate Compact on Placement of Children is applicable to placement of children from other states into child‑caring institutions in South Carolina, so long as child‑caring institution does not fall within exemptions under provisions of Section 20‑7‑1980. 1984 Op. Atty Gen, No. 84‑139, p. 335.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

Interstate Compact on the Placement of Children (ICPC) was designed to ensure that placements for children across state lines are safe; it was not designed to protect the rights of the birth parents. Doe v. Baby Girl (S.C. 2008) 376 S.C. 267, 657 S.E.2d 455. Infants 1005; Infants 2237; States 6

2. Jurisdiction

Illinois court did not have jurisdiction over out‑of‑wedlock child involved in contested child custody and adoption proceedings under provision of Interstate Compact on the Placement of Children (ICPC) stating that sending agency was to retain jurisdiction over child sufficient to determine all matters in relation to custody of child which it would have had if child had remained in sending agency’s state, until the child was adopted, though child was born in Illinois and had been transported to South Carolina to live with prospective adoptive parents, as this provision of ICPC was not meant to trump provisions of both the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA) more specifically related to conferring jurisdiction, both of which conferred jurisdiction over proceedings on South Carolina court. Doe v. Baby Girl (S.C. 2008) 376 S.C. 267, 657 S.E.2d 455. Child Custody 733; Infants 2066; Infants 2237; States 6

**SECTION 63‑9‑2210.** Financial responsibility for children.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Subsection 5 thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Article 23, Chapter 17 of this title also may be invoked.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 228, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 24 to 25, 41, 43, 46 to 48, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2220.** “Appropriate public authorities” defined.

The “appropriate public authorities” as used in Subsection 3 of the Interstate Compact on the Placement of Children, with reference to this State, means the South Carolina Department of Social Services for adoptive and foster care purposes. The department shall receive and act with reference to notices required by Subsection 3.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

Attorney General’s Opinions

Provisions of Interstate Compact on Placement of Children is applicable to placement of children from other states into child‑caring institutions in South Carolina, so long as child‑caring institution does not fall within exemptions under provisions of Section 20‑7‑1980. 1984 Op. Atty Gen, No. 84‑139, p. 335.

**SECTION 63‑9‑2230.** “Appropriate authority in receiving state” defined.

As used in item (a) of Subsection 5 of the Interstate Compact on the Placement of Children, “appropriate authority in the receiving state” with reference to this State means the Department of Social Services as the compact administrator.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2240.** Agreements with other compact states.

The officers and agencies of this State and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to item (b) of Subsection 5 of the Interstate Compact on the Placement of Children. Any agreement which contains a financial commitment or imposes a financial obligation of this State or subdivision or agency of it is not binding unless it has the approval in writing of the State Treasurer in the case of the State and of the Commissioner of the Department of Social Services in the case of a subdivision of the State, as their respective functions and duties may appear and be appropriate pursuant to this article.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2250.** Visitation, inspections by agreement.

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by item (b) of Subsection 5 of the Interstate Compact on the Placement of Children.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2260.** Out‑of‑state placements.

There shall be no legal restrictions on out‑of‑state placements made pursuant to the Interstate Compact on the Placement of Children.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 8, Who May Adopt.

**SECTION 63‑9‑2270.** Placement of delinquent children.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Subsection 6 of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Subsection 5 thereof.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 223.1, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 43, 71 to 95, 310.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 63‑9‑2280.** “Executive head” defined.

As used in Subsection 7 of the Interstate Compact on the Placement of Children, “executive head” means the Governor. The Governor is authorized to designate the Department of Social Services as the compact administrator in accordance with the terms of Subsection 7.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Department of Social Services regulations pertaining to child placing agencies, see S.C. Code of Regulations R. 114‑4910 et seq.

Library References

Infants 229.

States 6, 41.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 171 to 174, 240 to 242, 257.

**SECTION 63‑9‑2290.** Promulgation of procedures governing interstate adoptive and foster care.

The Department of Social Services shall promulgate procedures to govern all aspects of interstate adoptive and interstate foster care placements.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17, 229.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. States Sections 13, 67 to 71, 257.