SIDE-BY-SIDE

ARTICLE 2- Intestate Succession and Wills- Parts 7, 8, and 9

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
Article 2.Part 7. Contractual Arrangements relating to Death	Article 2.Part 7.
SECTION 62-2-701. Contracts concerning succession. A contract to make a will or devise, or to revoke a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. REPORTER'S COMMENTS Section 62-2-701 allows the proof of a contract binding a decedent and concerning the succession to his estate, testate or intestate, only by way of some signed writing, either (1) his written, signed will containing the material provisions of the contract; (2) his written, signed will containing an express reference to the contract (extrinsic evidence proving its terms); or (3) a writing other than a will but signed by the decedent and containing evidence of the contract (allowing extrinsic evidence to prove its terms). The section's requirement of a signed writing to prove such contracts is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively. Noting that the only concern of Section 62-2-701 is with the proof of contracts concerning succession, it should be recognized that the prior South Carolina law, concerning the formation of such contracts and the effects of such contracts' formation and the breach thereof, remains intact. See 19 S.C. Digest, Wills Section 56-68; C. Karesh, Course Notes: Wills 81-90a; C. Karesh, Wills 46, 55-59 (1977); W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965); and T. Stubbs, Oral Contracts to Make Wills, IX Selden Soc. Y.B. Part III, 10 (1948). The policies basing Section 62-2-701 and Sections 62-2-502 (execution of wills), 62-2-506 (revocation of wills), and 62-2-509 (incorporation of other matter by reference in wills) are the	**SECTION 62-2-701.** A contract to make a will or devise, or to revoke a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. REPORTER'S COMMENTS Section 62-2-701 allows the proof of a contract binding a decedent and concerning the succession to his estate, testate or intestate, only by way of some signed writing, either (1) his written, signed will containing the material provisions of the contract; (2) his written, signed will containing an express reference to the contract (extrinsic evidence proving its terms); or (3) a writing other than a will but signed by the decedent and containing evidence of the contract (allowing extrinsic evidence to prove its terms). The section's requirement of a signed writing to prove such contracts is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively. Noting that the only concern of Section 62-2-701 is with the proof of contracts concerning succession, it should be recognized that the prior South Carolina law, concerning the formation of such contracts and the effects of such contracts' formation and the breach thereof, remains intact. See S. Alan Medlin, The Law of Wills and Trusts (S.C. Bar 2002) Sections 341, 342; W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965); and T. Stubbs, Oral Contracts to Make Wills, IX Selden Soc. Y.B. Part III, 10 (1948). The policies basing Section 62-2-701 and Sections 62-2-502 (execution of wills), 62-2-506 (revocation of wills), and 62-2-509 (incorporation of other matter by reference in wills) are the same. All of these sections are aimed at protecting the integrity of the process of succession to

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
same. All of these sections are aimed at protecting the integrity of the process of succession to the estates of decedents in accordance with their own true wills. Each of these sections requires that the decedent's will be expressed either in some writing or by way of a physical act done to some writing; the writings are required in the expectation of increasing the reliability of the proof of the decedent's true will. See K. Walsh, Note: The Statute of Frauds' Lifetime and Testamentary Provisions: Safeguarding Decedents' Estates, 50 Ford. L. Rev. 239 (1981) (hereinafter Walsh). Section 36-2-201(1) of the 1976 Code requires contracts concerning the "sale of goods for the price of five hundred dollars or more" to be in "some writing . . . and signed by the party against whom enforcement is sought." Sections 36-2-105 and 36-2-106 of the 1976 Code define the "sale of goods." Whether the form of consideration, furnishing the support in contracts theory for interpreting as a contract an agreement between a survivor and a decedent as to the survivor's succession to goods as assets of the decedent's estate, the consideration being typically personal services rendered by the promisee, even if that consideration has a value of five hundred dollars or more, and whether the nature of the agreement itself, are bases upon which it may be fairly concluded that the contract is one for the " sale of goods for the price of $500 or more," and so falls within the application of a statute worded as is Section 36-2-201(1), is a question subject to some doubt in other jurisdictions. See Walsh, supra at 247, Fn. 48 and see M. Schnebly, Contracts to Make Testamentary Dispositions As Affected By the Statute of Frauds, 24 Mich. L. Rev. 749, 754 (1926). In South Carolina, there is, however, some authority for the application of the statute which was the predecessor of Section 36-2-201(1) to contracts concerning succession to the decedent's goods, Turnipseed v. Sirrine, 57 S.C. 559, 35 S.E. 757 (1900) (concerning the fourth clause of Section 17 of the Statute of Frauds (Rev. Stat. Section 2151), a case of part performance, constructive trust and restitution). Whether this dated authority would serve to answer the question of the applicability of Section 36-2-201(1) is problematic. Other provisions of the South Carolina Uniform Commercial Code require signed writings for contracts concerning the "sale of securities," Section 36-8-319, and for contracts concerning the "sale of personal property ... beyond five thousand dollars (other than those covered by Sections 36-2-201 and 36-8-319)", Section 36-1-206. Whether contracts concerning succession to the described items of property fall within the application of these UCC provisions is also problematic. However, Section 32-3-10(4) of the 1976 Code does require contracts concerning land to be "in writing and signed by the party to be charged therewith." Accordingly, contracts concerning the succession to land as an asset of a decedent's estate were, Brown v. Golightly, 106 S.C.	the estates of decedents in accordance with their own true wills. Each of these sections requires that the decedent's will be expressed either in some writing or by way of a physical act done to some writing; the writings are required in the expectation of increasing the reliability of the proof of the decedent's true will. See K. Walsh, Note: The Statute of Frauds' Lifetime and Testamentary Provisions: Safeguarding Decedents' Estates, 50 Ford. L. Rev. 239 (1981) (hereinafter Walsh). Section 32-3-10(4) of the 1976 Code does require contracts concerning land to be 'in writing and signed by the party to be charged therewith.' Accordingly, contracts concerning the succession to land as an asset of a decedent's estate were, Brown v. Golightly, 106 S.C. 519, 91 S.E. 869 (1917), White v. McKnight, 146 S.C. 59, 143 S.E. 552 (1928), and will yet be required to be in writing and signed by the decedent, i.e., 'by the party to be charged therewith (only in the sense that to charge the personal representative or other successor or assign of the decedent is to charge the decedent himself).' In addition, prior South Carolina case law was said to require that contracts concerning succession be proved by 'clear, cogent, and convincing evidence.' Caulder v. Knox, 251 S.C. 337, 346, 162 S.E.2d 262 (1968), Brown v. Graham, 242 S.C. 491, 131 S.E.2d 421 (1963). While Section 2-701 fails to codify the stated higher standard of proof per se, the provision's requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect. Further, Section 62-2-701 provides that no presumption of the existence of a contract concerning succession arises from the mere execution of mutual wills or of a joint will. And while there is South Carolina authority, relying on the reciprocating nature of the terms of a joint will, together with surrounding family circumstances, for the satisfaction by implication of the clear, cogent, and convincing evidentiary standard as to the existence of a contract not to revoke the joint will, in a case in which the joint will failed to actually express an agreement of nonrevocability, Pruitt v. Moss, 271 S.C. 305, 247 S.E.2d 324 (1978), Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract. Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract whose mere existence is proved by a signed writing. However, as a brake on the provision's liberality with respect to extrinsic evidence, Section 19-11-20 of the 1976 Code, the 'Dead man's' statute, will continue to limit the admissibility of that extrinsic evidence which is subject to its application, this notwithstanding the enactment of Section 62-2-701. See Brown v. Golightly, supra.

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
519, 91 S.E. 869 (1917), White v. McKnight, 146 S.C. 59, 143 S.E. 552 (1928), and will yet be required to be in writing and signed by the decedent, i.e., "by the party to be charged therewith (only in the sense that to charge the personal representative or other successor or assign of the decedent is to charge the decedent himself)." Similarly, as to contracts concerning succession, either in the nature of a surety contract or made upon consideration of marriage, Section 62-2-701 require that they be in writing and signed. In addition, prior South Carolina case law was said to require that contracts concerning succession be proved by "clear, cogent, and convincing evidence." Caulder v. Knox, 251 S.C. 337, 346, 162 S.E.2d 262 (1968), Brown v. Graham, 242 S.C. 491, 131 S.E.2d 421 (1963). While Section 2-701 fails to codify the stated higher standard of proof per se, the provision's requirement of a signed writing is consistent with the spirit of the former higher standard of proof and perpetuates its intended effect. Further, Section 62-2-701 provides that no presumption of the existence of a contract concerning succession arises from the mere execution of mutual wills or of a joint will. And while there is South Carolina authority, relying on the reciprocating nature of the terms of a joint will, together with surrounding family circumstances, for the satisfaction by implication of the clear, cogent, and convincing evidentiary standard as to the existence of a contract not to revoke the joint will, in a case in which the joint will failed to actually express an agreement of nonrevocability, Pruitt v. Moss, 271 S.C. 305, 247 S.E.2d 324 (1978), Section 62-2-701 seems to preclude the establishment of any such contract of nonrevocability where the material provision thereof, i.e., the promise not to revoke, is not expressed in the joint will and the joint will otherwise fails to expressly refer to the contract. Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract whose mere existence is proved by a signed writing. However, as a brake on the provision's liberality with respect to extrinsic evidence, Section 19-11-20 of the 1976 Code, the "Dead man's" statute, will continue to limit the admissibility of that extrinsic evidence which is subject to its application, this notwithstanding the enactment of Section 62-2-701. See Brown v. Golightly, supra. . Section 62-2-701 avoids the problems, both that of the possibly uneven application of the stated higher standard of proof of contracts concerning succession and that of the questionable breadth of application of the several pre-existing Statutes of Frauds provisions as to contracts concerning succession, quite simply by establishing a signed writing requirement specifically applicable to all such contracts. Presumably Section 62-2-701 will be construed as preempting the field, rendering all other such statutory and case law provisions inapplicable to such contracts in the future.	Section 62-2-701 avoids the problems, both that of the possibly uneven application of the stated higher standard of proof of contracts concerning succession and that of the questionable breadth of application of the several pre-existing Statutes of Frauds provisions as to contracts concerning succession, quite simply by establishing a signed writing requirement specifically applicable to all such contracts. Presumably Section 62-2-701 will be construed as preempting the field, rendering all other such statutory and case law provisions inapplicable to such contracts in the future. However, it may be questioned whether Section 62-2-701 should not be subject, in its operation, to the familiar legal and equitable exceptions to the operation of the other Statutes of Frauds provisions. See Section 62-1-103 and Walsh, supra, at 258-270. These include the remedies of restitution of monies advanced and the imposition of a constructive trust to force the restitution of other specific assets advanced by the promisee on an oral contract, and the effects of part performance of the oral contract by the promisee as well as equitable and promissory estoppel, either matter binding the promissor to the oral contract notwithstanding any applicable Statute of Frauds. One case has reached such a conclusion after the enactment of Section 62-2-701. See Satcher v. Satcher, 351 S.C. 477, 570 S.E. 2d 535 (S.C. App. 2002). See also White v. McKnight, supra, Turnipseed v. Sirrine, supra 57 S.C. at 578, Riddle v. George, 181 S.C. 360, 187 S.E. 524 (1936), Bruce v. Moon, 57 S.C. 60, 35 S.E. 415 (1900). See W. Brown, Note: Specific Performance of Oral Contracts to Devise, 17 S.C.L. Rev. 540 (1965). For the enforcement of a contract concerning succession while the testator is still alive, see Wright v. Trask, 329 S.C. 170, 495 S.E. 2d 222 (S.C. App. 1997).

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
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Article 2.Part 8. General Provisions	Article 2.Part 8.
SECTION 62-2-801. Disclaimer. (a) In addition to any methods available under existing law, statutory or otherwise, if a person (or his executor, administrator, successor, personal representative, special administrator, guardian, attorney-in-fact, trustee, committee, conservator, or his other fiduciary or agent who performs substantially similar functions under the law governing his status, acting with or without the approval of a specific court order and with or without the receipt of consideration for the act), as a disclaimant, makes a disclaimer as defined in Section 12-16-1910 of the 1976 Code, with respect to any transferor's transfer (including transfers by any means whatsoever, lifetime and testamentary, voluntary and by operation of law, initial and successive, by grant, gift, trust, contract, intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise, bequest, beneficiary designation, survivorship provision, exercise and nonexercise of a power, and otherwise) to him of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant. (b) The right to disclaim exists notwithstanding any limitation on the disclaimant's interest in the nature of a spendthrift provision or similar restriction. (c) The right to disclaim is barred by the disclaimant's written waiver of the right. (d) Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred, as the case may be) as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest; the disclaimer shall relate back to that date of effectiveness for all purposes; and any future interest which is	**SECTION 62-2-801.** (a) ~~In addition to any methods available under existing law, statutory or otherwise, if a person (or his executor, administrator, successor, personal representative, special administrator, guardian, attorney-in-fact, trustee, committee, conservator, or his other fiduciary or agent who performs substantially similar functions under the law governing his status, acting with or without the approval of a specific court order and with or without the receipt of consideration for the act), as a disclaimant, makes a disclaimer as defined in Section 12-16-1910 of the 1976 Code, with respect to any transferor's transfer (including transfers by any means whatsoever, lifetime and testamentary, voluntary and by operation of law, initial and successive, by grant, gift, trust, contract, intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise, bequest, beneficiary designation, survivorship provision, exercise and nonexercise of a power, and otherwise) to him of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant.~~ ~~(b) The right to disclaim exists notwithstanding any limitation on the disclaimant's interest in the nature of a spendthrift provision or similar restriction.~~ ~~(c) The right to disclaim is barred by the disclaimant's written waiver of the right.~~ ~~(d) Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred, as the case may be) as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest; the disclaimer shall relate back to that date of effectiveness for all purposes; and any future interest which is~~

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested; provided, that an interest disclaimed by a disclaimant who is the spouse of a decedent, the transferor of the interest, may pass by any further process of transfer to such spouse, notwithstanding the treatment of the transfer of the disclaimed interest as if the disclaimant had predeceased. (e) The date of effectiveness of the transfer of the disclaimed interest is (1) as to transfers by intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise and bequest, the date of death of the decedent transferor of, or that of the donee of a testamentary power of appointment (whether exercised or not exercised) with respect to, the interest, as the case may be, and (2) as to all other transfers, the date of effectiveness of the instrument, contract, or act of transfer. (f) It is the intent of the legislature of the State of South Carolina by this provision to clarify the laws of this State with respect to the subject matter hereof in order to ensure the ability of persons to disclaim interests in property without the imposition of federal and state estate, inheritance, gift, and transfer taxes. This provision is to be interpreted and construed in accordance with, and in furtherance of, that intent. (g) With the court's approval, a personal representative, trustee, or similar fiduciary may disclaim any one or more of the powers granted to the personal representative, trustee, or similar fiduciary. Any disclaimer must be made by written instrument in the manner provided in subsection (a) and has the same effect as in subsection (d). The disclaimer of a power may be made binding on any successor fiduciary, if the disclaiming fiduciary so declares when making the disclaimer.	~~provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested; provided, that an interest disclaimed by a disclaimant who is the spouse of a decedent, the transferor of the interest, may pass by any further process of transfer to such spouse, notwithstanding the treatment of the transfer of the disclaimed interest as if the disclaimant had predeceased.~~ ~~(e) The date of effectiveness of the transfer of the disclaimed interest is (1) as to transfers by intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise and bequest, the date of death of the decedent transferor of, or that of the donee of a testamentary power of appointment (whether exercised or not exercised) with respect to, the interest, as the case may be, and (2) as to all other transfers, the date of effectiveness of the instrument, contract, or act of transfer.~~ ~~(f) It is the intent of the legislature of the State of South Carolina by this provision to clarify the laws of this State with respect to the subject matter hereof in order to ensure the ability of persons to disclaim interests in property without the imposition of federal and state estate, inheritance, gift, and transfer taxes. This provision is to be interpreted and construed in accordance with, and in furtherance of, that intent.~~ ~~(g) With the court's approval, a personal representative, trustee, or similar fiduciary may disclaim any one or more of the powers granted to the personal representative, trustee, or similar fiduciary. Any disclaimer must be made by written instrument in the manner provided in subsection (a) and has the same effect as in subsection (d). The disclaimer of a power may be made binding on any successor fiduciary, if the disclaiming fiduciary so declares when making the disclaimer.~~ This section applies to disclaimers of any interest in or power over property, whenever created, and is the exclusive means by which a disclaimer may be made under the laws of this State. (b) For purpose of this section: (1) 'Disclaimer' means any writing which disclaims, renounces, declines, or refuses an interest in or power over property. (2) 'Disclaimant' means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made. (3) 'Disclaimed interest' means the interest that would have passed to the disclaimant had the disclaimer not been made. (4) 'Fiduciary' means a personal representative, trustee, agent acting under a power of attorney, guardian, conservator, or other person authorized to act as a fiduciary with respect to

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
	the property of another person. (c)(1) A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. (2) Unless barred, a disclaimer must be made within a reasonable time after the disclaimant acquires actual knowledge of the interest. A disclaimer is conclusively presumed to have been made within a reasonable time if made within nine months after the date of effectiveness of the transfer as determined under subsection (d)(3). (3) To be effective, a disclaimer must be: (i) in writing; (ii) declare the writing as a disclaimer; (iii) describe the interest or power disclaimed; and (iv) be delivered to the transferor of the interest, the transferor's fiduciary, the holder of the leagal title to or the person in possession of the property to which the interest relates, or a court that would have jurisdiction over such interest or subject matter. A disclaimer of a power must be delivered as if the power disclaimed were an interest in property. Delivery of a disclaimer may be made by personal delivery, first-class mail, or any other method that results in its receipt. A disclaimer sent by first-class mail shall be deemed to have been delivered on the date it is postmarked. (4) A disclaimer is not a transfer, assignment, or release if made within a reasonable time after the disclaimant acquires actual knowledge of the interest and if not otherwise barred. (5) A barred disclaimer is ineffective as a disclaimer under this section. A disclaimer is barred by any of the following conditions occurring before the disclaimer becomes effective: (i) the disclaimant waived in writing the right to disclaim; (ii) the disclaimant accepted the interest sought to be disclaimed; (iii) the disclaimant voluntarily assigned, conveyed, encumbered, pledged, transferred, or directed the interest sought to be disclaimed or has contracted to do so; or (iv) a judicial sale of the interest sought to be disclaimed has occurred. (6) A disclaimer is not barred by any of the following conditions: (i)by a spendthrift provision or similar restriction on transfer or the right to disclaim imposed by the creator of the interest in or power over the property; (ii) by the disclaimant's financial condition, whether or not insolvent and a disclaimer that complies with this section is not a fraudulent transfer under the laws of this State; (iii) a disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise; (iv) a disclaimer, in whole or in part, of the future exercise of a power not held in a

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
	fiduciary capacity is not barred unless the power is exercisable in favor of the disclaimant. (7) Unless a disclaimer is barred, a disclaimer treated as a qualified disclaimer pursuant to Internal Revenue Code Section 2518 is effective as a disclaimer under this section. (d)(1) If a disclaimant makes a disclaimer with respect to any transferor's transfer (including transfers by any means whatsoever, lifetime and testamentary, voluntary and by operation of law, initial and successive, by grant, gift, trust, contract, intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property, devise, bequest, beneficiary designation, survivorship provision, exercise and nonexercise of a power, and otherwise) to the disclaimant of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant. (2) Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred), as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest. The disclaimer shall relate back to that date of effectiveness for all purposes, and any future interest which is provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested. Provided, that an interest disclaimed by a disclaimant who is the spouse of a decedent, the transferor of the interest, may pass by any further process of transfer to such spouse, notwithstanding the treatment of the transfer of the disclaimed interest as if the disclaimant had predeceased. (3) The date of effectiveness of the transfer of the disclaimed interest is (i) as to transfers by intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise and bequest, the date of death of the decedent transferor, or that of the donee of a testamentary power of appointment (whether exercised or not exercised) with respect to, the interest, as the case may be, and (ii) as to all other transfers, the date of effectiveness of the instrument, contract, or act of transfer. (e)(1) If and to the extent an instrument creates a fiduciary relationship and expressly grants the fiduciary the right to disclaim, the fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. If there is no instrument expressly granting the fiduciary the right to disclaim, the fiduciary's right to disclaim shall be determined by the laws of this State applicable to that fiduciary relationship. (2) If a trustee disclaims an interest in property that otherwise would have become trust property, the disclaimed interest does not become trust property.

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
	(3) A fiduciary may disclaim a power held in a fiduciary capacity. If the power has not been previously exercised, the disclaimer takes effect as of the time the instrument creating the power became irrevocable. If the power has been previously exercised, the disclaimer takes effect immediately after the last exercise of the power. The disclaimer of a fiduciary power may be made binding on any successor fiduciary if the disclaimer so provides. (4) If no conservator or guardian has been appointed, a parent may disclaim on behalf of that parent's minor child and unborn issue, in whole or in part, any interest in or power over property which the minor child or unborn issue is to receive as a result of another disclaimer, but only if the disclaimed interest or power does not pass outright to that parent as a result of the disclaimer. (f) A fiduciary or other person having custody of the disclaimed interest is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is barred pursuant to subsection (c)(5), for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual knowledge of the facts constituting the bar of the right to disclaim.
REPORTER'S COMMENTS Section 62-2-801 provides for the state law effectiveness of the disclaimer of transfers by way of succession to the estates of decedents and otherwise. It affects transfers by will as well as transfers through intestate estates. Section 62-2-801 also regulates the method by which a disclaimer must be made in order to be effective, its nature, timeliness, formal execution and delivery, and also the effect of a disclaimer on the further disposition of the interest renounced. The purpose of the enactment of Section 62-2-801 is to establish the state property law basis for the recognition of the effectiveness of such disclaimers for purposes of the application of the federal and state tax laws. The antilapse statute, Section 62-2-603, applies to cases of disclaimers of gifts under wills unless the transferor provides otherwise.	REPORTER'S COMMENTS Section 62-2-801 provides for the state law effectiveness of the disclaimer of transfers by way of succession to the estates of decedents and otherwise. It affects transfers by will as well as transfers through intestate estates. Section 62-2-801 also regulates the method by which a disclaimer must be made in order to be effective, its nature, timeliness, formal execution and delivery, and also the effect of a disclaimer on the further disposition of the interest renounced. The purpose of the enactment of Section 62-2-801 is to establish the state property law basis for the recognition of the effectiveness of such disclaimers The antilapse statute, Section 62-2-603, applies to cases of disclaimers of gifts under wills unless the transferor provides otherwise.
SECTION 62-2-802. Effect of divorce, annulment, decree of separate maintenance, or order terminating marital property rights.	**SECTION 62-2-802.**
(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separate maintenance which does not terminate	(a) ~~A person~~ An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, ~~he~~ the individual is married to the decedent at the time of death. A decree of separate

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
the status of husband and wife is not a divorce for purposes of this section. (b) For purposes of Parts 1, 2, 3, and 4 of Article 2 [Sections 62-2-101 et seq., 62-2-201 et seq., 62-2-301 et seq., and 62-2-401 et seq.] and of Section 62-3-203, a surviving spouse does not include: (1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as husband and wife; (2) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or (3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses. (4) a person claiming to be a common law spouse who has not been established to be a common law spouse by an adjudication commenced before the death of the decedent or within the later of eight months after the death of the decedent or six months after the initial appointment of a personal representative; if the action is commenced after the death of the decedent, proof must be by clear and convincing evidence. (c) A divorce or annulment is not final until signed by the court and filed in the office of the clerk of court.	maintenance ~~which~~ that does not terminate the status of husband and wife is not a divorce for purposes of this section. (b) For purposes of Parts 1, 2, 3, and 4 of Article 2 [Sections 62-2-101 et seq., 62-2-201 et seq., 62-2-301 et seq., and 62-2-401 et seq.] and of Section 62-3-203, a surviving spouse does not include: (1) ~~a person~~ an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or ~~subsequently~~ live together as husband and wife at the time of the decedent's death; (2) ~~a person~~ an individual who, following ~~a~~ an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; ~~or~~ (3) ~~a person~~ an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death; or~~.~~ (4) ~~a person~~ an individual claiming to be a common law spouse who has not been established to be a common law spouse by an adjudication commenced before the death of the decedent or within the later of eight months after the death of the decedent or six months after the initial appointment of a personal representative; if the action is commenced after the death of the decedent, proof must be by clear and convincing evidence. (c) A divorce or annulment is not final until signed by the court and filed in the office of the clerk of court.
REPORTER'S COMMENTS Section 62-2-802 provides, with respect to the capacity of a putative surviving spouse to take by way of succession to the estate of a decedent, whether testate or intestate, for the effects of (1) a divorce, (2) an annulment, (3) a decree of separate maintenance, and (4) an order terminating marital property rights, or confirming equitable distribution between spouses, in cases in which any such event affects the marriage of the decedent to the putative surviving spouse. Valid Divorce and Annulment. Under Section 62-2-802(a), a valid divorce or a valid annulment deprives the putative spouse of the status of surviving spouse of the decedent and the capacity to take as such in succession to the decedent's estate under this Code, i.e., by way of provisions in favor of a "surviving spouse," whether found in the decedent's will, Parts 5 and 6 of Article 2, or in the intestacy	REPORTER'S COMMENTS Section 62-2-802 provides, with respect to the capacity of a putative surviving spouse to take by way of succession to the estate of a decedent, whether testate or intestate, for the effects of (1) a divorce, (2) an annulment, (3) a decree of separate maintenance, and (4) an order terminating marital property rights, or confirming equitable distribution between spouses, in cases in which any such event affects the marriage of the decedent to the putative surviving spouse. Valid Divorce and Annulment. Under Section 62-2-802(a), a valid divorce or a valid annulment deprives the putative spouse of the status of surviving spouse of the decedent and the capacity to take as such in succession to the decedent's estate under this Code, i.e., by way of provisions in favor of a 'surviving spouse,' whether found in the decedent's will, Parts 5 and 6 of Article 2, or in the intestacy statute,

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
statute, Section 62-2-102, or in the provision for an omitted spouse, Section 62-2-301, or in that for a spouse with respect to exempt property, Section 62-2-401. However, the issuance of a decree of separate maintenance, not terminating the marital status, has no such effect. It should be apparent that a valid divorce or annulment must always have deprived the former spouse of the status of spouse of the decedent for purposes of succession. Marital Conditions Other than Divorce or Annulment. Under Section 62-2-802(b), any one of the following, an order terminating marital property rights, or confirming equitable distribution between spouses, subsection (3), a divorce or an annulment not recognized as valid in South Carolina if the putative spouse obtained or consented to it, subsection (1), or subsequent to it he or she participated in a marriage ceremony with some third person, subsection (2), deprives the putative spouse of the status of surviving spouse of the decedent; but, under Section 62-2-802(b) itself, the deprivation is only for the purposes of succession to the decedent's estate in intestacy, as an omitted spouse, as a spouse with respect to exempt property, and as a spouse in line for appointment as an administrator in intestacy, i.e., as under Parts 1, 3, and 4 of Article 2 and under Section 62-3-203. However, under Section 62-2-507, such an order, a divorce or annulment, whether valid or invalid as under Section 62-2-802(b) has the additional effect of revoking, by operation of law, so much of the decedent's will as affects the putative spouse. Section 62-2-507 refers to Section 62-2-802(b) for the definition of divorce and annulment. Perhaps other marital conditions, not valid as divorces or annulments and not detailed in Section 62-2-802(b), will continue by the common law to estop a putative spouse from claiming as a surviving spouse. See Section 62-1-103. Further, matters of succession not within the coverage of Sections 62-2-802(b) and 62-2-507 will continue to be governed by the prior South Carolina law, e.g., recovery under the Wrongful Death Act, Section 15-51-20 of the 1976 Code. See Folk v. U.S., 102 F. Supp. 736 (W.D.S.C. 1952), and see Lytle v. Southern Ry.-Carolina Division, 171, S.C. 221, 171 S.E. 42 (1933) and Lytle v. Southern Ry.-Carolina Division, 152 S.C. 161, 149 S.E. 692 (1929). Both of Sections 62-2-802 and 62-2-507 provide for the exceptional case of the subsequent intermarriage of the decedent to the putative spouse, the sections being rendered inapplicable to such a case.	Section 62-2-102, or in the provision for an elective share, Section 62-2-201 et. seq., or in the provision for an omitted spouse, Section 62-2-301, or in that for a spouse with respect to exempt property, Section 62-2-401. However, the issuance of a decree of separate maintenance, not terminating the marital status, has no such effect. It should be apparent that a valid divorce or annulment must always have deprived the former spouse of the status of spouse of the decedent for purposes of succession. Marital Conditions Other than Divorce or Annulment. Under Section 62-2-802(b), any one of the following, an order terminating marital property rights, or confirming equitable distribution between spouses, subsection (3), a divorce or an annulment not recognized as valid in South Carolina if the putative spouse obtained or consented to it, subsection (1), or subsequent to it he or she participated in a marriage ceremony with some third person, subsection (2), deprives the putative spouse of the status of surviving spouse of the decedent; but, under Section 62-2-802(b) itself, the deprivation is only for the purposes of succession to the decedent's estate in intestacy, as a spouse with respect to an elective share as an omitted spouse, as a spouse with respect to exempt property, and as a spouse in line for appointment as an administrator in intestacy, i.e., as under Parts 1, 2, 3, and 4 of Article 2 and under Section 62-3-203. However, under Section 62-2-507, such an order, a divorce or annulment, whether valid or invalid as under Section 62-2-802(b) has the additional effect of revoking, by operation of law, so much of the decedent's will as affects the putative spouse. Section 62-2-507 refers to Section 62-2-802 for the definition of divorce and annulment. Perhaps other marital conditions, not valid as divorces or annulments and not detailed in Section 62-2-802(b), will continue by the common law to estop a putative spouse from claiming as a surviving spouse. See Section 62-1-103. Further, matters of succession not within the coverage of Sections 62-2-802(b) and 62-2-507 will continue to be governed by the prior South Carolina law, e.g., recovery under the Wrongful Death Act, Section 15-51-20 of the 1976 Code. See Folk v. U.S., 102 F. Supp. 736 (W.D.S.C. 1952), and see Lytle v. Southern Ry.-Carolina Division, 171, S.C. 221, 171 S.E. 42 (1933) and Lytle v. Southern Ry.-Carolina Division, 152 S.C. 161, 149 S.E. 692 (1929). Both Sections 62-2-802 and 62-2-507 provide for the exceptional case of the subsequent marriage of the decedent to the putative spouse, those sections being rendered inapplicable to such a case. The 2012 amendment clarifies that an individual who undergoes a divorce that is either invalid or not recognized in South Carolina will be considered a surviving spouse if the individual is living as husband and wife with the decedent at the time of decedent's death.

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
SECTION 62-2-803. Effect of homicide on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (a) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent. (b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents. (c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent. (d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section. A beneficiary whose interest is increased as a result of feloniously and intentionally killing shall be treated in accordance with the principles of this section. (e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section. (f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer, for value and without notice, property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section. (g) For purposes of this section, the killer is considered to have predeceased the decedent if the killer dies within one hundred twenty hours after feloniously and intentionally killing the decedent.	**SECTION 62-2-803.** (a) ~~A surviving spouse, heir, or devisee~~ An individual who feloniously and intentionally kills the decedent is not entitled to any benefits under the decedent's will, trust of which the decedent is a grantor or under this article with respect to the decedent's estate, including, but not limited to, an intestate share, an elective share, an omitted spouse's share or child's share, a homestead allowance, and exempt property, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent. (b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as ~~his~~ the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents. (c) A named beneficiary of a bond, life insurance policy, retirement plan, annuity, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the ~~person~~ individual upon whose life the policy is issued is not entitled to any benefit under the bond, policy, retirement plan, annuity, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent. (d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section. A beneficiary whose interest is increased as a result of feloniously and intentionally killing shall be treated in accordance with the principles of this section. (e) The felonious and intentional killing of the decedent revokes the nomination of the killer in a will or other document nominating or appointing the killer to serve in any fiduciary capacity or representative capacity, including, but not limited to, as personal representative, trustee, agent or guardian. (f) A final judgment ~~of~~ by conviction, or guilty plea establishing criminal accountability of felonious and intentional killing the decedent ~~is conclusive~~ conclusively establishes that the convicted individual feloniously and intentionally killed the decedent for purposes of this section. In the absence of ~~a conviction of felonious and intentional killing~~ such final judgment the court, ~~may determine by a preponderance of evidence whether the killing was felonious and~~

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
	~~intentional for purposes of this section~~ upon the petition of an interested person, must determine whether, upon the preponderance of the evidence standard, the individual would be found responsible for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be responsible for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section. ~~(f)~~(g) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer, for value and without notice, property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section. ~~(g)~~(h) ~~For purposes of this section, the killer is considered to have predeceased the decedent if the killer dies within one hundred twenty hours after feloniously and intentionally killing the decedent.~~ If an individual feloniously and intentionally kills the decedent, and if the killer dies within one hundred twenty hours of the decedent's death, then the decedent shall be deemed to have survived the killer for purposes of distributing the killer's estate, including, but not limited to, property passing by intestacy, the killer's will, any trust of which the killer is a grantor, joint tenancy with right of survivorship and benefits payable under a life insurance policy, retirement plan, annuity or other contractual arrangement.
REPORTER'S COMMENTS Section 62-2-803, subsections (a) through (d), governs the effects of the proof of a putative successor's felonious and intentional killing of a decedent upon whose death some matter of succession depends. Under this Code, such a killer is disabled from taking the succession and the succession proceeds as if the killer had predeceased the decedent. Under Section 62-2-803(e), a final judgment of conviction of felonious and intentional killing conclusively invokes the operation of Section 62-2-803, but the lack of a conviction is no bar to invocation of the provision where the killing is proved by the preponderance of the evidence. At common law, according to the maxim that "no one shall be permitted to profit by his own ... wrong," Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930), those, who were by the preponderance of the evidence, Smith v. Todd, supra, proven to have feloniously, Smith v. Todd, supra; and Keels v. Atlantic Coast Line R. Co., 159 S.C. 520, 157 S.E. 834 (1931), and intentionally, i.e., maliciously and not merely recklessly or involuntarily, Leggette v. Smith,	REPORTER'S COMMENTS Section 62-2-803, subsections (a) through (e), governs the effects of the proof of a putative successor's felonious and intentional killing of a decedent upon whose death some matter of succession depends. Under this Code, such a killer is disabled from taking the succession and the succession proceeds as if the killer had predeceased the decedent. Under Section 62-2-803(f), a final judgment of conviction or a guilty plea of felonious and intentional killing conclusively invokes the operation of Section 62-2-803, but the lack of a conviction is no bar to invocation of the provision where the killing is proved by the preponderance of the evidence. At common law, according to the maxim that 'no one shall be permitted to profit by his own ... wrong,' Smith v. Todd, 155 S.C. 323, 152 S.E. 506 (1930), those, who were by the preponderance of the evidence, Smith v. Todd, supra, proven to have feloniously, Smith v. Todd, supra; and Keels v. Atlantic Coast Line R. Co., 159 S.C. 520, 157 S.E. 834 (1931), and intentionally, i.e., maliciously and not merely recklessly or involuntarily, Leggette v. Smith,

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
226 S.C. 403, 85 S.E.2d 576 (1955), but see Fowler v. Fowler, 242 S.C. 252, 254, 130 S.E.2d 568 (1963), killed another, were disabled from taking in succession to their victim, whether by their being named as the beneficiary of a policy of life insurance on their victim, Smith v. Todd, supra, or of employment death benefits with respect to their victim, Keels, supra, or by their taking in intestacy from their victim, or otherwise, Leggette v. Smith, supra. The maxim applied and the civilly proven killer was disabled from taking notwithstanding that on the criminal side he had been convicted of involuntary manslaughter, Keels, supra, or had been acquitted of crime, Leggette v. Smith, supra. .	226 S.C. 403, 85 S.E.2d 576 (1955), but see Fowler v. Fowler, 242 S.C. 252, 254, 130 S.E.2d 568 (1963), killed another, were disabled from taking in succession to their victim, whether by their being named as the beneficiary of a policy of life insurance on their victim, Smith v. Todd, supra, or of employment death benefits with respect to their victim, Keels, supra, or by their taking in intestacy from their victim, or otherwise, Leggette v. Smith, supra. The maxim applied and the civilly proven killer was disabled from taking notwithstanding that on the criminal side he had been convicted of involuntary manslaughter, Keels, supra, or had been acquitted of crime, Leggette v. Smith, supra. .
Former Section 21-1-50 of the 1976 Code was enacted, importantly, in supplementation of the common law maxim disabling a killer from taking in succession to his victim, and was enacted merely in order to establish a conclusive presumption of the disablement of the killer in the single specified case of his criminal court conviction of an unlawful killing, Sections 16-3-10 and 16-3-50 of the 1976 Code and Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545 (1934), presumably because of the higher standard of proof bound to have been imposed in that proceeding; not including coroner's convictions, Smith v. Todd, supra, nor including, of course, complete acquittals, Leggette v. Smith, supra, nor involuntary manslaughter convictions, Keels, supra, Sections 16-3-50 and 16-3-60 of the 1976 Code, but, perhaps, including other reckless homicide convictions, Section 56-5-2910 of the 1976 Code, unlawful albeit unintended, i.e., nonmalicious and involuntary. See Fowler v. Fowler, supra, at 254 and C. Karesh, Survey of South Carolina Law, 8 S.C.L.Q. 150 (1955) and E. McCrackin, Inheritance--Unintentional Killing, 7 S.C.L.Q. 475 (1955).	Former Section 21-1-50 of the 1976 Code was enacted, importantly, in supplementation of the common law maxim disabling a killer from taking in succession to his victim, and was enacted merely in order to establish a conclusive presumption of the disablement of the killer in the single specified case of his criminal court conviction of an unlawful killing, Sections 16-3-10 and 16-3-50 of the 1976 Code and Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545 (1934), presumably because of the higher standard of proof bound to have been imposed in that proceeding; not including coroner's convictions, Smith v. Todd, supra, nor including, of course, complete acquittals, Leggette v. Smith, supra, nor involuntary manslaughter convictions, Keels, supra, Sections 16-3-50 and 16-3-60 of the 1976 Code, but, perhaps, including other reckless homicide convictions, Section 56-5-2910 of the 1976 Code, unlawful albeit unintended, i.e., nonmalicious and involuntary. See Fowler v. Fowler, supra, at 254 and C. Karesh, Survey of South Carolina Law, 8 S.C.L.Q. 150 (1955) and E. McCrackin, Inheritance--Unintentional Killing, 7 S.C.L.Q. 475 (1955).
The thrust of Section 62-2-803 is meant to encompass not only the intended unlawful killing cases covered by former Section 21-1-50 of the 1976 Code, but also the cases left to the common law maxim. See Section 62-2-803(d). Perhaps the common law maxim retains some validity, as under Section 62-1-103, with respect to cases of killings or of succession, not covered by Section 62-2-803, if any. For instance, perhaps the common law maxim will yet apply to deprive unintended but reckless homicides of the benefits of the Wrongful Death Act, Sections 15-51-10, 15-51-20 of the 1976 Code et seq. See Fowler v. Fowler, supra at 254 but compare Leggette v. Smith, supra. .	The thrust of Section 62-2-803 is meant to encompass not only the intended unlawful killing cases covered by former Section 21-1-50 of the 1976 Code, but also the cases left to the common law maxim. See Section 62-2-803(d). Perhaps the common law maxim retains some validity, as under Section 62-1-103, with respect to cases of killings or of succession, not covered by Section 62-2-803, if any. For instance, perhaps the common law maxim will yet apply to deprive unintended but reckless homicides of the benefits of the Wrongful Death Act, Sections 15-51-10, 15-51-20 of the 1976 Code et seq. See Fowler v. Fowler, supra at 254 but compare Leggette v. Smith, supra.
Under Section 62-2-803, subsections (a) through (d), the effect of the proving of the killing is not only to disable the killer from taking in succession but also to redirect the succession so that the matter proceeds as if the killer had predeceased the decedent.	Under Section 62-2-803, subsections (a) through (d), the effect of the proving of the killing is not only to disable the killer from taking in succession but also to redirect the succession so that the matter proceeds as if the killer had predeceased the decedent.
Section 62-2-803(f) provides for the protection, from the claims of the takers on the redirected succession, of obligors who pay benefits to a killer without notice of such claims and also for the protection, from such claims, of purchasers from a killer, for value and without notice, who	Section 62-2-803(g) provides for the protection, from the claims of the takers on the redirected succession, of obligors who pay benefits to a killer without notice of such claims and also for the protection, from such claims, of purchasers from a killer, for value and without notice, who

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
purchase before the adjudication of such claims. In protecting the killer's subsequent purchasers, for value and without notice, Section 62-2-803(f), having first established the theoretical base that the killer is deprived by his crime of all legal title in the property which the killer would have acquired except for this section, the interest then, however, accords to the killer's subsequent purchasers, for value and without notice, in whom presumably later mere equitable title arises, the kind of protection against the claims of the earlier legal title claimants, i.e., those who take the redirected succession under Section 2-803. Thus, Section 62-2-803(f) carves out a further statutory exception to the common law rule of priority.	purchase before the adjudication of such claims. In protecting the killer's subsequent purchasers, for value and without notice, Section 62-2-803(g), having first established the theoretical base that the killer is deprived by his crime of all legal title in the property which the killer would have acquired except for this section, the interest then, however, accords to the killer's subsequent purchasers, for value and without notice, in whom presumably later mere equitable title arises, the kind of protection against the claims of the earlier legal title claimants, i.e., those who take the redirected succession under Section 2-803. Thus, Section 62-2-803(g) carves out a further statutory exception to the common law rule of priority.
SECTION 62-2-804. Effect of provision for survivorship on succession to joint tenancy. When any person is seized or possessed of any real property held in joint tenancy at the time of his death, the joint tenancy is deemed to have been severed by the death of the joint tenant and the real property is distributable as a tenancy in common unless the instrument which creates the joint tenancy in real property, including any instrument in which one person conveys to himself and one or more other persons, or two or more persons convey to themselves, or to themselves and another or others, expressly provides for a right of survivorship, in which case the severance does not occur. While other methods for the creation of a joint tenancy in real property may be utilized, an express provision for a right of survivorship is conclusively considered to have occurred if the will or instrument of conveyance contains the names of the devisees or grantees followed by the words "as joint tenants with right of survivorship and not as tenants in common". REPORTER'S COMMENTS Section 62-2-804 is incorporated into Article 2 in order to integrate particularly with Sections 62-2-101 and 62-2-501 the South Carolina law on the effects of the establishment of a joint tenancy in real property, with and without express provision for right of survivorship, on the succession to a decedent joint tenant's interest in such real property by, respectively, the surviving joint tenants or the decedent's testate or intestate successors. The case law developed in South Carolina in the application of former Section 21-3-50 of the 1976 Code and its predecessor statutes, recodified as Section 62-2-804, continues to apply.	**SECTION 62-2-804.** When any ~~person~~ individual is seized or possessed of any real property held in joint tenancy at the time of ~~his~~ the individual's death, the joint tenancy is deemed to have been severed by the death of the joint tenant and the real property is distributable as a tenancy in common unless the instrument which creates the joint tenancy in real property, including any instrument in which one ~~person~~ individual conveys to himself and one or more other persons, or two or more persons convey to themselves, or to themselves and another or others, expressly provides for a right of survivorship, in which case the severance does not occur. While other methods for the creation of a joint tenancy in real property may be utilized, an express provision for a right of survivorship is conclusively considered to have occurred if the will or instrument of conveyance contains the names of the devisees or grantees followed by the words 'as joint tenants with right of survivorship and not as tenants in common'. REPORTER'S COMMENTS Section 62-2-804 is incorporated into Article 2 in order to integrate particularly with Sections 62-2-101 and 62-2-501 the South Carolina law on the effects of the establishment of a joint tenancy in real property, with and without express provision for right of survivorship, on the succession to a decedent joint tenant's interest in such real property by, respectively, the surviving joint tenants or the decedent's testate or intestate successors. The case law developed in South Carolina in the application of former Section 21-3-50 of the 1976 Code and its predecessor statutes, recodified as Section 62-2-804, continues to apply.
SECTION 62-2-805. Presumption of ownership of tangible personal property; exceptions.	**SECTION 62-2-805.**

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
(A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property: (1) acquired by either spouse before marriage; (2) acquired by either spouse by gift or inheritance during the marriage; (3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest; (4) held for another; or (5) devised in a written statement or list disposing of tangible personal property pursuant to Section 62-2-512. (B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.	(A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property: (1) acquired by either spouse before marriage; (2) acquired by either spouse by gift or inheritance during the marriage; (3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest; (4) held for another; or (5) specifically devised in a will or devised in a written statement or list disposing of tangible personal property pursuant to Section 62-2-512. (B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship. **SECTION 62-2-806.** To achieve the testator's tax objectives, the court may modify the terms of the testator's will in a manner that is not contrary to the testator's probable intention. The court may provide that the modification has retroactive effect. REPORTER'S COMMENTS The 2012 amendment added this section with provisions similar to Section 62-7-416.
Article 2.Part 9. Delivery and Suppression of Wills	Article 2.Part 9.
SECTION 62-2-901. Delivery of will to judge of probate; filing. Every executor, devisee, legatee, trustee, guardian, attorney, or other person having in his possession, custody, or control any last will and testament, including any codicil or codicils thereto, of any person dying must within thirty days after notice or knowledge of the death of the testator deliver such last will and testament, including any codicil or codicils thereto, to the judge of the probate court having jurisdiction to admit the same to probate and such judge of probate shall file the same in his court and if proceedings for the probate are not begun within	**SECTION 62-2-901.** (a) ~~Every executor, devisee, legatee, trustee, guardian, attorney, or other~~ After the death of a testator, a person having ~~in his possession,~~ custody~~, or control any last~~ of a will ~~and testament, including any codicil or codicils thereto,~~ of the testator shall deliver such will, ~~any person dying must~~ within thirty days ~~after~~ of actual notice or knowledge of the testator's death ~~of the testator deliver such last will and testament, including any codicil or codicils thereto,~~ to the judge of the probate court having jurisdiction to admit the same ~~to probate and~~ or to a person named as

ARTICLE 2- Parts 7, 8, and 9- Existing Code	Bill # S. 1243- Article 2- Parts 7, 8, and 9
thirty days he must publish a notice of such delivery and filing in one of the newspapers in his county for fifteen days. Any executor, devisee, legatee, guardian, attorney, or other person who fails to deliver to the judge of the probate court having jurisdiction to admit it to probate any last will and testament, including any codicil or codicils thereto, upon conviction must be punished as for a misdemeanor. Any person who intentionally or fraudulently destroys, suppresses, conceals, or fails to deliver to the judge of the probate court having jurisdiction to admit it to probate any last will and testament, including any codicil or codicils thereto, for the purpose and with the intent to prevent the institution of proceedings for its probate shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both, in the discretion of the court.	personal representative in the will who shall deliver the will to the judge of the probate court. Upon receipt of the will, the ~~such~~ judge of probate shall file the same in ~~his~~ probate court and if proceedings for the probate are not begun within thirty days ~~he must~~ the judge shall publish a notice of such delivery and filing in one of the newspapers in ~~his~~ the county of the probate court for ~~fifteen days~~ once a week for three consecutive weeks. ~~Any executor, devisee, legatee, guardian, attorney, or other person who fails to deliver to the judge of the probate court having jurisdiction to admit it to probate any last will and testament, including any codicil or codicils thereto, upon conviction must be punished as for a misdemeanor.~~ (b) Any person who intentionally or fraudulently destroys, suppresses, conceals, or fails to deliver the will to the judge of the probate court having jurisdiction to admit it to probate ~~any last will and testament, including any codicil or codicils thereto, for the purpose and with the intent to prevent the institution of proceedings for its probate shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both, in the discretion of the court~~ is liable to any person aggrieved for any damages that may be sustained by such action or inaction. (c) Any person who intentionally or fraudulently destroys, suppresses, conceals, or fails to deliver the will to the judge of the probate court having jurisdiction to admit it to probate, after being ordered by the court in a proceeding brought for the purpose of compelling delivery, is subject to a penalty for contempt of court. REPORTER'S COMMENT Section 62-2-901 requires a custodian of a will, who has actual notice or knowledge of the testator's death, to deliver the will to the probate court or to the personal representative named in the will.