CHAPTER 1

General Provisions

**SECTION 19‑1‑10.** Rules of construction.

 The rule of common law, that statutes in derogation of that law are to be strictly construed, has no application to this Title.

HISTORY: 1962 Code Section 26‑1; 1952 Code Section 26‑1; 1942 Code Section 902; 1932 Code Section 902; Civ. P. '22 Section 850; Civ. P. '12 Section 487; Civ. P. '02 Section 448; 1870 (14) 470.

**SECTION 19‑1‑20.** "Clerk" defined.

 The word "clerk," as used in this title, signifies unless the context otherwise indicates, the clerk of the court where the action is pending.

HISTORY: 1962 Code Section 26‑2; 1952 Code Section 26‑2; 1942 Code Section 900; 1932 Code Section 900; Civ. P. '22 Section 848; Civ. P. '12 Section 485; Civ. P. '02 Section 447; 1870 (14) 469.

**SECTION 19‑1‑30.** Pleading shall not be evidence against accused.

 No pleading can be used in a criminal prosecution against the defendant as a proof of a fact admitted or alleged in such pleading.

HISTORY: 1962 Code Section 26‑3; 1952 Code Section 26‑3; 1942 Code Section 475; 1932 Code Section 475; Civ. P. '22 Section 418; Civ. P. '12 Section 207; Civ. P. '02 Section 178; 1870 (14) 180; 1929 (36) 102.

**SECTION 19‑1‑60.** Request for admission of authenticity of documents and other papers.

 Either party to a civil action may exhibit to the other or to his attorney at any time before the trial any paper material to the action and request an admission of its genuineness in writing. If the adverse party or his attorney fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness and the same be finally proved or admitted on the trial, such expense shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there was good reason for the refusal.

HISTORY: 1962 Code Section 26‑6; 1952 Code Section 26‑6; 1942 Code Section 673; 1932 Code Section 673; Civ. P. '22 Section 689; Civ. P. '12 Section 427; Civ. P. '02 Section 389; 1870 (14) Section 405.

**SECTION 19‑1‑70.** Proof of negligence by plaintiff in certain motor vehicle cases.

 The provisions of Chapter 5, Title 56 declaring prima facie speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of the accident.

HISTORY: 1962 Code Section 26‑7; 1952 Code Section 26‑7; 1949 (46) 466.

**SECTION 19‑1‑80.** Conditions on examination of witness in criminal proceeding concerning written statement made to public employee.

 No witness in any preliminary hearing or in any criminal judicial proceeding of any kind or nature shall be examined or cross‑examined by any examiner, solicitor, lawyer or prosecuting officer concerning a written statement formerly made and given to any person employed by this State, or any county, city or municipality thereof, or any part of any such governing body, unless it first be shown that at the time of the making of the statement the witness was given an exact copy of the statement, and that before his examination or cross‑examination the witness was given a copy of the statement and allowed a reasonable time in which to read it.

HISTORY: 1962 Code Section 26‑7.1; 1952 (47) 1977.

**SECTION 19‑1‑90.** Admissibility in criminal proceeding of written statement made to public employee.

 Unless the provisions of Sections 8‑15‑50 and 19‑1‑80 have been complied with, no statement such as is referred to in those sections shall be admissible in evidence in any case, nor shall any reference be made to it in the trial of any case.

HISTORY: 1962 Code Section 26‑7.2; 1952 (47) 1977.

**SECTION 19‑1‑100.** No statement shall be used for impeachment in civil proceeding unless copy furnished when signed.

 No statement taken from and signed by a witness or litigant after July 1, 1966 shall be used in any civil judicial proceeding for the purpose of contradicting, impeaching or attacking the credibility of such a witness or litigant, unless such party shall have been furnished a copy of said statement at the time of its signing.

HISTORY: 1962 Code Section 26‑7.3; 1966 (54) 2621.

**SECTION 19‑1‑110.** Introduction of certain instruments or copies issued by common carriers.

 It shall be competent (a) to introduce in evidence as prima facie evidence that the same is genuine any instrument purporting to be the original of any waybill, receipt, bill of lading or similar instrument issued by any common carrier or (b) to introduce in evidence a copy of any such instrument as prima facie evidence that the same is a true and correct copy if the adverse party shall fail, upon due notice given, to produce the original instrument.

HISTORY: 1962 Code Section 26‑8; 1952 Code Section 26‑8; 1942 Code Section 736; 1932 Code Section 736; Civ. P. '22 Section 752; Civ. C. '12 Section 4015; 1910 (26) 695.

**SECTION 19‑1‑120.** Proving signature of absent witness to bond or note; effect of sworn denial of signature.

 The absence of a witness to any bond or note shall not be deemed a good cause by any court of justice for postponing a trial respecting the same, but the signature to such bond or note may be proved by other testimony, unless the defendant in his answer shall swear or affirm, according to the form of his religious profession, that the signature to the bond or note in suit is not his, or in case the defendant or defendants should be executors or administrators unless one of them shall swear or affirm, as aforesaid, in his answer that he has cause to believe the signature to such bond or note is not the testator's or intestate's, as the case may be.

HISTORY: 1962 Code Section 26‑9; 1952 Code Section 26‑9; 1942 Code Sections 709, 710; 1932 Code Sections 709, 710; Civ. P. '22 Sections 725, 726; Civ. C. '12 Sections 3988, 3989; Civ. C. '02 Sections 2884, 2885; G. S. 2213, 2214; R. S. 2348, 2349; 1802 (5) 485.

**SECTION 19‑1‑130.** Situations in which notary's protest is sufficient evidence.

 Whenever a notary public who may have made protest for nonpayment of any inland bill or promissory note shall be dead or shall reside out of the county in which the bill or note is sued his protest of such bill or note shall be received as sufficient evidence of notice in any action by any person whatsoever against any of the parties to such bill or note.

HISTORY: 1962 Code Section 26‑10; 1952 Code Section 26‑10; 1942 Code Section 711; 1932 Code Section 711; Civ. P. '22 Section 727; Civ. C. '12 Section 3990; Civ. C. '02 Section 2886; G. S. 2215; R. S. 2350; 1802 (5) 485.

**SECTION 19‑1‑140.** Use of testimony in subsequent trials when witness is in armed forces.

 In all civil causes pending in the courts of this State when a witness has testified and has been cross‑examined or the right given the opposing side to cross‑examine him his testimony so given may be read in all subsequent trials or hearings concerning the same cause when such witness is in the armed forces of our country.

HISTORY: 1962 Code Section 26‑11; 1952 Code Section 26‑11; 1943 (43) 278.

**SECTION 19‑1‑150.** Life expectancy tables.

 When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the table below must be received in all courts and by all persons having power to determine litigation as evidence, along with other evidence as to his health, constitution, and habits, of the life expectancy of the person. In determining the age of a person as of any particular time, periods of six months or more beyond the last full year must be treated as one year in using the table below.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Age | Male | Female |
| 0 | 76.62 | 80.84 |
| 1 | 75.69 | 79.88 |
| 2 | 74.74 | 78.91 |
| 3 | 73.76 | 77.93 |
| 4 | 72.78 | 76.95 |
| 5 | 71.80 | 75.96 |
| 6 | 70.81 | 74.97 |
| 7 | 69.83 | 73.99 |
| 8 | 68.84 | 73.00 |
| 9 | 67.86 | 72.02 |
| 10 | 66.88 | 71.03 |
| 11 | 65.89 | 70.05 |
| 12 | 64.91 | 69.07 |
| 13 | 63.93 | 68.08 |
| 14 | 62.95 | 67.10 |
| 15 | 61.98 | 66.13 |
| 16 | 61.02 | 65.15 |
| 17 | 60.07 | 64.17 |
| 18 | 59.12 | 63.20 |
| 19 | 58.17 | 62.23 |
| 20 | 57.23 | 61.26 |
| 21 | 56.29 | 60.28 |
| 22 | 55.34 | 59.31 |
| 23 | 54.40 | 58.34 |
| 24 | 53.45 | 57.37 |
| 25 | 52.51 | 56.40 |
| 26 | 51.57 | 55.43 |
| 27 | 50.62 | 54.46 |
| 28 | 49.68 | 53.49 |
| 29 | 48.74 | 52.53 |
| 30 | 47.79 | 51.56 |
| 31 | 46.85 | 50.60 |
| 32 | 45.90 | 49.63 |
| 33 | 44.95 | 48.67 |
| 34 | 44.00 | 47.71 |
| 35 | 43.05 | 46.75 |
| 36 | 42.11 | 45.80 |
| 37 | 41.16 | 44.84 |
| 38 | 40.21 | 43.89 |
| 39 | 39.27 | 42.94 |
| 40 | 38.33 | 42.00 |
| 41 | 37.39 | 41.05 |
| 42 | 36.46 | 40.11 |
| 43 | 35.53 | 39.17 |
| 44 | 34.61 | 38.23 |
| 45 | 33.69 | 37.29 |
| 46 | 32.78 | 36.36 |
| 47 | 31.87 | 35.43 |
| 48 | 30.97 | 34.51 |
| 49 | 30.07 | 33.60 |
| 50 | 29.18 | 32.69 |
| 51 | 28.28 | 31.79 |
| 52 | 27.40 | 30.90 |
| 53 | 26.52 | 30.01 |
| 54 | 25.65 | 29.14 |
| 55 | 24.79 | 28.27 |
| 56 | 23.94 | 27.41 |
| 57 | 23.10 | 26.57 |
| 58 | 22.27 | 25.73 |
| 59 | 21.45 | 24.90 |
| 60 | 20.64 | 24.08 |
| 61 | 19.85 | 23.27 |
| 62 | 19.06 | 22.47 |
| 63 | 18.29 | 21.68 |
| 64 | 17.54 | 20.90 |
| 65 | 16.80 | 20.12 |
| 66 | 16.08 | 19.36 |
| 67 | 15.37 | 18.60 |
| 68 | 14.68 | 17.86 |
| 69 | 13.99 | 17.12 |
| 70 | 13.32 | 16.40 |
| 71 | 12.66 | 15.69 |
| 72 | 12.01 | 14.99 |
| 73 | 11.39 | 14.31 |
| 74 | 10.78 | 13.64 |
| 75 | 10.18 | 12.98 |
| 76 | 9.61 | 12.34 |
| 77 | 9.05 | 11.71 |
| 78 | 8.50 | 11.10 |
| 79 | 7.98 | 10.50 |
| 80 | 7.49 | 9.92 |
| 81 | 7.01 | 9.35 |
| 82 | 6.57 | 8.81 |
| 83 | 6.14 | 8.29 |
| 84 | 5.74 | 7.79 |
| 85 | 5.36 | 7.32 |
| 86 | 5.00 | 6.87 |
| 87 | 4.66 | 6.43 |
| 88 | 4.35 | 6.02 |
| 89 | 4.07 | 5.64 |
| 90 | 3.81 | 5.29 |
| 91 | 3.57 | 4.96 |
| 92 | 3.35 | 4.61 |
| 93 | 3.15 | 4.26 |
| 94 | 2.96 | 3.93 |
| 95 | 2.78 | 3.63 |
| 96 | 2.62 | 3.38 |
| 97 | 2.47 | 3.18 |
| 98 | 2.32 | 3.02 |
| 99 | 2.19 | 2.82 |
| 100 | 2.07 | 2.61 |
| 101 | 1.96 | 2.42 |
| 102 | 1.86 | 2.23 |
| 103 | 1.76 | 2.06 |
| 104 | 1.66 | 1.89 |
| 105 | 1.57 | 1.74 |
| 106 | 1.48 | 1.60 |
| 107 | 1.39 | 1.47 |
| 108 | 1.30 | 1.36 |
| 109 | 1.22 | 1.25 |
| 110 | 1.14 | 1.16 |
| 111 | 1.07 | 1.08 |
| 112 | 0.99 | 1.00 |
| 113 | 0.92 | 0.93 |
| 114 | 0.85 | 0.86 |
| 115 | 0.79 | 0.79 |
| 116 | 0.72 | 0.73 |
| 117 | 0.66 | 0.67 |
| 118 | 0.61 | 0.61 |
| 119 | 0.55 | 0.56 |
| 120 | 0.50 | 0.50 |

HISTORY: 1962 Code Section 26‑12; 1952 Code Section 26‑12; 1942 Code Section 735; 1932 Code Section 735; Civ. P. '22 Section 751; Civ. C. '12 Section 4014; 1903 (24) 92; 1951 (47) 234; 1963 (53) 93. 1981 Act No. 37; 2004 Act No. 209, Section 1, eff April 26, 2004.

Editor's Note

2004 Act No. 209, Section 2, provides as follows:

"The life expectancy table contained in this section is based on the 2001 Commissioners Standard Ordinary Mortality Table developed by the National Association of Insurance Commissioners."

**SECTION 19‑1‑160.** Nonsealed instruments may be considered as sealed.

 Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

HISTORY: 1962 Code Section 11‑1; 1952 Code Section 11‑1; 1942 Code Section 6751; 1932 Code Section 6751; Civ. C. '22 Section 3651; Civ. C. '12 Section 2535; Civ. C. '02 Section 1677; 1899 (23) 48.

**SECTION 19‑1‑180.** Out‑of‑court statements by certain children.

 (A) An out‑of‑court statement made by a child who is under twelve years of age or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of a family court proceeding brought pursuant to Title 63 concerning an act of alleged abuse or neglect as defined by Section 63‑7‑20 is admissible in the family court proceeding if the requirements of this section are met regardless of whether the statement would be otherwise inadmissible.

 (B) An out‑of‑court statement may be admitted as provided in subsection (A) if:

 (1) the child testifies at the proceeding or testifies by means of videotaped deposition or closed‑circuit television, and at the time of the testimony the child is subject to cross‑examination about the statement; or

 (2)(a) the child is found by the court to be unavailable to testify on any of these grounds:

 (i) the child's death;

 (ii) the child's physical or mental disability;

 (iii) the existence of a privilege involving the child;

 (iv) the child's incompetency, including the child's inability to communicate about the offense because of fear;

 (v) substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of videotaped deposition or closed‑circuit television; and

 (b) the child's out‑of‑court statement is shown to possess particularized guarantees of trustworthiness.

 (C) The proponent of the statement shall inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the defendant with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered. If the child is twelve years of age or older, the adverse party may challenge the professional decision that the child functions cognitively, adaptively, or developmentally under the age of twelve.

 (D) In determining whether a statement possesses particularized guarantees of trustworthiness under subsection (B)(2)(b), the court may consider, but is not limited to, the following factors:

 (1) the child's personal knowledge of the event;

 (2) the age and maturity of the child;

 (3) certainty that the statement was made, including the credibility of the person testifying about the statement;

 (4) any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

 (5) whether more than one person heard the statement;

 (6) whether the child was suffering pain or distress when making the statement;

 (7) the nature and duration of any alleged abuse;

 (8) whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

 (9) whether the statement has a ring of verity, has internal consistency or coherence, and uses terminology appropriate to the child's age;

 (10) whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

 (E) The court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out‑of‑court statement.

 (F) Any hearsay testimony admissible under this section shall not be admissible in any other proceeding.

 (G) If the parents of the child are separated or divorced, the hearsay statement shall be inadmissible if (1) one of the parents is the alleged perpetrator of the alleged abuse or neglect and (2) the allegation was made after the parties separated or divorced. Notwithstanding this subsection, a statement alleging abuse or neglect made by a child to a law enforcement official, an officer of the court, a licensed family counselor or therapist, a physician or other health care provider, a teacher, a school counselor, a Department of Social Services staff member, or to a child care worker in a regulated child care facility is admissible under this section.

HISTORY: 1988 Act No. 649, Section 1, eff June 3, 1988; 1992 Act No. 481, Section 1, eff June 23, 1992; 1999 Act No. 104, Section 4, eff June 30, 1999.

**SECTION 19‑1‑190.** South Carolina Unanticipated Medical Outcome Reconciliation Act; legislative purpose; definitions; inadmissibility of certain statements; waiver of inadmissibility; impact of South Carolina Rules of Evidence.

 (A) This section may be cited as the "South Carolina Unanticipated Medical Outcome Reconciliation Act".

 (B) The General Assembly finds that conduct, statements, or activity constituting voluntary offers of assistance or expressions of benevolence, regret, mistake, error, sympathy, or apology between or among parties or potential parties to a civil action should be encouraged and should not be considered an admission of liability. The General Assembly further finds that such conduct, statements, or activity should be particularly encouraged between health care providers, health care institutions, and patients experiencing an unanticipated outcome resulting from their medical care. Regulatory and accreditation agencies are in some instances requiring health care providers and health care institutions to discuss the outcomes of their medical care and treatment with their patients, including unanticipated outcomes, and studies have shown such discussions foster improved communications and respect between provider and patient, promote quicker recovery by the patient, and reduce the incidence of claims and lawsuits arising out of such unanticipated outcomes. The General Assembly, therefore, concludes certain steps should be taken to promote such conduct, statements, or activity by limiting their admissibility in civil actions.

 (C) As used in this section, the term:

 (1) "Ambulatory surgical facility" means a licensed, distinct, freestanding, self‑contained entity that is organized, administered, equipped, and operated exclusively for the purpose of performing surgical procedures or related care, treatment, procedures, and/or services, by licensed health care providers or health care institutions, for which patients are scheduled to arrive, receive surgery or related care, treatment, procedures, and/or services, and be discharged on the same day. This term does not include abortion clinics.

 (2) "Designated meeting" means any meeting scheduled by the health care provider, representative or agent of a health care provider, or representative or agent of a health care institution:

 (a) to discuss the outcome including any unanticipated outcome of the provider or institution's medical care and treatment with the patient, patient's relative or representative; or

 (b) to offer an expression of benevolence, regret, mistake, error, sympathy, or apology between or among parties or potential parties to a civil action.

 (3) "Health care institution" means an ambulatory surgical facility, a hospital, an institutional general infirmary, a nursing home, or a renal dialysis facility.

 (4) "Health care provider" means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or similar category of licensed health care provider, including a health care practice, association, partnership, or other legal entity.

 (5) "Hospital" means a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty‑four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina. This term includes a hospital that provides specialized service for one type of care, such as tuberculosis, maternity, or orthopedics.

 (6) "Institutional general infirmary" means a licensed facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents, or inmates with illness, injury, or infirmity for a period exceeding twenty‑four hours for the diagnosis, treatment, and care of such persons and which provides medical, surgical, and professional nursing care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina.

 (7) "Nursing home" means a licensed facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty‑four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing skilled nursing services for persons who are not in need of hospital care. This term does not include assisted living, independent living, or community residential care facilities that do not provide skilled nursing services.

 (8) "Renal dialysis facility" means an outpatient facility which offers staff assisted dialysis or training and supported services for self‑dialysis to end‑stage renal disease patients.

 (9) "Skilled nursing services" means services that:

 (a) are ordered by a physician;

 (b) require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and

 (c) are furnished directly by or under the supervision of such personnel.

 (10) "Unanticipated outcome" means the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an expected or intended result of such medical treatment or procedure.

 (D) In any claim or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities, or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which are made by a health care provider, an employee or agent of a health care provider, or by a health care institution to the patient, a relative of the patient, or a representative of the patient and which are made during a designated meeting to discuss the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.

 (E) The defendant in a medical malpractice action may waive the inadmissibility of the statements defined in subsection (D) of this section.

 (F) Nothing in this section affects the South Carolina Rules of Evidence.

HISTORY: 2006 Act No. 373, Section 1, eff June 9, 2006.