

<p>Article 7.Part 11. Miscellaneous Provisions for the Trust Code</p>	<p>Article 7.Part 11.</p>
<p><b>SECTION 62-7-1101.</b> Uniformity of application and construction.</p> <p>In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.</p> <p><b>SOUTH CAROLINA COMMENT</b> This is consistent with SCPC Section 62-1-102, which provides that one of the underlying purposes and policies of the South Carolina Probate Code “is to make uniform the law among the various jurisdictions.” See SCPC Section 62-1-102(b)(5).</p> <p><b>SECTION 62-7-1102.</b> Electronic records and signatures.</p> <p>The provisions of this article governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.</p> <p><b>COMMENT</b> This section, which is being inserted in all Uniform Acts approved in 2000 or later, preempts the federal Electronic Signatures in Global and National Commerce Act. Section 102(a)(2)(B) of that Act provides that the federal law can be preempted by a later statute of the State that specifically refers to the federal law. The effect of this section, when enacted as part of this Code, is to leave to state law the procedures for obtaining and validating</p>	<p><b>SECTION 62-7-1101.</b></p> <p>In applying and construing this <del>Uniform Act</del> <u>article</u>, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact <del>it</del> <u>its provisions</u>.</p> <p><b>REPORTER’S COMMENT</b> This is consistent with SCPC Section 62-1-102, which provides that one of the underlying purposes and policies of the South Carolina Probate Code “is to make uniform the law among the various jurisdictions.” See SCPC Section 62-1-102(b)(5).</p> <p><b>SECTION 62-7-1102.</b></p> <p>The provisions of this article governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.</p> <p><b>REPORTER’S COMMENT</b> This section, which is being inserted in all Uniform Acts approved in 2000 or later, preempts the federal Electronic Signatures in Global and National Commerce Act. Section 102(a)(2)(B) of that Act provides that the federal law can be preempted by a later statute of the State that specifically refers to the federal law. The effect of this section, when enacted as part of this Code, is to leave to state law the procedures for obtaining and validating</p>

an electronic signature. The Uniform Trust Code does not require that any document be in paper form, allowing all documents under this Code to be transmitted in electronic form. A properly directed electronic message is a valid method of notice under the Code as long as it is reasonably suitable under the circumstances and likely to result in receipt of the notice or document. See Section 109(a).

**SOUTH CAROLINA COMMENT**

There was no prior South Carolina statutory counterpart.

**SECTION 62-7-1103. Severability Clause.**

If any provision of this article or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**SOUTH CAROLINA COMMENT**

The South Carolina Probate Code has a substantially identical provision in SCPC Section 62-1-104.

**SECTION 62-7-1106. Application to existing relationships.**

(a) Except as otherwise provided in this article, on the effective date of this article:

(1) this article applies to all trusts created before, on, or after its effective date;

(2) this article applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this article applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this article would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which

an electronic signature. The SCTC does not require that any document be in paper form, allowing all documents under this Code to be transmitted in electronic form. A properly directed electronic message is a valid method of notice under the Code as long as it is reasonably suitable under the circumstances and likely to result in receipt of the notice or document. See Section 62-7-109(a).

**SECTION 62-7-1103.**

If any provision of this article or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**REPORTER'S COMMENT**

The South Carolina Probate Code has a substantially identical provision in SCPC Section 62-1-104.

**SECTION 62-7-1106.**

(a) Except as otherwise provided in this article, on the effective date of this article:

(1) this article applies to all trusts created before, on, or after its effective date;

(2) this article applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this article applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this article would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which

case the particular provision of this article does not apply and the superseded law applies;

(4) subject to subsections (a)(5) and (b), any rule of construction or presumption provided in this article applies to trust instruments executed before the effective date of the article unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done and any right acquired or accrued before the effective date of the article is not affected by this article. Unless otherwise provided in this article, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the article, that statute continues to apply to the right even if it has been repealed or superseded.”

**COMMENT**

The Uniform Trust Code is intended to have the widest possible effect within constitutional limitations. Specifically, the Code applies to all trusts whenever created, to judicial proceedings concerning trusts commenced on or after its effective date, and unless the court otherwise orders, to judicial proceedings in progress on the effective date. In addition, any rules of construction or presumption provided in the Code apply to preexisting trusts unless there is a clear indication of a contrary intent in the trust’s terms. By applying the Code to preexisting trusts, the need to know two bodies of law will quickly lessen.

This Code cannot be fully retroactive, however. Constitutional limitations preclude retroactive application of rules of construction to alter property rights under trusts that became irrevocable prior to the effective date. Also, rights already barred by a statute of limitation or rule under former law are not revived by a possibly longer statute or more liberal rule under this Code. Nor is an act done before the

case the particular provision of this article does not apply and the superseded law applies;

(4) subject to subsections (a)(5) and (b), any rule of construction or presumption provided in this article applies to trust instruments executed before the effective date of the article unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done and any right acquired or accrued before the effective date of the article is not affected by this article. Unless otherwise provided in this article, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the article, that statute continues to apply to the right even if it has been repealed or superseded.”

**REPORTER’S COMMENT**

The SCTC is intended to have the widest possible effect within constitutional limitations. Specifically, the Code applies to all trusts whenever created, to judicial proceedings concerning trusts commenced on or after its effective date, and unless the court otherwise orders, to judicial proceedings in progress on the effective date. In addition, any rules of construction or presumption provided in the Code apply to preexisting trusts unless there is a clear indication of a contrary intent in the trust’s terms. By applying the Code to preexisting trusts, the need to know two bodies of law will quickly lessen.

This Code cannot be fully retroactive, however. Constitutional limitations preclude retroactive application of rules of construction to alter property rights under trusts that became irrevocable prior to the effective date. Also, rights already barred by a statute of limitation or rule under former law are not revived by a possibly longer statute or more liberal rule under this Code. Nor is an act done before the

effective date of the Code affected by the Code's enactment.

The Uniform Trust Code contains an additional effective date provision. Pursuant to Section 602(a), prior law will determine whether a trust executed prior to the effective date of the Code is presumed to be revocable or irrevocable.

For a comparable uniform law effective date provision, see Uniform Probate Code Section 8-101.

#### SOUTH CAROLINA COMMENT

The South Carolina Probate Code counterpart is SCPC Section 62-1-100, which has been subject to considerable litigation in the years after the probate code's enactment effective July 1, 1987. Importantly, the intent to safeguard preexisting rights is contained in SCTC Section 62-7-1106 as it is in SCPC Section 62-1-100. The South Carolina drafters of SCPC Section 62-1-100 drew a dichotomy between procedural provisions of the SCPC (as in SCPC Section 62-1-100(b)(2)) and substantive rights in the decedent's estate, which are to be unimpaired. SCPC Section 62-1-100(b)(4).

Rules of construction or presumption apply to trusts executed before the effective date unless there is a clear indication of a contrary intent in the terms of the trust. This appears similar to SCPC Section 62-1-100(b)(5). SCTC Section 1106(b), providing that any period of limitation which had commenced to run before the effective date would continue to apply, is a counterpart to SCPC Section 62-1-100(b)(4), last sentence. SCTC subsection (a) (4) makes clear that the application of a presumption or rule of construction shall not disrupt accrued or acquired rights in the trust, which are determined according to the law in effect at the trust's creation.

Reference in the last sentence of the Uniform Trust Code Comment to Uniform Probate Code Section 8-101 is the current Uniform Probate Code counterpart to SCPC Section 62-1-100, described in this South Carolina

effective date of the Code affected by the Code's enactment.

The SCTC contains an additional effective date provision. Pursuant to Section 62-7-602(a), prior law will determine whether a trust executed prior to the effective date of the Code is presumed to be revocable or irrevocable.

The South Carolina Probate Code counterpart is SCPC Section 62-1-100, which has been subject to considerable litigation in the years after the probate code's enactment effective July 1, 1987. Importantly, the intent to safeguard preexisting rights is contained in SCTC Section 62-7-1106 as it is in SCPC Section 62-1-100. SCPC Section 62-1-100 draws a dichotomy between procedural provisions of the SCPC (as in SCPC Section 62-1-100(b)(2)) and substantive rights in the decedent's estate, which are to be unimpaired. SCPC Section 62-1-100(b)(4).

Rules of construction or presumption apply to trusts executed before the effective date unless there is a clear indication of a contrary intent in the terms of the trust. This appears similar to SCPC Section 62-1-100(b)(5). SCTC Section 62-7-1106(b), providing that any period of limitation which had commenced to run before the effective date would continue to apply, is a counterpart to SCPC Section 62-1-100(b)(4), last sentence. SCTC subsection 62-7-1106(a)(4) makes clear that the application of a presumption or rule of construction shall not disrupt accrued or acquired rights in the trust, which are determined according to the law in effect at the trust's creation.

Comment.	
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