SIDE-BY-SIDE

ARTICLE 2- Intestate Succession and Wills

ARTICLE 2- Part 1. Existing Code	Bill # S. 1243- Article 2-Part 1
Article 2.Part1. Intestate Succession	Article 2.Part 1.
SECTION 62-2-101. Intestate estate. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code. REPORTER'S COMMENTS Section 62-2-101 establishes intestate succession as the method of disposition of any part of a decedent's estate not effectively disposed of by his will, as under Sections 62-2-501 and 62-2-602. It applies both in cases of total intestacy and in cases of partial intestacy. See Sections 62-1-201(11) and 62-1-201(33) for this Code's definition of the estate governed by Section 62-2-101 as to intestate succession.	**SECTION 62-2-101.** Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code. REPORTER'S COMMENTS Section 62-2-101 establishes intestate succession as the method of disposition of any part of a decedent's estate not effectively disposed of by his will, as under Sections 62-2-501 and 62-2-602. It applies both in cases of total intestacy and in cases of partial intestacy. See Sections 62-1-201(11) and 62-1-201(35) for this Code's definition of the estate governed by Section 62-2-101 as to intestate succession.
SECTION 62-2-102. Share of the spouse. The intestate share of the surviving spouse is: (1) if there is no surviving issue of the decedent, the entire intestate estate; (2) if there are surviving issue, one-half of the intestate estate. REPORTER'S COMMENTS Section 62-2-102 defines the intestate share of the decedent's surviving spouse (which term is in turn defined by Section 62-2-802) by limiting the persons with whom the surviving spouse must share any part of the intestate estate to the decedent's surviving issue, i.e., if no issue survive, the spouse takes all, and, in case issue do survive, the spouse takes one-half of the intestate estate. Section 62-2-102 draws no distinction between cases of single child survival and multiple child survival. A husband or wife who desires to leave his or her surviving spouse more or less than the share provided by this section and to leave to other persons more or less than would otherwise be	**SECTION 62-2-102.** The intestate share of the surviving spouse is: (1) if there is no surviving issue of the decedent, the entire intestate estate; (2) if there are surviving issue, one-half of the intestate estate. REPORTER'S COMMENTS Section 62-2-102 defines the intestate share of the decedent's surviving spouse (which term is in turn defined by Section 62-2-802) by limiting the persons with whom the surviving spouse must share any part of the intestate estate to the decedent's surviving issue, i.e., if no issue survive, the spouse takes all, and, in case issue do survive, the spouse takes one-half of the intestate estate. Section 62-2-102 draws no distinction between cases of single child survival and multiple child survival. A husband or wife who desires to leave his or her surviving spouse more or less than the share provided by this section and to leave to other persons more or less than would otherwise be

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available to them may do so by executing a will. **SECTION 62-2-103.** Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows: (1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation; (2) if there is no surviving issue, to his parent or parents equally; (3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation; (4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half; (5) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the surviving paternal great-grandparents in equal shares, or to the surviving paternal great-grandparent if only one survives, or to the issue of the paternal great-grandparents if none of the great-grandparents survive, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving great-grandparent or issue of a great-grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half; (6) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, great-grandparent or issue of a great-grandparent, but the decedent is survived by one or more stepchildren or issue of stepchildren, the estate passes to the surviving stepchildren and to the issue of any deceased stepchildren; if they are all of the same degree of step-kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation.	available to them may do so by executing a will. **SECTION 62-2-103.** The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows: (1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation; (2) if there is no surviving issue, to his parent or parents equally; (3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation; (4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half; (5) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the surviving paternal great-grandparents in equal shares, or to the surviving paternal great-grandparent if only one survives, or to the issue of the paternal great-grandparents if none of the great-grandparents survive, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving great-grandparent or issue of a great-grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half~~;~~ ~~(6) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, great-grandparent or issue of a great-grandparent, but the decedent is survived by one or more stepchildren or issue of stepchildren, the estate passes to the surviving stepchildren and to the issue of any deceased stepchildren; if they are all of the same degree of step-kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take~~

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REPORTER'S COMMENTS Section 62-2-103 defines the intestate shares of persons, other than the surviving spouse, in that part of the intestate estate not passing to the surviving spouse under Section 62-2-102. Subsection (1) of Section 62-2-103 gives preference to the decedent's issue as against all others, except the surviving spouse (see Section 62-2-102). Where the surviving issue who are heirs are all of the same degree of kinship to the decedent, they take per capita, i.e., in equal shares. Where the surviving issue who are heirs are of unequal degrees, they take per capita with per capita representation, i.e., those in the nearest degree take per capita, equal shares, as before, while those in the more remote degrees take, by representation, the equal share which their deceased ancestor in the nearest degree would have taken had he survived the decedent. Such issue in more remote degrees take their deceased ancestor's equal share, in turn, per capita with per capita representation. This section, read together with Section 62-2-106, minimizes the occurrence of unequal distributions among members of the same generation. For an example of issue taking per capita with per capita representation, suppose death is indicated by parentheses and: 1. (X) dies intestate: 2. predeceased by two children, (A) and (B): 3. survived by two grandchildren, A's child C, and B's child D, and predeceased by one grandchild, B's child (E): 4. predeceased by two great-grandchildren, E's children (F) and (G): 5. and survived by three great-great grandchildren F's child H, and G's children I and J, graphically represented, as follows: Under Section 62-2-103(1), the number of issue, in the nearest degree of kinship having surviving members, counting both those who survive and those who predecease leaving issue surviving, determines the basic shares. In this example, "thirds" go to each of the living grandchildren C and D and, collectively, to the issue of the predeceased grandchild E. In turn, E's "third" is divided among his issue in the same manner; and the number of his issue, in the nearest degree having surviving members, determines the further shares, which are, in this example, "thirds" of E's "third", or "ninths" which go to H, I, and J. Under Section 62-2-103(1), the pre-existence of A, B, F, and G is ignored because no member of their respective degrees of kinship survived the decedent. Subsection (2) of Section 62-2-103 allocates the entire intestate estate to the parents of the	~~by representation~~. REPORTER'S COMMENTS Section 62-2-103 defines the intestate shares of persons, other than the surviving spouse, in that part of the intestate estate not passing to the surviving spouse under Section 62-2-102. Subsection (1) of Section 62-2-103 gives preference to the decedent's issue as against all others, except the surviving spouse (see Section 62-2-102). Where the surviving issue who are heirs are all of the same degree of kinship to the decedent, they take per capita, i.e., in equal shares. Where the surviving issue who are heirs are of unequal degrees, they take per capita with per capita representation, i.e., those in the nearest degree take per capita, equal shares, as before, while those in the more remote degrees take, by representation, the equal share which their deceased ancestor in the nearest degree would have taken had he survived the decedent. Such issue in more remote degrees take their deceased ancestor's equal share, in turn, per capita with per capita representation. This section, read together with Section 62-2-106, minimizes the occurrence of unequal distributions among members of the same generation. For an example of issue taking per capita with per capita representation, suppose death is indicated by parentheses and: 1. (X) dies intestate: 2. predeceased by two children, (A) and (B): 3. survived by two grandchildren, A's child C, and B's child D, and predeceased by one grandchild, B's child (E): 4. predeceased by two great-grandchildren, E's children (F) and (G): 5. and survived by three great-great grandchildren F's child H, and G's children I and J. Under Section 62-2-103(1), the number of issue, in the nearest degree of kinship having surviving members, counting both those who survive and those who predecease leaving issue surviving, determines the basic shares. In this example, 'thirds' go to each of the living grandchildren C and D and, collectively, to the issue of the predeceased grandchild E. In turn, E's 'third' is divided among his issue in the same manner; and the number of his issue, in the nearest degree having surviving members, determines the further shares, which are, in this example, 'thirds' of E's 'third', or 'ninths' which go to H, I, and J. Under Section 62-2-103(1), the pre-existence of A, B, F, and G is ignored because no member of their respective degrees of kinship survived the decedent. Subsection (2) of Section 62-2-103 allocates the entire intestate estate to the parents of the decedent if there is neither a surviving spouse nor any surviving issue.

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decedent if there is neither a surviving spouse nor any surviving issue. Subsection (3) of Section 62-2-103 apportions the entire intestate estate, by representation, among the issue of the parents of the decedent only if the decedent leaves neither spouse nor issue nor parents. All issue of parents of the decedent, however remotely related to the decedent they may be, share by representation. For example, a grandnephew of decedent, related through a brother and nephew of decedent, themselves both predeceased, takes by representation and is not excluded by the survival of another brother or of another nephew of decedent. Sections 62-2-103(3) and 62-2-107 favor surviving brothers and sisters of the whole blood by excluding surviving brothers and sisters of the half blood and their issue. However, failing survival of any whole blood brother or sister, all issue of the decedent's parents take under Section 62-2-103(3) by representation so that issue of half blood brothers and sisters are treated the same as issue of whole blood brothers and sisters. Subsections (4) and (5) of Section 62-2-103 apply in cases in which the decedent is survived by neither spouse, nor issue, nor parents, nor issue of parents, but is survived by grandparents or their issue (then the entire intestate estate is distributed to them under subsection (4)), or the decedent is survived neither by grandparents nor their issue but by great-grandparents or their issue (then the entire intestate estate is distributed to them under subsection (5)). Persons, even more remotely related to decedent, the so-called "laughing heirs", do not share at all. Subsection (6) of Section 62-2-103 provides for inheritance by stepchildren in cases of predecease of all relations of decedent as closely related as great-grandparents and their issue. This section benefits the issue of stepchildren as well as the stepchildren themselves. A "stepchild" is defined in Section 62-1-201(40) as the child of a person's "spouse" and not of such person. Of course, the "spouse" referred to in the definition of "stepchild" must be either a predeceased or a divorced former spouse of the decedent in order for the definition of "stepchild" to come into play through the application of subsection (6) of Section 62-2-103. The rule applies only in cases in which decedents are not survived by a spouse. In such cases all of the children of all of such former spouses would come within the definition of "stepchild."	Subsection (3) of Section 62-2-103 apportions the entire intestate estate, by representation, among the issue of the parents of the decedent only if the decedent leaves neither spouse nor issue nor parents. All issue of parents of the decedent, however remotely related to the decedent they may be, share by representation. For example, a grandnephew of decedent, related through a brother and nephew of decedent, themselves both predeceased, takes by representation and is not excluded by the survival of another brother or of another nephew of decedent. All issue of the decedent's parents take under Section 62-2-103(3) by representation so that half blood heirs are treated the same as whole blood heirs. Subsections (4) and (5) of Section 62-2-103 apply in cases in which the decedent is survived by neither spouse, nor issue, nor parents, nor issue of parents, but is survived by grandparents or their issue (then the entire intestate estate is distributed to them under subsection (4)), or the decedent is survived neither by grandparents nor their issue but by great-grandparents or their issue (then the entire intestate estate is distributed to them under subsection (5)). Persons, even more remotely related to decedent, the so-called 'laughing heirs,' do not share at all.
SECTION 62-2-104. Requirement that heir survive decedent for one hundred twenty hours. Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of Section 62-2-401 and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the	**SECTION 62-2-104.** ~~Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of Section 62-2-401 and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the~~

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decedent by one hundred twenty hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of the intestate estate by the State under Section 62-1-105.	~~decedent by one hundred twenty hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of the intestate estate by the State under Section 62-1-105.~~ (1) For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (2): (a) an individual who was born before a decedent's death but who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. If it is not established that an individual who was born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. (b) an individual who was in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established that an individual who was in gestation at the decedent's death lived one hundred twenty hours after birth, it is deemed that the individual failed to survive for the required period. (2) This section does not apply if it would result in a taking of the intestate estate by the state under Section 62-2-105.
REPORTER'S COMMENTS Section 62-2-104 provides that a person must survive a decedent by at least one hundred twenty hours in order to qualify for the set aside of exempt property under Section 62-2-401 and as an heir of that decedent in intestacy, inapplicable, however, in cases in which escheat would be the result under Section 62-2-105; and Section 62-2-104 deems the person to have failed to meet the survival requirement where it cannot be shown that he did survive for one hundred twenty hours. See Sections 62-3-302 and 62-3-307 for provisions preventing informal probate and informal appointment of personal representatives for one hundred twenty hours. The one hundred twenty-hour rule harmonizes this section's presumption of failure of survival with the policy of the Uniform Simultaneous Death Act, Sections 62-1-501, et seq., as expressed by that act's presumption that a putative heir fails to survive his intestate decedent.	REPORTER'S COMMENTS Section 62-2-104 makes clear that survival for the 120 hours is a condition for benefit of intestate succession, the homestead allowance, and the exempt property exclusion; the amendment clarifies that an infant in gestation must survive for 120 hours following birth.
SECTION 62-2-105. No taker. If there is no taker under the provisions of this article [Sections 62-2-101 et seq.], the intestate estate passes to the State of South Carolina.	**SECTION 62-2-105.** If there is no taker under the provisions of this article [Sections 62-2-101 et seq.], the intestate estate passes to the State of South Carolina.

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REPORTER'S COMMENTS Section 62-2-105 provides for escheat of an intestate estate to the State of South Carolina whenever there are no heirs as prescribed in Sections 62-2-102 and 62-2-103, as affected by other sections of this Article 2, i.e., whenever neither spouse nor great-grandparents of decedent, nor issue thereof, survive decedent. The procedures regulating escheat to the State are embodied in Sections 27-19-10, et seq., of the 1976 Code.	REPORTER'S COMMENTS Section 62-2-105 provides for escheat of an intestate estate to the State of South Carolina whenever there are no heirs as prescribed in Sections 62-2-102 and 62-2-103, as affected by other sections of this Article 2, i.e., whenever neither spouse nor great-grandparents of decedent, nor issue thereof, survive decedent. The procedures regulating escheat to the State are embodied in Sections 27-19-10, et seq., of the 1976 Code.
SECTION 62-2-106. Representation; disclaimer by intestate beneficiary. If representation is called for by this Code, the estate is divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner. If an interest created by intestate succession is disclaimed, the beneficiary is not treated as having predeceased the decedent for purposes of determining the generation at which the division of the estate is to be made.	**SECTION 62-2-106.** If representation is called for by this Code, the estate is divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner. If an interest created by intestate succession is disclaimed, the beneficiary is not treated as having predeceased the decedent for purposes of determining the generation at which the division of the estate is to be made.
REPORTER'S COMMENTS Section 62-2-106 defines the division of an intestate estate, among the heirs' respective shares, by "representation", i.e., as an equal division among the nearest surviving kin, with the issue of any equally near but predeceased kin taking their ancestor's share in the same manner, by representation. For an example of the application of Section 62-2-106, see the Comment to Section 62-2-103(1).	REPORTER'S COMMENTS Section 62-2-106 defines the division of an intestate estate, among the heirs' respective shares, by 'representation,' i.e., as an equal division among the nearest surviving kin, with the issue of any equally near but predeceased kin taking their ancestor's share in the same manner, by representation. For an example of the application of Section 62-2-106, see the Comment to Section 62-2-103(1).
SECTION 62-2-107. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.	**SECTION 62-2-107.** Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.
REPORTER'S COMMENTS These rules of this section are carried over into the construction of wills' dispositions by Section 62-2-609.	REPORTER'S COMMENTS These rules of this section are carried over into the construction of wills' dispositions by Section 62-2-609.
SECTION 62-2-108. Afterborn heirs.	**SECTION 62-2-108.**

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Issue of the decedent (but no other persons) conceived before his death but born within ten months thereafter inherit as if they had been born in the lifetime of the decedent. REPORTER'S COMMENTS Section 62-2-108 codifies South Carolina case law establishing the right of an afterborn child of an intestate decedent to inherit. Pearson v. Carlton, 18 S.C. 47 (1882). This section expands the principle to benefit other issue of the intestate decedent, more remotely related than as his children, e.g., grandchildren. The section further expressly excepts collateral relatives of the decedent from the principle's operation. **SECTION 62-2-109.** Meaning of child and related terms. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person: (1) from the date the final decree of adoption is entered, and except as otherwise provided in Section 63-9-1120, an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent. (2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father if: (i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or (ii) the paternity is established by an adjudication commenced before the death of the father or within the later of eight months after the death of the father or six months after the initial appointment of a personal representative of his estate and, if after his death, by clear and convincing proof, except that the paternity established under this subitem (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child. (3) A person is not the child of a parent whose parental rights have been terminated under Section 63-7-2580 of the 1976 Code, except that the termination of parental rights is ineffective to disqualify the child or its kindred to inherit from or through the parent. REPORTER'S COMMENTS Section 62-2-109 concerns intestate succession as affected by adoptions of persons, by births out of wedlock, and by the termination of parental rights. However, this section's definition of the	Issue of the decedent (but no other persons) conceived before his death but born within ten months thereafter inherit as if they had been born in the lifetime of the decedent. REPORTER'S COMMENTS Section 62-2-108 codifies South Carolina case law establishing the right of an afterborn child of an intestate decedent to inherit. Pearson v. Carlton, 18 S.C. 47 (1882). This section expands the principle to benefit other issue of the intestate decedent, more remotely related than his children, e.g., grandchildren. The section further expressly excepts collateral relatives of the decedent from the principle's operation. **SECTION 62-2-109.** If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person: (1) From the date the final decree of adoption is entered, and except as otherwise provided in Section 63-9-1120, an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent. (2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father if: (i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or (ii) the paternity is established by an adjudication commenced before the death of the father or within the later of eight months after the death of the father or six months after the initial appointment of a personal representative of his estate and, if after his death, by clear and convincing proof, except that the paternity established under this subitem (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child. (3) A person is not the child of a parent whose parental rights have been terminated under Section 63-7-2580 of the 1976 Code, except that the termination of parental rights is ineffective to disqualify the child or its kindred to inherit from or through the parent. REPORTER'S COMMENTS Section 62-2-109 concerns intestate succession as affected by adoptions of persons, by births out of wedlock, and by the termination of parental rights. However, this section's definition of the

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parent-child relationship is imported by references in Sections 62-1-201(3) defining "child", 62-1-201(21) defining "issue", and 62-1-201(28) defining "parent", and in Section 62-2-609 construing class gift and family relationship terminology into the meanings of such terms and terminology as used throughout this Code and also in testators' wills. See Sections 62-2-102, 62-2-103, 62-2-106, 62-2-302, 62-2-401, 62-2-402, 62-2-603, and 62-2-609. The rule of general applicability of Section 62-2-109(1) is that upon adoption the adopted person's intestacy relationships with all his natural relatives are severed, but are supplanted by newly established intestacy relationships with all of his adopted relatives. However, the general rule does not apply to cases of adoption of adults. Rather, the intestacy relationships of the parties are left undisturbed by the adoption decree, unless a court finds it to be in the best interests of the persons involved to apply the general rule. To cover the case of the marriage of a child's natural parent to a person who adopts the child, Section 62-2-109(1) provides that adoption does not sever the adopted child's intestacy relationship with "that" natural parent. Adoption does, however, sever the adopted child's intestacy relationship with the "other" natural parent, i.e., the natural parent not married to the person adopting the child. Subsection (2) of Section 62-2-109 relates to the taking in intestacy by, through, or from persons born out of wedlock. It does not purport to declare such illegitimate children to be legitimate. No part of the prior South Carolina law, establishing the legitimacy of a child, is meant to be affected by Section 62-2-109(2). The bases for a finding of legitimacy, i.e., either birth to validly married parents, whether validly ceremonially married or married as at common law, or birth to parents covered by one of the legitimation statutes, Sections 20-1-30, 20-1-40, 20-1-50, 20-1-60, 20-1-80, and 20-1-90 of the 1976 Code, remains as under prior law; and, of course, such legitimate children bear intestacy relationships with their relatives. Section 62-2-109(2) merely establishes intestacy relationships between illegitimate children and their maternal and paternal relatives. The rule set forth in Section 62-2-109(2)(i) relates to the establishment of the illegitimate child's intestacy relationship with his father, whenever the father and mother have been ceremonially married, albeit invalidly so. Section 62-2-109(2)(ii) allows an illegitimate child to inherit from and through his father if paternity is established by an adjudication commenced either before the father's death or within six months thereafter. A standard higher than usual, clear, and convincing proof is required to be met in an adjudication commenced after, but not in an adjudication before, the father's death. The imposition of a required adjudication and a higher standard of proof upon illegitimate children seeking to inherit from their fathers, as compared with legitimate children not similarly	parent-child relationship is imported by references in Sections 62-1-201(3) defining 'child', 62-1-201(24) defining 'issue', and 62-1-201(31) defining 'parent', and in Section 62-2-609 construing class gift and family relationship terminology into the meanings of such terms and terminology as used throughout this Code and also in testators' wills. See Sections 62-2-102, 62-2-103, 62-2-106, 62-2-302, 62-2-401, 62-2-402, 62-2-603, and 62-2-609. The rule of general applicability of Section 62-2-109(1) is that upon adoption the adopted person's intestacy relationships with all his natural relatives are severed, but are supplanted by newly established intestacy relationships with all of his adopted relatives. However, the general rule does not apply to cases of adoption of adults. Rather, the intestacy relationships of the parties are left undisturbed by the adoption decree, unless a court finds it to be in the best interests of the persons involved to apply the general rule. To cover the case of the marriage of a child's natural parent to a person who adopts the child, Section 62-2-109(1) provides that adoption does not sever the adopted child's intestacy relationship with 'that' natural parent. Adoption does, however, sever the adopted child's intestacy relationship with the 'other' natural parent, i.e., the natural parent not married to the person adopting the child. Subsection (2) of Section 62-2-109 relates to the taking in intestacy by, through, or from persons born out of wedlock. It does not purport to declare such illegitimate children to be legitimate. No part of the prior South Carolina law, establishing the legitimacy of a child, is meant to be affected by Section 62-2-109(2). The bases for a finding of legitimacy, i.e., either birth to validly married parents, whether validly ceremonially married or married as at common law, or birth to parents covered by one of the legitimation statutes, Sections 20-1-30, 20-1-40, 20-1-50, 20-1-60, 20-1-80, and 20-1-90 of the 1976 Code, remains as under prior law; and, of course, such legitimate children bear intestacy relationships with their relatives. Section 62-2-109(2) merely establishes intestacy relationships between illegitimate children and their maternal and paternal relatives. The rule set forth in Section 62-2-109(2)(i) relates to the establishment of the illegitimate child's intestacy relationship with his father, whenever the father and mother have been ceremonially married, albeit invalidly so. Section 62-2-109(2)(ii) allows an illegitimate child to inherit from and through his father if paternity is established by an adjudication commenced either before the father's death or within six months thereafter. A standard higher than usual, clear and convincing proof is required to be met in an adjudication commenced after, but not in an adjudication before, the father's death. The imposition of a required adjudication and a higher standard of proof upon illegitimate children seeking to inherit from their fathers, as compared with legitimate children not similarly

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burdened, should pass constitutional muster under the decision of Lalli v. Lalli, 439 U.S. 259 (1978). Section 62-2-109(2)(ii) precludes the father and his kindred from inheriting from or through the child unless the father has openly treated the child as his and has not refused to support the child. Subsection (3) of Section 62-2-109, on intestacy relationships following the termination of parental rights, is meant to conform with Section 20-7-1576 of the 1976 Code, cutting the parent off from the child's intestate estate, but not cutting the child off from the parent's intestate estate.	burdened, should pass constitutional muster under the decision of Lalli v. Lalli, 439 U.S. 259 (1978). Section 62-2-109(2)(ii) precludes the father and his kindred from inheriting from or through the child unless the father has openly treated the child as his and has not refused to support the child. Subsection (3) of Section 62-2-109, on intestacy relationships following the termination of parental rights, is meant to conform with Section 63-7-2590 of the 1976 Code, cutting the parent off from the child's intestate estate, but not cutting the child off from the parent's intestate estate.
SECTION 62-2-110. Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing signed by the decedent or acknowledged in a writing signed by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property shall be taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.	**SECTION 62-2-110.** If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing signed by the decedent or acknowledged in a writing signed by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property shall be taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.
REPORTER'S COMMENTS Section 62-2-110 concerns the effect on intestate succession of lifetime gifts made by the intestate to donees who are his prospective heirs. The section charges such lifetime gifts, as advancements, against the intestate share of the donee-heir, but only if, first, the intestate dies wholly intestate, i.e., without a will disposing of any part of his estate. See Section 62-2-610 on satisfaction for a rule analogous to the rule of advancements but operative in the event of succession under a will. Such gifts are treated as advancements under Section 62-2-110 only if, second, they are contemporaneously declared by the intestate or acknowledged by the donee, in writing, to be advancements. If the donee predeceases the intestate, but issue of the donee survive as heirs of the intestate, Section 62-2-110 charges the ancestor's lifetime gifts as advancements against the intestate share of the issue-heirs, again, only if there is a total intestacy and the above-mentioned writing exists but not if the writing provides that the lifetime gifts to the ancestor are not to be treated as advancements to such issue.	REPORTER'S COMMENTS Section 62-2-110 concerns the effect on intestate succession of lifetime gifts made by the intestate to donees who are his prospective heirs. The section charges such lifetime gifts, as advancements, against the intestate share of the donee-heir, but only if, first, the intestate dies wholly intestate, i.e., without a will disposing of any part of his estate. See Section 62-2-610 on satisfaction for a rule analogous to the rule of advancements but operative in the event of succession under a will. Such gifts are treated as advancements under Section 62-2-110 only if, second, they are contemporaneously declared by the intestate or acknowledged by the donee, in writing, to be advancements. If the donee predeceases the intestate, but issue of the donee survive as heirs of the intestate, Section 62-2-110 charges the ancestor's lifetime gifts as advancements against the intestate share of the issue-heirs, again, only if there is a total intestacy and the above-mentioned writing exists but not if the writing provides that the lifetime gifts to the ancestor are not to be treated as advancements to such issue.

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Section 62-2-110 applies to lifetime gifts made to any of the heirs of the intestate, a class of donees broader than the former law's language "child or issue of the intestate." See Section 62-1-201(17) defining "heirs". Section 62-2-110 values the advancement at the earlier of the donee's actual receipt of the gift or the intestate's death, resulting in most cases in a valuation at the date of the gift rather than at the date of death.	Section 62-2-110 applies to lifetime gifts made to any of the heirs of the intestate, a class of donees broader than the former law's language 'child or issue of the intestate.' See Section 62-1-201(20) defining 'heirs'. Section 62-2-110 values the advancement at the earlier of the donee's actual receipt of the gift or the intestate's death, resulting in most cases in a valuation at the date of the gift rather than at the date of death.
SECTION 62-2-111. Debts to decedent. A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue. REPORTER'S COMMENTS Section 62-2-111 qualifies the personal representative's right and obligation of retainer, i.e., to offset or charge the amounts of debts owed to the decedent against the shares of successors to his estate, as provided for in Section 62-3-903. Section 62-2-111 limits such charge's effects so that they affect only the debtor's share and not also the intestate shares of the debtor's issue. This codifies South Carolina case law. See Stokes v. Stokes, 62 S.C. 346, 40 S.E. 662 (1902), where the debt of a predeceased brother of the intestate was not charged against the brother's children's intestate shares.	**SECTION 62-2-111.** A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue. REPORTER'S COMMENTS Section 62-2-111 qualifies the personal representative's right and obligation of retainer, i.e., to offset or charge the amounts of debts owed to the decedent against the shares of successors to his estate, as provided for in Section 62-3-903. Section 62-2-111 limits such charge's effects so that they affect only the debtor's share and not also the intestate shares of the debtor's issue. This codifies South Carolina case law. See Stokes v. Stokes, 62 S.C. 346, 40 S.E. 662 (1902), where the debt of a predeceased brother of the intestate was not charged against the brother's children's intestate shares.
SECTION 62-2-112. Alienage. No person is disqualified to take as an heir because he, or a person through whom he claims, is or has been an alien. REPORTER'S COMMENTS Section 62-2-112 allows an individual to inherit property even though he, or a person through whom he claims, is or has been an alien. This was the prior South Carolina law notwithstanding the mandate of Article 3, Section 35 of the South Carolina Constitution (1895) and the provisions of Sections 27-13-30 and 27-13-40 of the 1976 Code, limiting alien ownership of South Carolina land to five hundred thousand acres, the last obviously unrealistic as an effective limit at approximately twenty-eight miles square.	**SECTION 62-2-112.** No person is disqualified to take as an heir because he, or a person through whom he claims, is or has been an alien. REPORTER'S COMMENTS Section 62-2-112 allows an individual to inherit property even though he, or a person through whom he claims, is or has been an alien. This was the prior South Carolina law notwithstanding the mandate of Article 3, Section 35 of the South Carolina Constitution (1895) and the provisions of former Sections 27-13-30 and 27-13-40 of the 1976 Code, limiting alien ownership of South Carolina land to five hundred thousand acres, the last obviously unrealistic as an effective limit at approximately twenty-eight miles square.

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SECTION 62-2-113. Persons related to decedent through two lines. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share. REPORTER'S COMMENTS Section 62-2-113 precludes possibility of a person related to the decedent through two lines of relationship, adopted and natural or either, from inheriting other than through the single line which will entitle him to the larger share. **SECTION 62-2-114.** Limitation on parent's entitlement as intestate heirs to estate proceeds; failure to provide support for decedent during minority. Notwithstanding any other provision of law, if the parents of the deceased would be the intestate heirs pursuant to Section 62-2-103(2), upon the motion of either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.	**SECTION 62-2-113.** A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share. REPORTER'S COMMENTS Section 62-2-113 precludes possibility of a person related to the decedent through two lines of relationship, adopted and natural or either, from inheriting other than through the single line which will entitle him to the larger share. **SECTION 62-2-114.** Notwithstanding any other provision of law, if the parents of the deceased would be the intestate heirs pursuant to Section 62-2-103(2), upon the service of a summons, petition and notice by ~~motion of~~ either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority. If the court makes such a determination as to a parent or parents, the parent shall be a disqualified parent. The proceeds, or portion of the proceeds, that a disqualified parent would have taken shall pass as though the disqualified parent had predeceased the decedent. REPORTER'S COMMENT The 2012 amendment makes clear that an action under this section must be commenced by the service of a Summons, Petition and Notice by either parent or any other party of potential interest; the amendment defines a disqualified parent as a parent found by the court by a preponderance of the evidence not to have reasonably have provided support for the deceased child; the amendment clarifies that the portion, or all , as the court determines, of the intestate share denied to the disqualified parent shall pass as if the disqualified parent had predeceased the child.