CHAPTER 5

Legal Status of Children

ARTICLE 1

Parent‑Child Relationship

DERIVATION TABLE

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

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑5‑10 | 20‑7‑40 |
| 63‑5‑20 | 20‑7‑90 |
| 63‑5‑30 | 20‑7‑100 |
| 63‑5‑40 | 20‑7‑97 |
| 63‑5‑50 | 20‑7‑95 |
| 63‑5‑60 | 20‑7‑8930 |
| 63‑5‑70 | 20‑7‑50 |
| 63‑5‑80 | 20‑7‑70 |

**SECTION 63‑5‑10.** Spousal and child support.

 A husband or wife declared to be chargeable with the support of his or her spouse and children, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑20.** Obligation to support.

 (A) Any able‑bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the circuit court. A husband or wife abandoned by his or her spouse is not liable for the support of the abandoning spouse until such spouse offers to return unless the misconduct of the husband or wife justified the abandonment. If a fine be imposed the circuit court may, in its discretion, order that a portion of the fine be paid to a proper and suitable person or agency for the maintenance and support of the defendant's spouse or minor unmarried legitimate or illegitimate child. As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

 (B) Any person who fails to receive the support required by this section may petition to a circuit court of competent jurisdiction for a rule to show cause why the obligated person should not be required to provide such support and after proper service and hearing the circuit court shall in all appropriate cases order such support to be paid. Any such petition shall specify the amount of support required. Compliance with the circuit court order shall bar prosecution under the provisions of subsection (A) of this section.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑30.** Rights and duties of parents regarding minor children.

 The mother and father are the joint natural guardians of their minor children and are equally charged with the welfare and education of their minor children and the care and management of the estates of their minor children; and the mother and father have equal power, rights, and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of the minor or any other matter affecting the minor. Each parent, whether the custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children and the right to participate in their children's school activities unless prohibited by order of the court. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to custody of the child.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑40.** Breastfeeding.

 (A) A woman may breastfeed her child in any location where the mother and her child are authorized to be.

 (B) Breastfeeding a child in a location where the mother is authorized to be is not considered indecent exposure.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑50.** Parental immunity in cases of incorrigibility of seventeen year old.

 A parent, guardian, or other person responsible for the care and support of a child may not be charged with unlawful neglect of a child, cruelty to a child, failure to provide reasonable support of a child, or a similar offense based on the exclusion from the home of a seventeen‑year‑old child where there is a demonstrable record that the child is incorrigible (beyond the control of parents).

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑60.** Parental civil liability for damage to State property.

 (A) The State of South Carolina, a political subdivision of the State including, but not limited to, a school district, or any other person including, but not limited to, an individual, a religious organization, a corporation, a partnership, or other entity, whether incorporated or unincorporated, is entitled to recover damages in an amount not to exceed five thousand dollars in a civil action in a court of competent jurisdiction from the parents or legal guardian of the person of a minor under the age of eighteen years and residing with the parents or the legal guardian of the person who maliciously or wilfully causes personal injury to the individual or destroys, damages, or steals property, real, personal, or mixed, belonging to the State of South Carolina, the political subdivision of the State including, but not limited to, a school district, or other person including, but not limited to, an individual, religious organization, corporation, partnership, or other entity, whether incorporated or unincorporated.

 (B) Recovery under this section is limited to actual damages.

 (C) Nothing in this section limits the application of the family purpose doctrine.

 (D) The liability of parents or legal guardians under subsection (A) is joint and several with the minor for the injury or the destruction, damage, or theft, as the case may be, as long as the minor would have been liable for the injury or the destruction, damage, or theft if the minor had been an adult. Nothing in this section may be construed to relieve the minor from personal liability for the injury or the destruction, damage, or theft. The liability in this section is in addition to and not in lieu of other liability which may exist by law.

 (E) This section does not apply to persons having custody or charge of a minor under the authority of a state agency or a county social services department or to state agencies or county departments of social services which have legal custody or charge of a minor.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑70.** Unlawful conduct toward a child.

 (A) It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63‑7‑20 to:

 (1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety;

 (2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or

 (3) wilfully abandon the child.

 (B) A person who violates subsection (A) is guilty of a felony and for each offense, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑80.** Cruelty to children.

 Whoever cruelly ill‑treats, deprives of necessary sustenance or shelter, or inflicts unnecessary pain or suffering upon a child or causes the same to be done, whether the person is the parent or guardian or has charge or custody of the child, for every offense, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not more than two hundred dollars, at the discretion of the magistrate.

HISTORY: 2008 Act No. 361, Section 2.

ARTICLE 3

Legal Capacity of Minors

DERIVATION TABLE

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

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑5‑310 | 20‑7‑250 |
| 63‑5‑320 | 20‑7‑260 |
| 63‑5‑330 | 20‑7‑270 |
| 63‑5‑340 | 20‑7‑280 |
| 63‑5‑350 | 20‑7‑290 |
| 63‑5‑360 | 20‑7‑300 |
| 63‑5‑370 | 20‑7‑310 |

**SECTION 63‑5‑310.** Ratification of minor's contracts.

 No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise (except upon contracts for necessaries) made during infancy unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑320.** Minor's capacity to borrow for higher education.

 Notwithstanding any other provisions of law to the contrary, any person who, not having attained his majority, contracts to borrow money to defray the expenses of attending any institution of higher learning, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑330.** Married minors consent to health procedures.

 The consent of a married minor or, if a married minor be unable to give consent by reason of physical disability, then the consent of the spouse of the married minor to the performance by any licensed medical, surgical or dental practitioners, or any hospital, or their agents or employees, of any lawful diagnostic, therapeutic surgical or postmortem procedure upon or in respect to such minor or any minor child of such minor, shall, notwithstanding the minority of such minor, be valid and legally effective for all purposes and shall be binding upon such minor, his parents, spouse, heirs, executors and administrators as effectively as if such minor or the spouse of such minor were eighteen years of age.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑340.** Minor's consent to health services.

 Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑350.** Health services to minors without parental consent.

 Health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian when, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑360.** Minor parent consent to health services for child.

 Any minor who has been married or has borne a child may consent to health services for the child.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑5‑370.** Consent not subject to disaffirmance.

 Any consent given pursuant to this article shall not be subject to disaffirmance because of minority when such minor reaches majority.

HISTORY: 2008 Act No. 361, Section 2.

ARTICLE 5

Uniform Gift to Minors Act [Repealed]

Editor's Note

2022 Act No. 128, Section 7, provides as follows:

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

**SECTIONS 63‑5‑500 to 63‑5‑600.** Repealed.

ARTICLE 6

South Carolina Uniform Transfers to Minors Act

Editor's Note

2022 Act No. 128, Section 7, provides as follows:

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

**SECTION 63‑5‑601.** Short title.

 This act shall be known and may be cited as the "South Carolina Uniform Transfers to Minors Act".

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑605.** Definitions.

 In this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑610.** Scope and jurisdiction.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑615.** Nomination of custodian.

 (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑620.** Transfer by gift or exercise of power of appointment.

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑625.** Transfer authorized by will or trust.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑630.** Other transfer by fiduciary.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑635.** Transfer by obligor.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑640.** Receipt for custodial property.

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑645.** Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

 (a) Custodial property is created and a transfer is made whenever:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"TRANSFER UNDER THE SOUTH CAROLINA UNIFORM TRANSFERS TO MINORS ACT

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

Dated: \_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

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

Dated: \_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Custodian)"

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑650.** Single custodianship.

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑655.** Validity and effect of transfer.

 (a) The validity of a transfer made in a manner prescribed in this article is not affected by:

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

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

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑660.** Care of custodial property.

 (a) A custodian shall:

 (1) take control of custodial property;

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

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

 (b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑665.** Powers of custodian.

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑670.** Use of custodial property.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑675.** Custodian's expenses, compensation, and bond.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑680.** Exemption of third person from liability.

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

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

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑685.** Liability to third persons.

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

 (b) A custodian is not personally liable:

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑690.** Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

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

 (b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 63‑5‑620 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

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

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑695.** Accounting by and determination of liability of custodian.

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

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑700.** Termination of custodianship.

 The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

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

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

 (3) the minor's death.

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑705.** Applicability.

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

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

**SECTION 63‑5‑710.** Effect on existing custodianships.

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

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

Editor's Note

2022 Act No. 128, Section 7, provides as follows:

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

**SECTION 63‑5‑715.** Uniformity of application and construction.

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

HISTORY: 2022 Act No. 128 (H.3821), Section 1, eff April 4, 2022.

ARTICLE 7

Military Parent Equal Protection Act

**SECTION 63‑5‑900.** Citation of article.

 This article may be cited as the "Military Parent Equal Protection Act".

HISTORY: 2009 Act No. 25, Section 1, eff June 2, 2009.

**SECTION 63‑5‑910.** Definitions.

 For purposes of this article:

 (A)(1) In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve component of these services, "military service or service" means a deployment for combat operations, a contingency operation, or a natural disaster based on orders that do not permit a family member to accompany the member on the deployment.

 (2) In the case of a parent who is a member of the National Guard, "military service or service" means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty consecutive days pursuant to 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds.

 "Military service or service" includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause.

 (B) "Military parent" means a natural parent or adoptive parent of a child under the age of eighteen whose parental rights have not been terminated by a court of competent jurisdiction.

HISTORY: 2009 Act No. 25, Section 1, eff June 2, 2009.

**SECTION 63‑5‑920.** Effect of military service on visitation and custody orders; temporary modification order.

 (A) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms establishing custody or visitation contained in an existing order until ninety days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of the custody or visitation terms established in an existing order.

 (B) An existing order establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent's service. A temporary modification automatically terminates when the military parent is released from service and, upon release, the original terms of the custody or visitation order in place at the time the military parent was called to military service are automatically reinstated.

 (C) A temporary modification order issued pursuant to this section must provide that the military parent has custody of the child or reasonable visitation, whichever is applicable pursuant to the original order, with the child during a period of leave granted to the military parent during their military service. If a temporary modification order is not issued pursuant to this section, the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable visitation and is able to visit the child or children.

 (D) If there is no existing order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish temporary custody or visitation to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.

HISTORY: 2009 Act No. 25, Section 1, eff June 2, 2009.

**SECTION 63‑5‑930.** Temporary modification of support order for duration of military parent's military service.

 (A) If a military parent is called to military service, either parent may file a notice of activation of military service and petition to modify a support order. In the petition, the parent must cite the basis for modifying the support order and the military parent's change in financial circumstances supporting the petition.

 (B) The court shall temporarily modify the amount of child support for the duration of the military parent's military service based on changes in income and earning capacity of the military parent during military service. An increase or decrease in income or earning capacity of a military parent due to military service only may be used to calculate support during the period of military service and must not be considered a permanent increase in wages or earning capacity. The effective date for a temporary modification must be the date the military parent begins military service.

 (C) Upon return from military service, the military parent's child support obligation prior to a temporary modification is automatically reinstated, effective on the date the military parent is released from service. Within ninety days of the military parent's release from service, either parent may make a subsequent request for modification to correspond to a change in the military parent's nonservice‑related income or earning capacity. A modification must be based upon the income or earning capacity of the military parent following the period of military service.

 (D) Except for modifying a child support obligation during military service pursuant to this section, a military parent's income during military service must not be used to determine the military parent's income or earning capacity.

HISTORY: 2009 Act No. 25, Section 1, eff June 2, 2009.

**SECTION 63‑5‑940.** Mutually agreeable arrangements between military and nonmilitary parents prior to mobilization.

 (A) Military necessity may preclude court adjudication before mobilization, and the parties are encouraged to negotiate mutually agreeable arrangements prior to mobilization.

 (B) The nonmilitary parent and the military parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, and child support. Each party shall provide information to each other in an effort to facilitate agreement on custody, visitation, and child support.

 (C) A provision of custody, visitation, or child support agreed to by the parties pursuant to this section must not be deemed a substantial change of circumstances in an action for custody, visitation, or child support, which occurs subsequent to termination of the military parent's military service. A negotiation of the parties concerning custody, visitation, and child support related to the military service conducted pursuant to this section are deemed settlement negotiations and are not admissible in custody, visitation, and child support actions between the parties after termination of the military parent's military service.

HISTORY: 2009 Act No. 25, Section 1, eff June 2, 2009.

**SECTION 63‑5‑950.** Attorney's fees and costs; factors.

 In making determinations pursuant to this article, the court may award attorney's fees and costs based on the court's consideration of:

 (1) the failure of either party to reasonably accommodate the other party in custody, visitation, and support matters related to a military parent's service;

 (2) unreasonable delay caused by either party in resolving custody, visitation, and support matters related to a military parent's service;

 (3) failure of either party to timely provide income and earnings information to the other party; and

 (4) other factors as the court may consider appropriate and as may be required by law.

HISTORY: 2009 Act No. 25, Section 1, eff June 2, 2009.