**South Carolina General Assembly**

125th Session, 2023-2024

**A200, R211, H4234**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton, Bernstein and Mitchell

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Introduced in the Senate on March 26, 2024

Last Amended on May 9, 2024

Currently residing in the House

Governor's Action: May 21, 2024, Signed

Summary: Probate

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/30/2023 House Introduced and read first time (House Journal‑page 21)

 3/30/2023 House Referred to Committee on **Judiciary** (House Journal‑page 21)

 3/6/2024 House Committee report: Favorable with amendment **Judiciary** (House Journal‑page 7)

 3/6/2024 House Member(s) request name added as sponsor: Mitchell

 3/13/2024 Scrivener's error corrected

 3/20/2024 House Amended (House Journal‑page 47)

 3/20/2024 House Read second time (House Journal‑page 47)

 3/20/2024 House Roll call Yeas-109 Nays-0 (House Journal‑page 49)

 3/21/2024 House Read third time and sent to Senate (House Journal‑page 30)

 3/26/2024 Senate Introduced and read first time (Senate Journal‑page 5)

 3/26/2024 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 5)

 4/5/2024 Senate Referred to Subcommittee: M.Johnson (ch), Sabb,
 Talley, Adams, Devine

 5/1/2024 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 9)

 5/7/2024 Senate Committee Amendment Adopted (Senate Journal‑page 115)

 5/8/2024 Scrivener's error corrected

 5/8/2024 Senate Amended (Senate Journal‑page 110)

 5/8/2024 Senate Roll call Ayes-44 Nays-0

 5/8/2024 Senate Read second time (Senate Journal‑page 110)

 5/9/2024 Senate Amended (Senate Journal‑page 118)

 5/9/2024 Senate Read third time and returned to House with amendments (Senate Journal‑page 118)

 5/9/2024 Senate Roll call Ayes-43 Nays-0 (Senate Journal‑page 118)

 5/9/2024 House Concurred in Senate amendment and enrolled (House Journal‑page 126)

 5/9/2024 House Roll call Yeas-106 Nays-0 (House Journal‑page 128)

 5/15/2024 Ratified R 211

 5/21/2024 Signed By Governor

 5/29/2024 Effective date See Act for Effective Date

 5/29/2024 Act No. 200

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**VERSIONS OF THIS BILL**

[03/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20230330.docx)

[03/06/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240306.docx)

[03/13/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240313.docx)

[03/20/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240320.docx)

[05/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240501.docx)

[05/07/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240507.docx)

[05/08/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240508.docx)

[05/08/2024-A](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240508a.docx)

[05/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240509.docx)

[05/09/2024-A](https://www.scstatehouse.gov/sess125_2023-2024/prever/4234_20240509a.docx)

(A200, R211, H4234)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 62‑5‑101, RELATING TO DEFINITIONS, SO AS TO REVISE THE DEFINITION OF “SUPPORTS AND ASSISTANCE”; BY AMENDING SECTION 62‑5‑103, RELATING TO FACILITY OF PAYMENT OR DELIVERY, SO AS TO CLARIFY THE NATURE OF THE FIFTEEN-THOUSAND-DOLLAR THRESHOLD; BY AMENDING SECTION 62‑5‑106, RELATING TO DUTIES OF GUARDIANS AD LITEM, SO AS TO INCREASE THE LENGTH OF TIME THE GUARDIAN AD LITEM HAS TO SUBMIT HIS REPORT PRIOR TO THE HEARING; BY AMENDING SECTION 62‑5‑108, RELATING TO EMERGENCY AND TEMPORARY ORDERS AND HEARINGS, SO AS TO CLARIFY CERTAIN ASPECTS OF THE PROCESS; BY AMENDING SECTIONS 62‑5‑303, 62‑5‑303A, 62‑5‑303B, 62‑5‑303C, AND 62‑5‑303D, ALL RELATING TO THE PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN, SO AS TO CLARIFY CERTAIN ASPECTS OF THE PROCESS; BY AMENDING SECTION 62‑5‑307, RELATING TO INFORMAL REQUESTS FOR RELIEF, SO AS TO CLARIFY THE WARD’S ABILITY TO SUBMIT CERTAIN REQUESTS TO THE COURT; BY AMENDING SECTION 62‑5‑401, RELATING TO VENUES, SO AS TO CLARIFY, AMONG OTHER THINGS, THAT, IN THE CASE OF MINOR CONSERVATORSHIPS, PROPER VENUE IS THE COUNTY IN WHICH THE MINOR RESIDES OR OWNS PROPERTY; BY AMENDING SECTION 62‑5‑403A, RELATING TO SERVICE OF SUMMONS AND PETITIONS, SO AS TO INCLUDE CERTAIN OTHER AFFIDAVITS AND REPORTS AMONG THOSE THAT MUST BE FILED WITH THE PETITION; BY AMENDING SECTION 62‑5‑403B, RELATING TO THE APPOINTMENT OF COUNSEL AND GUARDIANS, SO AS TO APPOINT NURSE PRACTITIONERS, PHYSICIAN ASSISTANTS, NURSES, AND PSYCHOLOGISTS TO SERVE AS EXAMINERS UNDER CERTAIN CIRCUMSTANCES; BY AMENDING SECTION 62‑5‑403C, RELATING TO HEARINGS AND WAIVERS, SO AS TO REVISE, AMONG OTHER THINGS, CERTAIN PROCEDURES IF NO PARTY REQUESTS A HEARING OR IF THE ALLEGED INCAPACITATED INDIVIDUAL WAIVES HIS RIGHT TO A HEARING; BY AMENDING SECTION 62‑5‑405, RELATING TO PROTECTIVE ARRANGEMENTS, SO AS TO REVISE CERTAIN ACTS THAT MAY BE PERFORMED BY CONSERVATORS AND SPECIAL CONSERVATORS; BY AMENDING SECTION 62‑5‑422, RELATING TO POWERS OF CONSERVATORS IN ADMINISTRATION, SO AS TO MAKE CONFORMING CHANGES REGARDING THE PAYMENT OF CERTAIN FEES; BY AMENDING SECTION 62‑5‑426, RELATING TO CLAIMS AGAINST PROTECTED PERSONS, SO AS TO REQUIRE, AMONG OTHER THINGS, THAT THE CLAIMANT ALSO MUST FILE A WRITTEN STATEMENT OF THE CLAIM WITH THE PROBATE COURT IN WHICH THE CONSERVATORSHIP IS UNDER ADMINISTRATION; BY AMENDING SECTION 62‑5‑428, RELATING TO ACTIONS FOR REQUESTS SUBSEQUENT TO THE APPOINTMENT, SO AS TO, AMONG OTHER THINGS, REVISE CERTAIN ACTIONS THAT THE COURT MAY TAKE AFTER THE TIME FOR RESPONSE TO THE PETITION HAS ELAPSED TO ALL PARTIES SERVED; BY AMENDING SECTION 62‑5‑433, RELATING TO DEFINITIONS AND PROCEDURES FOR SETTLEMENT OF CLAIMS IN FAVOR OF OR AGAINST MINORS OR INCAPACITATED PERSONS, SO AS TO, AMONG OTHER THINGS, DEFINE “GUARDIAN AD LITEM”; BY AMENDING SECTION 62‑5‑715, RELATING TO CONFIRMATIONS OF GUARDIANSHIPS OR CONSERVATORSHIPS TRANSFERRED FROM OTHER STATES, SO AS TO ALLOW THE COURT MORE DISCRETION AS TO THE TYPE OF DOCUMENTS IT MAY REQUIRE IN THE TRANSFER OF A GUARDIANSHIP OR CONSERVATORSHIP FROM ANOTHER JURISDICTION; BY AMENDING SECTION 62‑5‑716, RELATING TO THE REGISTRATION OF ORDERS FROM ANOTHER STATE, SO AS TO, AMONG OTHER THINGS, ACKNOWLEDGE THAT IN CERTAIN OTHER JURISDICTIONS, A GUARDIAN MAY ALSO HOLD THE SAME POWERS AS A CONSERVATOR; BY ADDING SECTION 62‑6‑401 SO AS TO ESTABLISH A TRANSFER ON DEATH; BY AMENDING SECTIONS 50‑23‑60, 50‑23‑70, 50‑23‑90, 50‑23‑130, 56‑19‑290, and 56‑19‑420, ALL RELATING TO THE TRANSFER OF PROPERTY, SO AS TO INCLUDE REFERENCE TO TRANSFER ON DEATH; AND BY AMENDING SECTION 62‑6‑101, RELATING TO DEFINITIONS, SO AS TO DEFINE “OWNER”, “TRANSFER ON DEATH”, AND “TITLED PERSONAL PROPERTY”.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions

SECTION 1. Section 62‑5‑101(23) of the S.C. Code is amended to read:

 (23) “Supports and assistance” includes:

 (a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf including, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, a designated health care decision maker under Section 44‑66‑30, or an educational representative designated under Section 59‑33‑310 to Section 59‑33‑370; and

 (b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision‑maker including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

Facility of payment or delivery

SECTION 2. Section 62‑5‑103 of the S.C. Code is amended to read:

 Section 62‑5‑103. (A) A person under a duty to pay or deliver money or personal property to a minor or incapacitated individual may perform this duty in amounts not exceeding a net aggregate amount of fifteen thousand dollars each year by paying or delivering the money or property to the conservator for the minor or incapacitated person, if the person under a duty to pay or deliver money or personal property has actual knowledge that a conservator has been appointed or an appointment is pending. If the net aggregate amount to be paid or delivered in a given year exceeds fifteen thousand dollars, a protective proceeding is required. If the person under a duty to pay or deliver money or personal property to a minor or incapacitated person does not have actual knowledge that a conservator has been appointed or that appointment of a conservator is pending, the person may pay or deliver the money or property in amounts not exceeding a net aggregate of fifteen thousand dollars each year to:

 (1) a person having the care and custody of the minor or incapacitated individual with whom the minor or incapacitated individual resides;

 (2) a guardian of the minor or an incapacitated individual; or

 (3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Transfers to Minors Act and giving notice of the deposit to the minor.

 (B) The persons, other than a financial institution under subsection (A)(3) above, receiving money or property for a minor or incapacitated individual, serve as fiduciaries subject to fiduciary duties, and are obligated to apply the money for the benefit of the minor or incapacitated individual with due regard to:

 (1) the size of the estate, the probable duration of the minority or incapacity, and the likelihood that the minor or incapacitated individual, at some future time, may be able to manage his affairs and his estate;

 (2) the accustomed standard of living of the minor or incapacitated individual and members of his household; and

 (3) other funds or resources used or available for the support or any obligation to provide support for the minor or incapacitated individual.

 (C) The persons may not pay themselves except by way of reimbursement for out‑of‑pocket expenses for goods and services necessary for the minor’s or incapacitated individual’s support. Money or other property received on behalf of a minor or incapacitated individual may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated individual. Excess sums must be preserved for future benefit of the minor or incapacitated individual, and any balance not used and property received for the minor or incapacitated individual must be turned over to the minor when he attains majority or is emancipated by court order; or, to the incapacitated individual when he has been readjudicated as no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of the money or personal property.

 (D) An employer may fulfill his duties to a minor or incapacitated individual by delivering a check to or depositing payment into an account in the name of the minor or incapacitated employee.

Independent investigations

SECTION 3. Section 62‑5‑106(A)(2) of the S.C. Code is amended to read:

 (2) conducting an independent investigation to determine relevant facts and filing a written report with recommendations no later than seventy‑two hours prior to the hearing, unless excused or required earlier by the court. The investigation must include items listed in subitems (a) through (i) and also may include items listed in subitems (j) through (m), as appropriate or as ordered by the court:

 (a) obtaining and reviewing relevant documents;

 (b) meeting with the alleged incapacitated individual, at least once within thirty days following appointment, or within such time as the court may direct;

 (c) investigating the residence or proposed residence of the alleged incapacitated individual;

 (d) interviewing all parties;

 (e) discerning the wishes of the alleged incapacitated individual;

 (f) identifying less restrictive alternatives to guardianship and conservatorship;

 (g) reviewing a criminal background check on the proposed guardian or conservator;

 (h) reviewing a credit report on the proposed conservator;

 (i) interviewing the person whose appointment is sought to ascertain the:

 (i) proposed fiduciary’s knowledge of the fiduciary’s duties, requirements, and limitations; and

 (ii) steps the proposed fiduciary intends to take or has taken to identify and meet the needs of the alleged incapacitated individual;

 (j) consulting with persons who have a significant interest in the welfare of the alleged incapacitated individual or knowledge relevant to the case;

 (k) contacting the Department of Social Services to investigate any action concerning the alleged incapacitated individual or the proposed fiduciary;

 (l) determining the financial capabilities and integrity of the proposed conservator including, but not limited to:

 (i) previous experience in managing assets similar to the type and value of the alleged incapacitated individual’s assets;

 (ii) plans to manage the alleged incapacitated individual’s assets; and

 (iii) whether the proposed conservator has previously borrowed funds or received financial assistance or benefits from the alleged incapacitated individual;

 (m) interviewing any persons known to the guardian ad litem having knowledge of the alleged incapacitated individual’s financial circumstances or the integrity and financial capabilities of the conservator, or both, and reviewing pertinent documents;

Emergency orders, temporary orders, and hearings

SECTION 4. Section 62‑5‑108 of the S.C. Code is amended to read:

 Section 62‑5‑108. (A) The process for emergency orders without notice is as follows:

 (1) Emergency orders without notice must not be issued unless the moving party files a summons, verified petition, notice of and motion for emergency relief and hearing with any available supporting affidavit(s), and any other document required by the court. The verified petition, motion, and affidavits shall set forth specific facts supporting the allegation that an immediate and irreparable injury, loss, or damage will result before notice can be served on adverse parties and a hearing held pursuant to subsection (B).

 (a) If emergency relief is requested, the moving party must present evidence of the emergency and of the individual’s incapacity to the court’s satisfaction including, but not limited to, an affidavit from a physician or nurse practitioner, or at the discretion of the court, a physician assistant or psychologist, who has performed an examination within thirty days prior to the filing of the action. Additionally, the moving party shall file a motion for the appointment of counsel if counsel has not been retained for an alleged incapacitated individual, and a motion for the appointment of a guardian ad litem.

 (b) If the emergency relief requested is an order for:

 (i) appointment of a temporary guardian, conservator, guardian ad litem, or other fiduciary; or

 (ii) the removal of an existing guardian, conservator, or other fiduciary, and the appointment of a substitute, then the moving party must submit evidence of the suitability and creditworthiness of the proposed fiduciary.

 (2) If the motion for emergency relief is not granted, the moving party may seek temporary relief after notice pursuant to subsection (B) or proceed to a final hearing. The court may, in its discretion, treat a motion for emergency relief as a motion for temporary relief as set forth in subsection (B).

 (3) If the motion for an emergency relief is granted, the date and hour of its issuance must be endorsed on the order. The date and time for the emergency hearing must be entered on the notice of hearing and it must be no later than ten days from the date of the order or as the court determines is reasonable for good cause shown.

 (4) The moving party shall serve all pleadings on the alleged incapacitated individual, ward or protected person, counsel for the alleged incapacitated individual, guardian ad litem, and other adverse parties immediately after issuance of the emergency order.

 (5) If the moving party does not appear at the emergency hearing, the court may dissolve the emergency order without notice.

 (6) Evidence admitted at the hearing may be limited to verified pleadings and any supporting affidavits. Upon good cause shown or at the court’s direction, additional evidence of incapacity and the nature of the emergency may be admitted.

 (7) On two days’ notice to the party who obtained the emergency order without notice or on such shorter notice to that party as the court may prescribe, an adverse party may appear and move for the emergency order’s dissolution or modification, and in that event, the court shall proceed to hear and determine the motion as expeditiously as possible and may consolidate motions.

 (8) No emergency order for conservatorship must be issued except upon the court receiving adequate assurances the assets will be protected, which may include providing of security by the moving party in a sum the court deems proper for costs and damages incurred by any party who without just cause is aggrieved as a result of the emergency order. A surety upon a bond or undertaking submits to the jurisdiction of the court.

 (9) The court may take whatever actions it deems necessary to protect assets including, but not limited to, issuing an order to freeze accounts.

 (10) Upon the hearing on the ex parte order, if the court continues its prior emergency order, the order must be for a duration of no more than six months unless otherwise specified in an order. A hearing held for the purpose of the issuance of a final order shall be de novo as to all issues.

 (11) In an emergency, the court may exercise the power of a guardian with or without notice if the court makes emergency findings as required by the Adult Health Care Consent Act, Section 44‑66‑30.

 (B) The process for temporary orders and temporary hearings with notice is as follows:

 (1) A temporary order must not be issued without proof of service on a notice of hearing to the alleged incapacitated individual, ward or protected person, counsel for the alleged incapacitated individual, the guardian ad litem, and other parties.

 (2) A temporary hearing may be scheduled upon the filing of the summons, motion for temporary hearing with any supporting affidavits, a verified petition, and motions for the appointment of counsel and guardian ad litem if none have been previously appointed or retained. The temporary hearing may not be held fewer than ten days from service on all interested parties or as the court determines is reasonable.

 (a) If temporary relief is requested, the moving party shall present evidence of the need for temporary relief and of incapacity, including without limitation, an affidavit from a physician or nurse practitioner or, at the discretion of the court, a physician assistant or psychologist, who has performed an examination within the previous forty‑five days.

 (b) If the temporary relief requested is an order for:

 (i) appointment of a temporary guardian, conservator, guardian ad litem, or other fiduciary; or

 (ii) removal of an existing guardian, conservator or other fiduciary, and the appointment of a substitute, in addition to the requirements set forth in subsection (B)(2) and (a), as applicable, the moving party shall submit evidence of the suitability and creditworthiness of the proposed fiduciary.

 (3) If the motion for temporary relief is not granted, the action will remain on the court docket for a de novo hearing on the underlying petition.

 (4) If the court determines that the motion for temporary relief should be set for a hearing, the court shall enter a date and time for the temporary hearing on the notice of hearing.

 (5) Temporary orders resulting from the hearing shall expire six months from the date of issuance unless otherwise specified in an order.

 (C) After preliminary hearing upon such notice as the court deems reasonable, and if the petition requests temporary relief, the court has the power to preserve and apply the property of the alleged incapacitated individual as may be required for his benefit or the benefit of his dependents. Notice of the court’s actions shall be given to interested parties as soon thereafter as possible.

 (D) A hearing concerning the need for a protective order or the appointment of a permanent guardian or conservator must be a hearing de novo as to all issues before the court.

Seeking a finding of incapacity or appointment of guardian ad litem

SECTION 5. Section 62‑5‑303(A) of the S.C. Code is amended to read:

 (A) A person seeking a finding of incapacity, appointment of a guardian, or both, shall file a summons and petition. When more than one petition is pending in the same court, the proceedings may be consolidated.

Required service

SECTION 6. Section 62‑5‑303A(A) of the S.C. Code is amended to read:

 (A) As soon as reasonably possible after the filing of the summons and petition, the petitioner shall serve:

 (1) a copy of the summons, petition, and a notice of right to counsel upon the alleged incapacitated individual and any other documents required if filing an emergency or temporary action;

 (2) a copy of the summons and petition upon all co‑respondents and the petitioner in any pending guardianship proceeding; and

 (3) any affidavits or physician’s or nurse practitioner’s reports or, at the discretion of the court, the report of a physician assistant or psychologist filed with the petition.

Required examiners

SECTION 7. Section 62‑5‑303B(A)(2)(b) of the S.C. Code is amended to read:

 (b) one examiner, who must be a physician or nurse practitioner or, at the discretion of the court, may be a physician assistant or psychologist, to examine the alleged incapacitated individual and file a notarized report setting forth his evaluation of the condition of the alleged incapacitated individual in accordance with the provisions set forth in Section 62‑5‑303D. Unless the guardian ad litem or the alleged incapacitated individual objects, if a physician’s or nurse practitioner’s notarized report or, at the discretion of the court, or the report of a physician assistant or psychologist is filed with the petition and served upon the alleged incapacitated individual and all interested parties with the petition, then the court may appoint such physician as the examiner. Upon the court’s own motion or upon request of the initial examiner, the alleged incapacitated individual, or his guardian ad litem, the court may appoint a second examiner, who must be a physician, physician assistant, nurse, nurse practitioner, social worker, or psychologist.

Notice of hearing

SECTION 8. Section 62‑5‑303C of the S.C. Code is amended to read:

 Section 62‑5‑303C. (A) As soon as the interests of justice may allow, but after the time for filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition, unless the provisions in subsection (C) apply. The alleged incapacitated individual, all parties, and any person who has filed a demand for notice shall be given notice of the hearing. The alleged incapacitated individual is entitled to be present at the hearing, to conduct discovery, and to review all evidence bearing upon his condition. The hearing may be closed at the request of the alleged incapacitated individual or his guardian ad litem.

 (B) The alleged incapacitated individual may waive notice of a hearing and his presence at the hearing.

 (C) If no party has requested a hearing, there is an agreement among all the parties and the guardian ad litem’s report indicates that a hearing would not further the interests of justice, the alleged incapacitated individual may waive his right to a hearing. If the alleged incapacitated individual is unable to communicate to his guardian ad litem his wishes, interests, or preferences regarding the appointment of a guardian or the petition for appointment is not contested, either the attorney for the alleged incapacitated individual or the guardian ad litem, if the attorney has been relieved, shall be allowed to waive his right to a hearing. If the alleged incapacitated individual, his attorney, or his guardian ad litem waives his right to a hearing, the court may:

 (1) require a formal hearing;

 (2) require an informal proceeding as the court shall direct; or

 (3) proceed without a hearing.

 (D) If no formal hearing is held, the court shall issue a temporary consent order based upon the terms agreed to by the parties and the guardian ad litem. The order shall be considered to be a temporary order which shall expire in thirty days. A ward, under a temporary consent order, may request a formal hearing at any time during the thirty‑day period after the order is filed. At the end of the thirty‑day period, if the ward, his guardian ad litem, or any other fiduciary empowered to act on the ward’s behalf by law or contract has not requested a formal hearing, the court shall issue an order upon such terms agreed to by the parties and the guardian ad litem and the consent order shall become the final order of the court. The ward, his guardian, his attorney, his guardian ad litem, or any other fiduciary empowered to act on the ward’s behalf by law or contract also may request any desired corrections or amendments to the order during the thirty‑day period.

Examiner’s report

SECTION 9. Section 62‑5‑303D of the S.C. Code is amended to read:

 Section 62‑5‑303D. (A) Each examiner shall complete a notarized report setting forth an evaluation of the condition of the alleged incapacitated individual. The original report must be filed with the court by the court’s deadline, but not less than forty‑eight hours prior to any hearing in which the report is introduced as evidence. For good cause, the court may admit an examiner’s report filed less than forty‑eight hours prior to the hearing. All parties are entitled to review the reports after filing, which must be admissible as evidence. The evaluation shall contain, to the best of the examiner’s knowledge and belief:

 (1) a description of the nature and extent of the incapacity, including specific functional impairments;

 (2) a diagnosis and assessment of the alleged incapacitated individual’s mental and physical condition, including whether he is taking any medications that may affect his actions;

 (3) an evaluation of the alleged incapacitated individual’s ability to exercise the rights set forth in Section 62‑5‑304A;

 (4) when consistent with the scope of the examiner’s license, an evaluation of the alleged incapacitated individual’s ability to learn self‑care skills, adaptive behavior, social skills, and a prognosis for improvement;

 (5) the date of all examinations and assessments upon which the report is based;

 (6) the identity of the persons with whom the examiner met or consulted regarding the alleged incapacitated individual’s mental or physical condition; and

 (7) the signature and designation of the professional license held by the examiner.

 (B) Unless otherwise directed by the court, the examiner may rely upon an examination conducted within the ninety‑day period immediately preceding the filing of the petition, or longer at the discretion of the court in extraordinary circumstances. In the absence of bad faith, an examiner appointed by the court pursuant to Section 62‑5‑303B, is immune from civil liability for breach of patient confidentiality made in furtherance of his duties.

 (C) For the purposes of this section, at the discretion of the court, the “examination” must be conducted in person or virtually via telemedicine or other appropriate methods.

Informal request for relief

SECTION 10. Section 62‑5‑307 of the S.C. Code is amended to read:

 Section 62‑5‑307. (A) The ward or another person interested in his welfare, may make an informal request for relief by submitting a written request to the court. The court may take such action as it considers in its sole discretion to be reasonable and appropriate including, but not limited to, limiting or terminating the guardianship.

 (B) A person making an informal request submits personally to the jurisdiction of the court.

Venue

SECTION 11. Section 62‑5‑401 of the S.C. Code is amended to read:

 Section 62‑5‑401. Subject to the provisions of Section 62‑5‑701, et seq., venue for proceedings under this part is:

 (1) in the county where the alleged incapacitated individual or minor child resides; or

 (2) if the alleged incapacitated individual or minor child does not reside in this State, in any county in the state where the alleged incapacitated individual or minor child has property or has the right to take legal action.

Service of summons and petition

SECTION 12. Section 62‑5‑403A(A)(3) of the S.C. Code is amended to read:

 (3) any affidavits or physicians’ or nurse practitioners’ reports, at the discretion of the court, the report of a physician assistant or psychologist, filed with the petition.

Appointment of counsel

SECTION 13. Section 62‑5‑403B(A)(2)(b) of the S.C. Code is amended to read:

 (b) except in cases governed by Section 62‑5‑431 relating to benefits from the VA, one examiner, who must be a physician or nurse practitioner or, at the discretion of the court, may be a physician assistant or psychologist, to examine the alleged incapacitated individual and file a notarized report setting forth his evaluation of the condition of the alleged incapacitated individual in accordance with the provisions set forth in Section 62‑5‑403D. Unless the guardian ad litem or the alleged incapacitated individual objects, if a physician’s or nurse practitioner’s notarized report or, at the discretion of the court, may be a physician assistant or psychologist, is filed with the petition and served upon the alleged incapacitated individual and all interested parties with the petition, then the court may appoint that physician or nurse practitioner or, at the discretion of the court, may be a physician assistant, or psychologist, as the examiner. Upon the court’s own motion or upon request of the initial examiner, the alleged incapacitated individual, or his guardian ad litem, the court may appoint a second examiner, who must be a physician, physician assistant, nurse practitioner, nurse, social worker, or psychologist. No appointment of examiners is required when the basis for the petition is that the individual is confined, detained, or missing.

Hearing

SECTION 14. Section 62‑5‑403C of the S.C. Code is amended to read:

 Section 62‑5‑403C. (A) As soon as the interests of justice may allow, but after the time for filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition, unless the provisions in subsection (C) apply. The alleged incapacitated individual, all parties, and any person who has filed a demand for notice shall be given notice of the hearing. The alleged incapacitated individual is entitled to be present at the hearing, to conduct discovery, and to review all evidence bearing upon his condition. The hearing may be closed at the request of the alleged incapacitated individual or his guardian ad litem.

 (B) The alleged incapacitated individual may waive notice of a hearing and his presence at the hearing.

 (C) If no party has requested a hearing, there is an agreement among all the parties and the guardian ad litem’s report indicates that a hearing would not further the interests of justice, the alleged incapacitated individual may waive his right to a hearing. If the alleged incapacitated individual is unable to communicate to his guardian ad litem his wishes, interest, or preferences regarding the appointment of a guardian or the petition for appointment is not contested, either the attorney of the alleged incapacitated individual or the guardian ad litem, if the attorney has been relieved, shall be allowed to waive the alleged incapacitated individual’s right to a hearing. If the alleged incapacitated individual waives his right to a hearing, the court may:

 (1) require a formal hearing;

 (2) require an informal proceeding as the court shall direct; or

 (3) proceed without a hearing.

 (D) If no formal hearing is held, the court shall issue a temporary consent order, based upon such terms agreed to by the parties and the guardian ad litem. The order shall be considered to be a temporary order which shall expire in thirty days. A protected person under a temporary consent order may request a formal hearing at any time during the thirty‑day period after the order is filed. At the end of the thirty‑day period, if the protected person, his conservator, his attorney, his guardian ad litem, or any other fiduciary empowered to act on the protected person’s behalf by law or contract has not requested a formal hearing, the court shall issue an order upon such terms agreed to by the parties and the guardian ad litem. The consent order shall become the final order of the court. The protected person, his conservator, his attorney, his guardian ad litem, or any other fiduciary empowered to act on the protected person’s behalf by law or contract also may request any desired corrections or amendments to the order during the thirty‑day period.

Formal proceedings

SECTION 15. Section 62‑5‑405(A) of the S.C. Code is amended to read:

 (A) When it is established in a formal proceeding that a basis exists for affecting a protective arrangement that concerns the property and affairs of a minor or an incapacitated individual, the court may:

 (1) without appointing a conservator, authorize, direct, or ratify any provision within a protective arrangement that is in the best interest of the minor or incapacitated individual. A protective arrangement includes, but is not limited to, the payment, delivery, deposit, or retention of funds or property; the sale, mortgage, lease, or other transfer of property; the entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or the addition to or establishment of a suitable trust. If the formal proceeding involves the sale of real property, the petitioner shall file in the office of the clerk of the circuit court a notice of pendency of action authorized by Sections 15‑11‑10 to 15‑11‑50 and upon the filing of such notice, it has the same force and effect as a notice of pendency of action filed in an action in the circuit court.

 (2) authorize a conservator or a special conservator to exercise the power to perform the following acts:

 (a) make gifts as the court, in its discretion, believes would be made by the protected person;

 (b) convey or release the protected person’s contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy;

 (c) create or amend revocable trusts or create irrevocable trusts of property of the protected person’s estate that may extend beyond the protected person’s disability or life, or the protected person attaining the age of majority, including the creation or funding of a trust for the benefit of a minor, and a special needs trust or a pooled fund trust for disabled individuals;

 (d) fund trusts;

 (e) exercise the protected person’s right to elect options and change beneficiaries under insurance and annuity policies and to surrender policies for their cash value;

 (f) exercise the protected person’s right to an elective share in the estate of a deceased spouse;

 (g) renounce any interest by testate or intestate succession or by inter vivos transfer;

 (h) ratify any such actions taken on behalf of the protected person.

Powers of conservator

SECTION 16. Section 62‑5‑422(B) of the S.C. Code is amended to read:

 (B) A conservator acting reasonably and in the best interest of the protected person to accomplish the purpose for which he was appointed, may file an application with the court pursuant to Section 62‑5‑428(A) requesting authority to:

 (1) continue or participate in the operation of any unincorporated business or other enterprise;

 (2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;

 (3) buy and sell an estate asset, including land in this State or in another jurisdiction for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset; when selling real property, the conservator shall file in the office of the clerk of the circuit court a notice of pendency of action authorized by Sections 15‑11‑10 to 15‑11‑50 and upon the filing of such notice, it has the same force and effect as notice of pendency of action filed in an action in the circuit court;

 (4) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

 (5) enter into a lease as lessor or lessee, other than a residential lease described in subsection (A);

 (6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

 (7) grant an option involving disposition of an estate asset or to take an option for the acquisition of any asset;

 (8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;

 (9) make charitable gifts pursuant to the protected person’s gifting and estate plan if the estate is sufficient to provide for the health, education, support, and maintenance of the protected person and his dependents;

 (10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship;

 (11) pay a reasonable fee to the conservator, special conservator, guardian ad litem, attorney, examiner, physician, physician assistant, nurse practitioner, or psychologist for services rendered;

 (12) adopt an appropriate budget for routine expenditures of the protected person;

 (13) reimburse the conservator for monies paid to or on behalf of the protected person;

 (14) exercise or release the protected person’s powers as personal representative, custodian for minors, conservator, or donee of a power of appointment;

 (15) exercise options to purchase securities or other property; and

 (16) establish or fund a special needs trust or other trust.

Claims against protected person

SECTION 17. Section 62‑5‑426(A) of the S.C. Code is amended to read:

 (A) The probate court has exclusive jurisdiction over claims against the protected person arising from the internal affairs of the conservatorship which may be commenced in the following manner:

 (1) A claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claimant also must file a written statement of the claim, in the form prescribed by rule, with the probate court in which the conservatorship is under administration.

 (2) A claim is considered presented upon the filing of the statement of claim with the court.

 (3) As to claims presented in the manner described in item (1), within sixty days after the presentment of the claim, the conservator must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part. Service of such notice shall be by United States mail, personal service, or otherwise as permitted by rule, and a copy of the notice must be filed with the probate court, along with proof of delivery setting forth the date of mailing or other service on the claimant. A notice of disallowance or partial disallowance of a claim must contain a warning that the claim will be barred to the extent disallowed unless the claimant commences a proceeding for allowance of the claim in accordance with item (4) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance. Every claim which is disallowed in whole or in part by the conservator is barred so far as not allowed unless the claimant commences a proceeding for allowance of the claim in accordance with item (4) no later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the conservator. For good cause shown, the court may reasonably extend the time for filing the notice of allowance or disallowance of a properly filed claim.

 (4) Once a claim is presented in accordance with item (1), a claimant may at any time thereafter commence a legal proceeding against the conservator by the filing of a summons and petition for allowance of a claim in the probate court having jurisdiction over the conservatorship, seeking payment of the claim by the conservatorship, and serving the same upon the conservator. Thereafter, the probate court shall not authorize the termination of the conservatorship until the legal proceeding has ended.

 (5) In lieu of the procedure provided for in items (1) through (4), a claimant may commence a legal proceeding against the conservator, by the filing of a summons and petition for allowance of a claim or complaint in the probate court having jurisdiction over the conservatorship, seeking payment of his claim by the conservatorship, and serving the same upon the conservator. Thereafter, the probate court may not permit the termination of the conservatorship until the legal proceeding has ended.

 (6) Notwithstanding another provision of this section, no proceeding for enforcement or allowance of a claim may be commenced more than thirty days after the conservator has mailed a notice of disallowance or partial disallowance of the claim.

 (7) This subsection does not apply to a proceeding by a secured creditor to enforce the secured creditor’s right to its security.

Actions for requests subsequent to appointment

SECTION 18. Section 62‑5‑428(B)(2)(c) of the S.C. Code is amended to read:

 (c) As soon as the interests of justice may allow, but after the time for response to the petition has elapsed as to all parties served, the court may hold a hearing on the merits of the petition or may follow the procedure for a consent order without a hearing outlined in Section 62‑5‑403C. The protected person and all parties not in default must be given notice of the hearing. If all parties not in default waive a hearing, the court may issue a consent order.

Definitions, procedures for settlement of claims in favor of or against minors or incapacitated persons

SECTION 19. Section 62‑5‑433 of the S.C. Code is amended to read:

 Section 62‑5‑433. (A)(1) For purposes of this section and for any claim exceeding twenty‑five thousand dollars in favor of or against any minor or incapacitated individual, “court” means the circuit court of the county in which the minor or incapacitated individual resides or the circuit court in the county in which the suit is pending. For purposes of this section and for any claim not exceeding twenty‑five thousand dollars in favor of or against any minor or incapacitated individual, “court” means either the circuit court or the probate court of the county in which the minor or incapacitated individual resides or the circuit court or probate court in the county in which the suit is pending.

 (2) “Claim” means the net or actual amount accruing to or paid by the minor or incapacitated individual as a result of the settlement.

 (3) “Petitioner” means either a conservator appointed by the court for the minor or incapacitated individual or the guardian or guardian ad litem of the minor or incapacitated individual if a conservator has not been appointed.

 (4) “Guardian ad litem” means a person who has been appointed by the court as provided in Rule 17, South Carolina Rules of Civil Procedure and not a person appointed pursuant to Section 62‑5‑303B or Section 62‑5‑403B.

 (B) The settlement of a claim over twenty‑five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

 (1) The petitioner must file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, if any, and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved. For all claims that exceed twenty‑five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement is in the best interests of the minor or incapacitated individual.

 (2) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated individual, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, to receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual.

 (3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator or pursuant to a protective order issued by the probate court. If a conservator has not been appointed nor a protective order issued, the petitioner, upon receiving the money or personal property, shall pay and deliver it to the court pending the appointment and qualification of a duly-qualified conservator or the issuance of a protective order. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

 (C) The settlement of a claim that does not exceed twenty‑five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected in any of the following manners:

 (1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62‑5‑422, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual.

 (2) If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62‑5‑103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62‑5‑103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

 (D) The settlement of a claim that does not exceed two thousand five hundred dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated individual without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62‑5‑103.

Confirmation of transfer from another state

SECTION 20. Section 62‑5‑715(A) of the S.C. Code is amended to read:

 (A) To confirm transfer of a guardianship or conservatorship to this State under provisions similar to Section 62‑5‑714, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a copy of the other state’s provisional order of transfer and copies of the other documents from the other state’s file, as the court in this State shall require, said copies being either certified or exemplified, in the discretion of the court.

Conservator or guardian ad litem in another state

SECTION 21. Section 62‑5‑716(B) of the S.C. Code is amended to read:

 (B) If a conservator or a guardian with financial and contractual authority, guardian of the assets, has been appointed in another state and a petition for a protective order is not pending in this State, the conservator or guardian of the assets appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in the Probate Court, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. The court shall treat this as the filing of authenticated or certified records and shall charge the fees set forth in Section 8‑21‑770 for the filing of such documents. The court will then issue a certificate of registration. The conservator or guardian of the assets shall file the certificate, along with a copy of the fiduciary letters in the county real estate records.

Transfer on death

SECTION 22. Article 6, Chapter 6, Title 62 of the S.C. Code is amended by adding:

 Section 62‑6‑401. (A) In addition to such other methods for registering and titling titled personal property as permitted in Title 50 and Title 56, any owner of a vehicle, mobile home, watercraft, outboard motor, or any similar personal property for which legal titles are issued and administered by the Department of Motor Vehicles or Department of Natural Resources may establish a Transfer on Death (TOD) designation upon any such title or registration, subject to the provisions of this section, for the purposes set forth herein.

 (B) A TOD designation on any titled personal property shall pass, upon the death of all owners of such titled personal property, to the TOD beneficiary or beneficiaries pursuant to this section and is effective by reason of this statute and such transfer is not testamentary or subject to Articles 1 through 4 (estate administration).

 (C) A beneficiary of a TOD designation on any titled personal property has no ownership of the titled personal property during the lifetime of the owner or owners of such titled personal property.

 (D) The following rules shall apply to titled personal property owned by one owner with TOD designation:

 (1) On the death of an owner who is the sole owner of titled personal property with a TOD designation, the titled personal property belongs to the surviving beneficiary or beneficiaries named in the TOD designation. If two or more beneficiaries survive, the titled personal property must be titled to them in undivided equal shares, and there is no right of survivorship in the event of a later death of a beneficiary, unless such beneficiaries shall thereafter change the titling during their lifetimes to reflect such a right of survivorship.

 (2) If no beneficiary named on the TOD designation survives upon the death of the owner, then the titled personal property belongs to the estate of the owner.

 (3) Any sole owner who utilizes a TOD designation on titled personal property may revoke or modify the TOD designation at any time during the owner’s life without the consent of any beneficiary listed on a TOD designation.

 (E) The following rules shall apply to titled personal property owned by two or more owners with a TOD designation:

 (1) Only multiple owners who own titled personal property with right of survivorship shall be entitled to utilize a TOD designation to transfer property pursuant to this section and a TOD designation for multiple owners who own titled personal property without such right of survivorship shall be ineffective.

 (2) On the death of one owner among multiple owners with right of survivorship the titled personal property belongs to the surviving owner or owners. If two or more owners survive, the titled personal property belongs to the surviving owners in undivided equal shares and the right of survivorship continues between the surviving parties.

 (3) On the death of the last surviving owner among multiple owners with right of survivorship, the titled personal property belongs to the surviving beneficiary or beneficiaries named in a TOD designation. If two or more beneficiaries survive, the titled personal property belongs to them in undivided equal shares, and there is no right of survivorship in the event of a later death of a beneficiary, unless such beneficiaries shall thereafter change the titling to reflect such a right of survivorship during their lifetimes. If no beneficiary named in the TOD designation is living on the date of the last surviving owner’s death, the titled personal property belongs to the estate of the last surviving owner.

 (4) When multiple owners own titled personal property, all of such multiple owners, or the survivors among them, must act together to establish such TOD designation or to thereafter revoke or modify such TOD designation, but the consent of any beneficiary selected in such TOD designation must not be required.

 (F) An owner or multiple owners of a vehicle, mobile home, or any other similar vehicle or property for which the Department of Motor Vehicles issues and administers titles shall apply to the Department of Motor Vehicles for such TOD designation pursuant to the terms of this section pursuant to the rules and standards of the department.

 (G) An owner or multiple owners of a watercraft, outboard motor, or any other similar watercraft or property for which the Department of Natural Resources issues and administers titles shall apply to the Department of Natural Resources for such TOD designation pursuant to the terms of this section pursuant to the rules and standards of the department.

 (H) The Department of Motor Vehicles or the Department of Natural Resources, as appropriate, upon request, shall retitle the appropriate titled personal property with a TOD designation, to:

 (1) The beneficiary or beneficiaries named in the TOD designation, if proof of death is presented to the appropriate department showing that the beneficiary or beneficiaries survived all owners of the titled personal property.

 (2) The personal representative of a deceased party, if proof of death is presented to the appropriate department showing that the deceased party was the last survivor of all other owners named on the title to the titled personal property and there shall be no surviving beneficiaries named in any TOD designation.

 (3) To such party or parties in accordance with a court order directing the retitling of such titled personal property.

 (I) For purposes of this section, ownership of titled personal property using “OR” with two or more multiple owners shall indicate “joint tenants with right of survivorship”, while ownership using “AND” with two or more multiple owners shall indicate ownership “tenants in common”. Only sole owners and multiple owners holding title to titled personal property with such right of survivorship (e.g., “OR” titling between multiple owners) are eligible to utilize the TOD procedures described in this statute.

Application for certificate

SECTION 23. Section 50‑23‑60(A) of the S.C. Code is amended to read:

 (A) Every person who acquires a watercraft or outboard motor required to be titled under this chapter shall apply to the department within thirty days of the date of acquisition for a certificate of title for the watercraft or outboard motor accompanied by the required fee and on forms required by the department. The application must be signed by the person who acquires the watercraft or outboard motor and shall contain:

 (1) the applicant’s name, domiciled address, including the county, date of birth, and the county where the watercraft is principally located, state‑issued identification number, and state of issue;

 (2) for watercraft, a description of the watercraft, including its make, model, model year, length, the principal material used in construction, hull number, and the manufacturer’s engine serial number if an inboard; for an outboard motor, its make, model, model year, or year of manufacture, and horsepower, and manufacturer’s serial number;

 (3) the date of acquisition by the applicant, the name and address of the person from whom the watercraft or outboard motor was acquired, and the names and addresses of persons having a security interest in the order of their priority;

 (4) a bill of sale;

 (5) further information reasonably required by the department to enable it to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the watercraft or outboard motor;

 (6) when a Transfer of Death (TOD) beneficiary is designated, each TOD beneficiary’s name, domiciled address, including the county, date of birth, state‑issued identification number, and state of issue; and

 (7) in the case of one or more TOD beneficiaries receiving the title and registration to a watercraft or outboard motor, a bill of sale shall not be required for the department to issue a title, but such TOD beneficiaries shall establish the death of all owners of the watercraft or outboard motor.

Fees

SECTION 24. Section 50‑23‑70 of the S.C. Code is amended by adding:

 (F) The fee to establish, modify, or revoke a Transfer of Death designation upon a certificate of title for watercraft or outboard motor is ten dollars.

Certificate of title

SECTION 25. Section 50‑23‑90(a) of the S.C. Code is amended to read:

 (a) Each certificate of title issued by the department shall contain:

 (1) the date issued;

 (2) the name and address of the owner;

 (3) the names and addresses of any lienholders, in the order of priority as shown on the application or, if the application is based on a certificate of title, as shown on the certificate;

 (4) the title number assigned to the watercraft or outboard motor;

 (5) a description of the watercraft or outboard motor, including its make, model, model year, or year of manufacture, horsepower, registration number, and manufacturer’s serial number or, hull number assigned to the watercraft by the department, length, and the principal material used in construction;

 (6) on the reverse side of the certificate, spaces for assignment of title by the owner or by the dealer and for a warranty that the signer is the owner and that there are no mortgages, liens, or encumbrances on the watercraft or outboard motor except as are noted on the face of the certificate of title;

 (7) information of whether Transfer of Death beneficiary designations have been filed with the department; and

 (8) any other data the department prescribes.

Transfer of ownership by operation of law

SECTION 26. Section 50‑23‑130(a) of the S.C. Code is amended to read:

 (a) If the ownership of a watercraft or outboard motor is transferred by operation of law, such as by inheritance, Transfer on Death, devise or bequest, order in bankruptcy, insolvency, replevin, or execution sale, or satisfaction of mechanic’s lien, or repossession upon default in performance of the terms of a security agreement, the transferee shall, except as provided in subsection (b), promptly mail or deliver to the department the last certificate of title, if available, or the manufacturer’s or importer’s statement of origin or, if that is not possible, satisfactory proof of the transfer of ownership, and his application for a new certificate of title accompanied by the required fee, and upon the appropriate form or forms prescribed and furnished by the department.

Contents of certificate

SECTION 27. Section 56‑19‑290 of the S.C. Code is amended to read:

 Section 56‑19‑290. Each certificate of title issued by the Department of Motor Vehicles shall contain:

 (1) the date issued;

 (2) the name and address of the owner;

 (3) the names and addresses of any lienholders, in the order of priority as shown on the application, and dates of the liens, or if the application is based on a certificate of title, as shown on the certificate;

 (4) the title number assigned to the vehicle;

 (5) a description of the vehicle including, so far as the following data exists: its make, model, vehicle identification number, odometer reading at the time of application, and type of body;

 (6) the names of any Transfer on Death beneficiary established upon such title pursuant to Section 62‑6‑401; and

 (7) any other data the department prescribes.

 The certificate of title shall contain forms for assignment and warranty of title by the owner and for reassignment and warranty of title by a dealer and may contain forms for application for a certificate of title by a transferee, the naming of a lienholder and the assignment or release of the security interest of a lienholder.

Fee allocation

SECTION 28. Section 56‑19‑420(A) of the S.C. Code is amended to read:

 (A) The Department of Motor Vehicles shall charge fifteen dollars for:

 (1) the issuance of a certificate of title;

 (2) the transfer of a certificate of title;

 (3) the issuance of a duplicate certificate of title; or

 (4) the establishment, modification, or revocation of Transfer on Death beneficiaries pursuant to Section 62‑6‑401.

Definitions

SECTION 29. Section 62‑6‑101 of the S.C. Code is amended to read:

 Section 62‑6‑101. In this subpart:

 (1) “Account” means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements.

 (2) “Agent” means a person authorized to make account transactions for a party.

 (3) “Beneficiary” means a person named as one to whom sums on deposit in an account are payable on request after the death of all parties or for whom a party is named as the trustee; or, as it relates to titled personal property, any party named as one to whom a title shall be reregistered and retitled on request after the death of all owners of titled personal property.

 (4) “Financial institution” means any organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

 (5) “Multiple‑party account” means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned including, but not limited to, joint accounts or POD accounts.

 (6) “Net contribution of a party” means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

 (7) “Party” means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

 (8) “Payment” of sums on deposit includes withdrawal, payment to a party, or third person pursuant to a check or other request, and a pledge of sums on deposit by a party, or a set‑off, reduction, or other disposition of all or part of an account pursuant to a pledge.

 (9) “Proof of death” includes a death certificate or record or report which is prima facie proof of death under Section 62‑1‑507.

 (10) “POD designation” means the designation of: (i) a beneficiary in an account payable on request to one party during the party’s lifetime and on the party’s death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

 (11) “Receive” as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

 (12) “Request” means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution. However, for purposes of this subpart, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

 (13) “Sums on deposit” means the balance payable on an account including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of the death of a party.

 (14) “Terms of the account” includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

 (15) “Owner” as it relates to titled personal property, means one or more parties with titled personal property registered and titled in such parties’ respective name or names.

 (16) “Transfer on Death” or “TOD” means the designation of a beneficiary named on titled personal property for purposes of reregistering and retitling such titled personal property in such beneficiary’s or beneficiaries’ name or names upon the death of the last surviving owner of such titled personal property.

 (17) “Titled personal property” means any vehicle, mobile home, watercraft, outboard motor, or any other similar personal property for which the Department of Motor Vehicles or Department of Natural Resources issues and administers legal titles.

Time effective

SECTION 30. SECTIONS 1‑21 of this act take effect upon approval by the Governor and their provisions shall apply to all applicable actions, proceedings, and matters filed on and after the effective date; SECTIONS 22‑29 of this act take effect on July 1, 2025.

Ratified the 15th day of May, 2024.

Approved the 21st day of May, 2024.

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