CHAPTER 5

Legal Status of Children

CROSS REFERENCES

Subject matter jurisdiction, concurrent jurisdiction with family court, see Section 62‑1‑301.

ARTICLE 1

Parent‑Child Relationship

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

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

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Another provision regarding the obligation to support spouse and children, see Section 63‑5‑20.

Bond for support in lieu of punishment, see Section 63‑17‑430.

Failure to pay court‑ordered child support other than periodic child support payments, affidavit, hearing, costs and attorney’s fees, see Section 63‑17‑385.

Liability of husband on contracts for necessaries of wife and minor children, see Section 20‑5‑60.

Limitation on parent’s entitlement to estate proceeds for failure to provide support to deceased during minority, see Section 62‑2‑114.

Persons who may file petitions for support, see Section 63‑17‑340.

Library References

Child Support 82, 89, 90, 140(1).

Divorce 237, 240.

Westlaw Topic Nos. 76E, 134.

C.J.S. Divorce Sections 608, 611 to 622, 636 to 637, 677 to 679, 1077, 1082 to 1084, 1087, 1093 to 1095, 1097.

C.J.S. Parent and Child Sections 157 to 159, 162, 173, 224 to 225.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 153, Jurisdiction.

S.C. Jur. Compromise and Settlement Section 12, Death Settlements.

NOTES OF DECISIONS

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1. In general

A husband who consents for his wife to conceive a child through artificial insemination, with the understanding that the child will be treated their own, is the legal father of the child born as a result of the artificial insemination and will be charged with all of the legal responsibilities of paternity, including support. In re Baby Doe (S.C. 1987) 291 S.C. 389, 353 S.E.2d 877. Child Support 63; Parent And Child 242

Both parents have an obligation to contribute to the support of their children. Sauls v. Sauls (S.C.App. 1985) 287 S.C. 297, 337 S.E.2d 893.

A father is still under an obligation to support his daughter pursuant to Section 20‑7‑40 despite the fact that he no longer lives with her. Calcutt v. Calcutt (S.C.App. 1984) 282 S.C. 565, 320 S.E.2d 55. Child Support 24

Family Court’s order attempting to limit daughter’s application for any future support after 60 days from high school graduation is enforced waiver constituting overreaching of judge’s authority. Cato v. Cato (S.C. 1981) 276 S.C. 41, 276 S.E.2d 290.

2. Mother’s support obligation

Trial court did not abuse its discretion in requiring wife to pay $55 per week child support, because in South Carolina both father and mother are primarily liable for child’s support, amount was not excessive, and court considered wife’s income and her expenses. West v. West (S.C.App. 1987) 294 S.C. 190, 363 S.E.2d 402.

Both the father and mother are primarily liable for their child’s support, and an order requiring the mother to contribute $30 per week for support of daughter, whose custody had been awarded to the father, was not excessive. Jones v. Jones (S.C.App. 1986) 290 S.C. 49, 348 S.E.2d 178.

3. Support elements

Although both parents are obligated to support their child under Section 20‑7‑40, financial assistance is just one aspect of a support obligation. Another aspect of support includes the services parents provide for a child. Thus, a family court did not abuse its discretion in failing to require a custodial parent to contribute to the support of the minor child since the custodial parent has the responsibility of performing the daily services the child requires such as preparing meals, helping with homework and washing clothes. Cross v. Cross (S.C. 1988) 296 S.C. 474, 374 S.E.2d 178.

Equal support duties are now imposed on both parents under Section 14‑21‑820 (now Section 20‑7‑40), absent pleading and proof that circumstances otherwise warrant. An equal support duty is not synonymous with an identical support payment, however. The determination of the amount of support to be ordered must be made in a way that reflects fairness for all parties involved. The court must consider not only the needs of the child but also the abilities of the parents to provide support. McElrath v. Walker (S.C.App. 1985) 285 S.C. 439, 330 S.E.2d 313.

4. Modification

A father was properly required to pay an increased amount of child support pursuant to Section 20‑7‑40, which provides that a parent may be required to pay for the support of his or her child according to his or her means “if possessed of sufficient means or able to earn such means,” where the father was evasive to questions dealing with his financial condition and failed to report income and other assets in a deliberate attempt to avoid payment of child support obligations, but the record reflected his capability to pay. Nicholson v. Lewis (S.C.App. 1988) 295 S.C. 434, 369 S.E.2d 649.

5. Arrearages

An out‑of‑state custodial parent owed child support is not required to first obtain a South Carolina judgment for arrearage before the claim can be made against the estate of the defaulting parent. Appeal of Brown (S.C.App. 1986) 288 S.C. 530, 343 S.E.2d 649. Executors And Administrators 219.7(1)

6. Contempt

Former wife made out prima facie case of contempt by pleading the Order for the payment of child support and default in payment, and the burden was upon the former husband to establish his defense and to show his inability to comply with the divorce order. Redick v. Redick (S.C. 1976) 266 S.C. 241, 222 S.E.2d 758. Child Support 484

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

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Another provision regarding the obligation to support spouse and children, see Section 63‑5‑10.

Bond for support in lieu of punishment in proceeding under this section, see Section 63‑17‑430.

Care custody and maintenance of children, see Section 20‑3‑160.

Liability of husband on contracts for necessaries of wife and minor children, see Section 20‑5‑60.

Persons who may file petitions for support, see Section 63‑17‑340.

Placing person on probation after refusal to obey court order for support, see Section 63‑17‑500.

Service by publication in custody or support proceedings, etc., see Section 15‑9‑710.

Library References

Child Support 179, 652.

Husband and Wife 4, 19, 304.

Westlaw Topic Nos. 76E, 205.

C.J.S. Husband and Wife Sections 66 to 86, 216 to 217, 221.

C.J.S. Parent and Child Sections 208, 210, 359 to 365, 377.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 153, Jurisdiction.

S.C. Jur. Divorce Section 42, Abandonment.

LAW REVIEW AND JOURNAL COMMENTARIES

The South Carolina Workers’ Compensation Act treats nonmarital children like bastards out of Carolina. 49 S.C. L. Rev. 1281 (Summer 1998).

Attorney General’s Opinions

If a child is declared emancipated, then parents or guardians are not required to continue support. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

If a court finds the child to be incorrigible, then parents or guardians are not required to continue supporting the child. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

If a minor child gets married or becomes self‑supporting, as determined by the court, then parents or guardians are not required to continue support. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

A parent or guardian is generally required to support his or her minor child, meaning any child under the age of eighteen. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

A defendant can be ordered to pay support payments to his wife and children as terms of probation. 1963‑64 Op. Atty Gen, No. 1743, p 242.

Support payments can be ordered paid as a term of probation. 1964‑65 Op. Atty Gen, No. 1869, p 133.

Jurisdiction of offense of nonsupport of wife or children is where offense occurred—usually where wife and children reside—although circumstances, such as justifiable moving of residence by family, may alter the rule. 1966‑67 Op. Atty Gen, No. 2248, p 55.

Under this section [Code 1962 Section 20‑303], a defendant can be sentenced to imprisonment or fined, or both, the sentence can be suspended and he can be placed on probation. 1963‑64 Op. Atty Gen, No. 1743, p 242; 1964‑65 Op. Atty Gen, No. 1869, p 133.

When a probationary sentence was handed down, the Probation, Parole and Pardon Board should have requested the circuit judge to specifically set out in the sentence whether or not the probation was to be terminated when the sum of $1,500.00 had been paid. 1964‑65 Op. Atty Gen, No. 1869, p 133.

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1. In general

Cited in State v Moore (1924) 128 SC 192, 122 SE 672. State v Franks (1949) 214 SC 525, 53 SE2d 608. Collins v Collins (1960) 237 SC 230, 116 SE2d 839. Flemon v Dickert‑Keowee, Inc. (1972) 259 SC 99, 190 SE2d 751. State v Young (1973) 261 SC 123, 198 SE2d 531.

Where a husband abandons his wife, destroys his home, and provides no other place for her, his failure to supply her with necessaries at the place where circumstances compel her to live constitutes a violation of this section [Code 1962 Section 20‑303]. State v Stone (1919) 111 SC 496, 98 SE 333. Todd v Todd (1963) 242 SC 263, 130 SE2d 552.

Applied in State v Tucker (1922) 118 SC 238, 110 SE 398. State v Eskew (1945) 206 SC 519, 34 SE2d 767. 211 SC 565, 34 SE2d 767.

Defendant, as husband of plaintiff, owed the legal obligation under this section [Code 1962 Section 20‑303] to support her in keeping with his ability to do so after he had allegedly deserted her without just cause or excuse. Frist v. Gallant, 1965, 240 F.Supp. 827. Marriage And Cohabitation 1207

Testimony on behalf of State showing marriage and subsequent separation of parties after which defendant had not furnished his wife any support, even though he was an able‑bodied man and capable of earning a livelihood and was in fact making substantial livelihood, made out a prima facie case against defendant in prosecution under this section [Code 1962 Section 20‑303]. State v. Campbell (S.C. 1963) 242 S.C. 64, 129 S.E.2d 902.

The basic reason for the enactment of this section [Code 1962 Section 20‑303] is the important responsibility of the State through its courts, to protect the rights of a wife and minor unmarried children dependent for support upon the husband and father, respectively. State v. Caldwell (S.C. 1951) 220 S.C. 301, 67 S.E.2d 421. Child Support 650; Marriage And Cohabitation 1202

There is but one offense intended to be legislated against by this statute, to wit, the failure of an able‑bodied man or a man capable of earning or making a livelihood, who, without just cause or excuse, abandons or fails to support his wife, or if there be a minor unmarried child or children, fails to support such child or children, or both his wife and minor unmarried child or children. State v. Caldwell (S.C. 1951) 220 S.C. 301, 67 S.E.2d 421.

This section [Code 1962 Section 20‑303] does not provide an exclusive remedy for the enforcement of the rights of children to support by their parents. The obligation exists independently of the statute. Campbell v. Campbell (S.C. 1942) 200 S.C. 67, 20 S.E.2d 237.

Proceedings in abandonment or nonsupport case are criminal rather than civil in nature. State v. Nesmith (S.C. 1937) 185 S.C. 341, 194 S.E. 160. Marriage And Cohabitation 1223

In trial of husband for abandoning and failing to support his wife and minor child, the state need not prove that wife is dependent upon husband for support, words “dependent upon him” in this section [Code 1962 Section 20‑303] referring to minor unmarried children. State v. Redmond (S.C. 1929) 150 S.C. 452, 148 S.E. 474.

2. Validity of section

It is not unconstitutional as going beyond the scope of the title of the enacting act. State v. Redmond (S.C. 1929) 150 S.C. 452, 148 S.E. 474.

This section [Code 1962 Section 20‑303] is not so contradictory and misleading as to warrant inference that General Assembly was imposed upon in its passage. State v. Redmond (S.C. 1929) 150 S.C. 452, 148 S.E. 474. Child Support 650; Marriage And Cohabitation 1202

This section [Code 1962 Section 20‑303] is not invalid as contrary to SC Const, Art 1, Section 24 (now Art 1, Section 19), prohibiting imprisonment for debt. State v Redmond (1929) 150 SC 452, 148 SE 474. The imprisonment is not for any “debt,” but for failure to obey the statutory obligations incident to the marriage contract or relation. State v. English (S.C. 1915) 101 S.C. 304, 85 S.E. 721.

3. Wrongful death action

Under this section [Code 1962 Section 20‑303] the widow and minor unmarried child of a deceased had prima facie and presumptively a legal pecuniary interest in the continuance of his life, though he had abandoned them and failed to perform the duty imposed upon him by law. In an action for his death, the failure to introduce evidence to show that they sustained any actual pecuniary loss did not justify a directed verdict. Gilliam v. Southern Ry. Co. (S.C. 1917) 108 S.C. 195, 93 S.E. 865.

4. Illegitimate children

The common law recognized no legal duty on the part of a father to provide for the support of an illegitimate child. He was said to be a filius nullius, the child of nobody. There was no procedure for determining paternity. An illegitimate child had no rights against an asserted parent that could be enforced in court. McGlohon v. Harlan (S.C. 1970) 254 S.C. 207, 174 S.E.2d 753.

5. Child conceived by artificial insemination

A husband who consents for his wife to conceive a child through artificial insemination, with the understanding that the child will be treated their own, is the legal father of the child born as a result of the artificial insemination and will be charged with all of the legal responsibilities of paternity, including support. In re Baby Doe (S.C. 1987) 291 S.C. 389, 353 S.E.2d 877. Child Support 63; Parent And Child 242

5.5. Private school expenses

Family courts should award child support in an amount sufficient to provide for the needs of the children and to maintain the children at the standard of living they would have been provided but for the divorce; this may include contributing to private school expenses where appropriate. Burch v. Burch (S.C. 2011) 395 S.C. 318, 717 S.E.2d 757, rehearing denied. Child Support 100; Child Support 117

Father was required to contribute 50 percent of the costs of child’s private school tuition as part of his child support obligation, where child had attended the private school from kindergarten through the sixth grade, and father, given his income and high standard of living, could afford to contribute 50 percent of the $12,000 annual tuition. Burch v. Burch (S.C. 2011) 395 S.C. 318, 717 S.E.2d 757, rehearing denied. Child Support 117

5.7. Medical expenses

Mother, in her individual capacity, was real party in interest with respect to future medical expenses that would be incurred while daughter, who allegedly suffered nerve injuries in her shoulder and arm as result of medical malpractice during delivery, was still a minor, since mother owned substantive right to recover damages for such expenses in medical malpractice action because parental responsibilities included legal obligation to pay for a child’s medical expenses. Patton v. Miller (S.C. 2017) 804 S.E.2d 252. Health 812

Mother, in her individual capacity, was real party in interest with respect to past medical expenses incurred to treat minor daughter, who allegedly suffered nerve injuries in her shoulder and arm as result of medical malpractice during delivery, since mother owned substantive right to recover damages for such expenses in medical malpractice action because parental responsibilities included legal obligation to pay for a child’s medical expenses. Patton v. Miller (S.C. 2017) 804 S.E.2d 252. Health 812

6. Sufficiency of indictment

An indictment for nonsupport of an illegitimate child should allege the fact of illegitimacy and the identity of the child so that the defendant will know the nature of the charge against him and, in acquittal or conviction, may be pleaded in bar to any subsequent prosecution. State v. Montgomery (S.C. 1965) 246 S.C. 543, 144 S.E.2d 797.

An indictment was fatally deficient in failing to designate the child as illegitimate, or the date of birth or other description of the child so that it could be identified. State v. Montgomery (S.C. 1965) 246 S.C. 543, 144 S.E.2d 797.

When the defendant was charged in one count with failure to supply the actual necessaries of life to his wife and his minor unmarried children, two separate and distinct offenses were not alleged in one count, and the indictment was not bad for duplicity. State v. Caldwell (S.C. 1951) 220 S.C. 301, 67 S.E.2d 421.

7. Venue

An action under this section [Code 1962 Section 20‑303] against a husband for failure to support his wife and children is properly brought in the county in which he resides. State v. Bailey (S.C. 1969) 253 S.C. 304, 170 S.E.2d 376.

The failure to support a wife or child is a negative offense, so the question arises: In what county did the offense occur? State v. Bailey (S.C. 1969) 253 S.C. 304, 170 S.E.2d 376. Child Support 653; Marriage And Cohabitation 1202

Nonsupport of a legitimate child is a continuing offense and as such follows the father from one residence to another. State v. Bailey (S.C. 1969) 253 S.C. 304, 170 S.E.2d 376.

Where husband and wife were living in another state, and husband by his conduct caused wife to move to her parents’ home in a county in South Carolina, venue in criminal action for nonsupport was properly laid to such county as it was husband’s failure to supply the necessities of life to his wife and child in that county that was a violation of this section [Code 1962 Section 20‑303]. State v. Collins (S.C. 1959) 235 S.C. 65, 110 S.E.2d 270, certiorari denied 80 S.Ct. 199, 361 U.S. 895, 4 L.Ed.2d 152.

In prosecution of husband under this section [Code 1962 Section 20‑303], the county of husband’s residence, and not that of residence of wife and children, is the proper county for trial, the offense having been committed in such county. State v. Peeples (S.C. 1919) 112 S.C. 310, 99 S.E. 813. Criminal Law 108(1)

Where a husband by his conduct compels his wife to leave him, and she, of necessity, seeks a home in another county, his prosecution for failure to support, in violation of this section [Code 1962 Section 20‑303], was properly instituted in such other county. State v. Stone (S.C. 1919) 111 S.C. 496, 98 S.E. 333. Criminal Law 108(1)

8. Continuing offense

The offense of nonsupport is made by this section [Code 1962 Section 20‑303] a continuing one. State v Stone (1919) 111 SC 496, 98 SE 333 (1919). State v Nesmith (1937) 185 SC 341, 194 SE 160. State v Collins (1959) 235 SC 65, 110 SE2d 270, cert den 361 US 895, 4 L Ed 2d 152, 80 S Ct 199.

As this section [Code 1962 Section 20‑303] had repeatedly been held to provide for a continuing offense, it must be assumed, absent a compelling argument otherwise, that the inclusion of illegitimate children within its purview means that the failure to support them shall also be a continuing offense. State v. Bailey (S.C. 1969) 253 S.C. 304, 170 S.E.2d 376.

9. Just cause or excuse for leaving

This section [Code 1962 Section 20‑303] imposes duty upon husband to support his wife unless he has just cause or excuse for failure to do so. Todd v. Todd (S.C. 1963) 242 S.C. 263, 130 S.E.2d 552.

Where husband did not provide his wife with a home where she was free from physical abuse and ill‑treatment, she was justified in leaving, and was not guilty of desertion, but the husband was guilty of constructive desertion. State v. Collins (S.C. 1959) 235 S.C. 65, 110 S.E.2d 270, certiorari denied 80 S.Ct. 199, 361 U.S. 895, 4 L.Ed.2d 152.

The principles of the common law and of equity jurisprudence which govern the responsibility of parents to their children independently of this section are pertinent only to the extent that they bear upon the question of “just cause or excuse.” State v. Hellams (S.C. 1946) 209 S.C. 141, 39 S.E.2d 212.

The established law in this State is that where a husband provides a home and the necessaries of life therein for his wife and minor unmarried children, and the wife without just cause or excuse leaves that home and takes such minor children with her, and without just cause or excuse refuses the husband the custody of the children, then the duty no longer devolves upon him to support either. State v. Hellams (S.C. 1946) 209 S.C. 141, 39 S.E.2d 212.

It is for the jury to say, under appropriate instructions, whether the prosecutrix in leaving the home of the defendant, and taking with her their minor children, was justified in so doing. State v. Hellams (S.C. 1946) 209 S.C. 141, 39 S.E.2d 212.

Evidence that defendant husband took his wife to his mother’s home, and that after remaining there about four months, during which time she was subjected to violent and insulting language and threatened with violence by her mother‑in‑law, the wife left and rented another house, in which defendant refused to live with her, authorizes a conviction for nonsupport under this section [Code 1962 Section 20‑303]. State v. Bagwell (S.C. 1923) 125 S.C. 401, 118 S.E. 767. Marriage And Cohabitation 1231(4)

Whether wife’s immorality before marriage, unknown to husband, is a good defense as a just cause or excuse in a prosecution under this section [Code 1962 Section 20‑303] is a jury question. State v. English (S.C. 1915) 101 S.C. 304, 85 S.E. 721.

Testimony that defendant’s wife left the home provided for her, and went and lived with her parents, is not sufficient to sustain a conviction of the defendant for nonsupport under this section. [Code 1962 Section 20‑303]. State v. Collins (S.C. 1923) 123 S.C. 487, 124 S.E. 338. Marriage And Cohabitation 1231(4)

10. Age of dependent child

In the absence of a statutory provision to the contrary, a certificate of birth or other official record is not necessarily required to prove a person’s age, the best evidence of such fact being the testimony of a person having actual knowledge thereof. State v. Bailey (S.C. 1969) 253 S.C. 304, 170 S.E.2d 376.

A parent may testify as to the age of his or her child if this is done with actual knowledge. State v. Bailey (S.C. 1969) 253 S.C. 304, 170 S.E.2d 376.

11. Defenses

The burden rests on defendant to show a just cause or excuse for failure to support his wife and minor daughter. State v Goins (1922) 122 SC 192, 115 SE 232. State v Sutherland (1950) 217 SC 259, 60 SE2d 591. State v Collins (1959) 235 SC 65, 110 SE2d 270, cert den 361 US 895, 4 L Ed 2d 152, 80 S Ct 199.

The actions of the defendant in separating from his wife and refusing to further keep under this care a child taken into the family, but not adopted, constituted a termination of any legal obligation that he might have owed to the child. Chestnut v. Chestnut (S.C. 1966) 247 S.C. 332, 147 S.E.2d 269. Child Support 31

Fact that wife may be supported by her parents is no defense to prosecution under this section [Code 1962 Section 20‑303]. Todd v. Todd (S.C. 1963) 242 S.C. 263, 130 S.E.2d 552. Marriage And Cohabitation 1213

Husband who has just cause or excuse for failure to support wife has burden of proving it. Todd v. Todd (S.C. 1963) 242 S.C. 263, 130 S.E.2d 552.

In prosecution under this section [Code 1962 Section 20‑303] where defendant asserts just cause or excuse for failure to support wife, burden rests upon him to prove it. State v. Campbell (S.C. 1963) 242 S.C. 64, 129 S.E.2d 902.

Valid decree of divorce affords immunity from prosecution for abandonment and nonsupport, but invalid divorce will constitute no bar to conviction under this section [Code 1962 Section 20‑303]. State v. Campbell (S.C. 1963) 242 S.C. 64, 129 S.E.2d 902. Marriage And Cohabitation 1222

Trial judge erred in refusing to admit into evidence exemplified copy of divorce proceedings of another state regular upon its face when tendered by defendant to show just cause or excuse. State v. Campbell (S.C. 1963) 242 S.C. 64, 129 S.E.2d 902. Criminal Law 1170(1); Marriage And Cohabitation 1252

Where husband testified as to his earnings in response to questions by his own attorney, and testified that he had no way of supporting his wife and child, he waived objection to the admission of the same or similar evidence. State v. Collins (S.C. 1959) 235 S.C. 65, 110 S.E.2d 270, certiorari denied 80 S.Ct. 199, 361 U.S. 895, 4 L.Ed.2d 152.

The husband is not barred of the defense that he is not supporting his minor children for just cause or excuse merely because he has not, prior to the criminal prosecution, established on the civil side of the court his right to their custody. State v. Hellams (S.C. 1946) 209 S.C. 141, 39 S.E.2d 212.

A decree made in a civil proceeding in alimony is not admissible in a criminal proceeding under this section [Code 1962 Section 20‑303] where the decree was to be used to fix the status of the parties as to liability for support. State v Rogers (1941) 198 SC 273, 17 SE2d 563, holding that the State had no right to appeal from a judgment of acquittal under this section [Code 1962 Section 20‑303] as it was a criminal case. State v. Rogers (S.C. 1941) 198 S.C. 273, 17 S.E.2d 563.

It is no defense to a prosecution under this section [Code 1962 Section 20‑303] that wife was not dependent upon her husband for support, and that her parents were able to support her. State v. English (S.C. 1915) 101 S.C. 304, 85 S.E. 721.

In a prosecution under this section [Code 1962 Section 20‑303], it is no defense that the marriage was contracted under the proviso of Code 1962 Section 16‑405 permitting a seducer to escape the penalty of his wrong by marrying his victim. State v. English (S.C. 1915) 101 S.C. 304, 85 S.E. 721. Marriage And Cohabitation 1207

12. Instructions

A court instructed that if a wife should without just cause or excuse leave her husband and carry her unmarried minor children away from the home of her husband which he provided for them, then under the law the husband would not be required to support them. It was held that there was no error in this instruction. State v. Stafford (S.C. 1940) 193 S.C. 474, 8 S.E.2d 849.

An instruction under this section [Code 1962 Section 20‑303] that “the unfaithfulness of the wife does not excuse the father from supporting his minor unmarried children” is sound. State v. Stafford (S.C. 1940) 193 S.C. 474, 8 S.E.2d 849.

It is quite evident that the distinction between the two words “cause” and “excuse”, as used in this section [Code 1962 Section 20‑303], is largely metaphysical. The failure to include “excuse” in the charge as a defense, while “cause” was included, could not possibly have had any effect on the minds of the jury. State v. Craig (S.C. 1931) 161 S.C. 232, 159 S.E. 559.

What constitutes “just cause or excuse” for failure to support wife and minor child within this section [Code 1962 Section 20‑303] is for jury, and fact that judge singled out one circumstance which could constitute just cause or excuse in charge to jury did not exclude consideration of any other. State v. Redmond (S.C. 1929) 150 S.C. 452, 148 S.E. 474.

13. Penalty

Where the court provides for monthly support payments conditioned on a bond as an alternative to the penalty provided by the sentence, the aggregate payments are not to exceed the amount of the fine imposed. State v. Barton (S.C. 1942) 201 S.C. 225, 22 S.E.2d 585.

Before this section [Code 1962 Section 20‑303] was amended in 1925, it gave the court discretion to impose either fine or imprisonment, but required it to determine which of the two should be imposed. State v. Goins (S.C. 1922) 122 S.C. 192, 115 S.E. 232.

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Adoption, see Section 63‑9‑30 et seq.

Equal access to educational and medical records of child by parents, see Section 63‑15‑260.

Failure to cause child to attend school, see Section 59‑65‑20.

Gifts of securities or money to minors, see Section 63‑5‑500 et seq.

Parent or guardian permitting unauthorized minor to drive, see Section 56‑1‑490.

Telephonic and electronic communication between minor child and parents, see Section 63‑15‑250.

Library References

Child Custody 22.

Guardian and Ward 4.

Kidnapping 23.

Parent and Child 1, 2.5, 5, 8.

Westlaw Topic Nos. 76D, 196, 231E, 285.

C.J.S. Guardian and Ward Section 4.

C.J.S. Parent and Child Sections 1 to 12, 40 to 54, 65, 67, 201, 262 to 266, 270 to 278.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 124, Equal Rights as to Custody.

S.C. Jur. Children and Families Section 131, The Custody Trial and the Best Interests of the Child.

S.C. Jur. Children and Families Section 142, Joint Custody.

S.C. Jur. Divorce Section 24, Defined.

S.C. Jur. Divorce Section 25, Best Interests of the Child.

United States Supreme Court Annotations

Right of custody, removal of child to foreign country, see Abbott v. Abbott, 2010, 130 S.Ct. 1983, 560 U.S. 1, 176 L.Ed.2d 789, on remand 393 Fed.Appx. 148, 2010 WL 3377233.

Attorney General’s Opinions

Rights of guardian to custody of child are not superior to those of a natural parent. 1967‑68 Op. Atty. Gen, No 2543, p 237.

NOTES OF DECISIONS

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1. In general

Applied in Clardy v Ford, 203 SC 44, 26 SE2d 20 (1943). Constance v Gosnell, 62 F Supp 253 (1945). Moore v Moore, 235 SC 386, 111 SE2d 695 (1959).

Cited in Beckwith v McAlister, 165 SC 1, 162 SE 623 (1932). West v West, 208 SC 1, 36 SE2d 856 (1946). State v Hellams, 209 SC 141, 39 SE2d 212 (1946). Nettles v Southern Ry Co., 211 SC 187, 44 SE2d 321 (1947). Sanders v Sanders, 230 SC 263, 95 SE2d 440 (1956).

This section [Code 1962 Section 31‑51] puts the father and mother upon parity with respect to the legal right of custody of their children. Powell v Powell, 231 SC 283, 98 SE2d 764 (1957). Todd v Todd, 242 SC 263, 130 SE2d 552 (1963). Ford v Ford, 242 SC 344, 130 SE2d 916 (1963).

The judgment of a court of one state as to custody of children, after a hearing on the merits, must in the absence of fraud or want of jurisdiction be given the same full effect in every other state as to the facts before the court at the time such judgment was rendered. Barrett v. Barrett (S.C. 1973) 261 S.C. 111, 198 S.E.2d 532.

2. Custody factors

Among various factors and circumstances which court should consider in determining what is for best interest of child or children are age, health and sex, sometimes referred to as “tender years doctrine,” under which mother is given preference as to children of tender years surroundings and opportunities afforded in respective environments, conduct and suitability of parents, preference in favor of innocent or prevailing party, financial condition of parents agreements between parties actual possession of child and others. Ford v. Ford (S.C. 1963) 242 S.C. 344, 130 S.E.2d 916.

3. —— Welfare or best interest of child

In determining the rights of the respective parents to the custody of their child, the welfare of the child shall be the prime consideration of the court. Simmons v Simmons, 41 F Supp 545 (1941), quoting Graydon v Graydon, 150 SC 117, 147 SE 749 (1929).

Best interests of children involved in custody dispute were not compromised by their attendance at schools in mother’s state of residence, despite higher scores obtained by schools in father’s state of residence in pupil performance scholarship exams, where schools in mother’s state of residence were sufficient to provide children with tools to succeed in that state’s colleges. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Child Custody 88

Best interest of the child is the controlling factor in custody cases. Patel v. Patel (S.C. 2004) 359 S.C. 515, 599 S.E.2d 114, rehearing denied. Child Custody 76

The welfare of the child required that custody be awarded to her father with liberal visitation accorded the mother, where the mother planned to practice medicine as an OB/GYN, she would have to make daily rounds at the hospital, schedule time for surgery, be available for emergencies and to deliver babies, the father had been in the oil business for 10 years, he planned to continue living in the same house where the child had lived for the previous 2 years, the child would be able to attend the same school and church and would remain in the same neighborhood if she lived with her father, and the father’s home was spacious and in a good neighborhood near the child’s paternal grandparents and many of her first cousins. Richmond v. Tecklenberg (S.C.App. 1990) 302 S.C. 331, 396 S.E.2d 111.

The welfare of the child and what is in child’s best interest is the primary, paramount and controlling consideration of the court in all child custody controversies. Cook v. Cobb (S.C. 1978) 271 S.C. 136, 245 S.E.2d 612. Child Custody 76

While preference usually given to parents as against others in child custody disputes, the rights of even a fit parent are merely presumptive and must yield when the best interests of the child would not be subserved. Cook v. Cobb (S.C. 1978) 271 S.C. 136, 245 S.E.2d 612. Child Custody 510

The welfare of the children, and what is for their best interests, is the primary, paramount and controlling consideration in all controversies between parents as to their custody. Adams v. Miller (S.C. 1969) 253 S.C. 118, 169 S.E.2d 391.

In a custody dispute the controlling question and th dominant consideration is the welfare of the children, and what is for their best interest. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376. Child Custody 76

Welfare of children and what is for their best interest is primary paramount and controlling consideration in controversies between parents over custody of their minor children. Todd v Todd, 242 SC 263, 130 SE2d 552 (1963). Ford v. Ford (S.C. 1963) 242 S.C. 344, 130 S.E.2d 916. Child Custody 76

That the welfare of the children is the primary consideration for the court is recognized in this section [Code 1962 Section 31‑51] and Code 1962 Section 20‑115. Pullen v Pullen, 253 SC 123, 169 SE2d 376 (1969). Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

The custody of children of separated and contending parents usually presents a difficult and delicate problem. The controlling question and the dominant consideration is the welfare of the child, and what is for the child’s best interest. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

The well‑being of the child is to be regarded more than the technical legal rights of the parties, so that, following this rule, it is generally held that the child will not be delivered to the custody of either parent where it is not to its best interest. The right of the parent is not absolute and unconditional. The primary consideration for the guidance of the court is what is best for the child itself. Koon v. Koon (S.C. 1943) 203 S.C. 556, 28 S.E.2d 89.

Legal rights of parent must be subordinated to welfare of child in determining rights to child’s custody. Graydon v. Graydon (S.C. 1929) 150 S.C. 117, 147 S.E. 749. Child Custody 76

4. —— Age of child

The family court, hearing a petition to review a joint custody order, gave proper consideration to the “tender age doctrine” prior to awarding sole custody to the father where the doctrine created no presumption in favor of either parent, the evidence showed that during the joint custody the father had joint or sole custody of the child, and the judge’s order stated that he had considered “the psychological, physical, environmental, and recreational aspects of the child’s health, age, and sex in awarding custody.” Wheeler v. Gill (S.C.App. 1992) 307 S.C. 94, 413 S.E.2d 860.

A family court erred in holding that the tender years doctrine mandated that custody be given to the mother because the children were young females. Radtke v. Radtke (S.C. 1989) 297 S.C. 260, 376 S.E.2d 275. Child Custody 26

South Carolina courts feel that in a situation in which the mother is found to be a fit and proper person and the children are of “tender years,” it is in the best interest of the children to be in the custody of their natural mother. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376.

General rule as to preference to be given to mother in award of custody of young children not inflexible and applicable in every case, mother of child of tender years not being entitled to its custody as a matter of law. Ford v. Ford (S.C. 1963) 242 S.C. 344, 130 S.E.2d 916. Child Custody 26

Custody of children of tender years may be awarded to the father rather than to the mother; the controlling consideration is the welfare of the children. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

5. —— Parent’s conduct

The family court did not err by granting sole custody of a 3 year‑old girl to her father where the evidence showed that although both parents were loving and had family nearby, the mother, who had committed adultery, had married her paramour and held 3 jobs in the course of a year, the father continued to live in the familial home and held the same job for 7 years, and the father and the child were closely bonded. Wheeler v. Gill (S.C.App. 1992) 307 S.C. 94, 413 S.E.2d 860.

Conduct which is “immoral” must also be shown to be detrimental to the welfare of the child before it is of legal significance in a custody dispute. Shainwald v. Shainwald (S.C.App. 1990) 302 S.C. 453, 395 S.E.2d 441. Child Custody 32

A trial court did not abuse its discretion in awarding custody of the parties’ children to the husband, even though the wife loved the children and was a fit parent, where the husband had had primary custody of the children since he and the wife separated, he lived with his mother who helped him take care of the children, the children had been well cared for during that period, the husband loved the children, and the wife had tended to put her active social life before the interests of the children. Husband v. Wife (S.C.App. 1990) 301 S.C. 531, 392 S.E.2d 811.

Father entitled to custody of young son though wife was a devoted mother, where trial judge’s finding that wife was the less stable parent was supported by evidence that she had been under psychiatrist’s care and had attempted suicide. Murray v. Murray (S.C. 1978) 271 S.C. 62, 244 S.E.2d 538.

It is usual for the custody of children of divorced parents to be awarded to the parent who is innocent of the conduct which led to the divorce. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

The right of the mother to custody of children of tender years may be recognized although she is the party in fault, if such fault does not reflect on her moral character. Powell v. Powell (S.C. 1957) 231 S.C. 283, 98 S.E.2d 764.

6. —— Contract between parents

A final decree awarding the custody of a child in a divorce case, based on an agreement of the parties, is conclusive as between them if no change of circumstances affecting the welfare of the child is shown. Pullen v Pullen, 253 SC 123, 169 SE2d 376 (1969). Barrett v Barrett, 261 SC 111, 198 SE2d 532 (1973).

Contracts between spouses as to custody of children will be recognized unless welfare of children requires different disposition, and it is incumbent upon one who would disregard contract to show that welfare of children requires that the agreement be ignored and set aside. Ford v. Ford (S.C. 1963) 242 S.C. 344, 130 S.E.2d 916.

7. —— Wishes of child

The wishes of a child of any age may be considered under all the circumstances. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271.

The weight given to the child’s wishes is dominated by what is best for the welfare of the children. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271.

The significance to be attached to the wishes of the child in a custody dispute depends upon the age of the child and the attendant circumstances. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271. Child Custody 78

The mere fact that the seven‑year‑old child expressed a desire to live with his father did not constitute a change in condition sufficient to warrant a change in custody. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271. Child Custody 566

8. Presumption favoring biological parent

Although the best interest of the child is the primary and controlling consideration of the court in all child custody controversies, there is a rebuttable presumption that it is in the best interest of any child to be in the custody of its biological parent. The rebuttable presumption standard requires a case‑by‑case analysis. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456.

9. Joint custody

Ordinarily it is not conducive to the best interest and welfare of a child for it to be shifted and shuttled back and forth as such an arrangement is likely to cause confusion, interfere with the proper training of the child and make the child the basis of many quarrels between its custodians. The best interest and welfare of the child demands that divided custody be avoided if at all possible and such will not be approved except under exceptional circumstances. Bolick v. Bolick (S.C.App. 1989) 297 S.C. 312, 376 S.E.2d 785. Child Custody 210

10. Guardian ad litem’s recommendation

The determination as to whether the opinion of a guardian ad litem or a social worker should be admitted for advisory purposes in a child custody action is within the discretion of the family court judge, provided that full right of cross‑examination is afforded. Richmond v. Tecklenberg (S.C.App. 1990) 302 S.C. 331, 396 S.E.2d 111.

A trial judge in a child custody action did not err in allowing the guardian ad litem (GAL) to give her opinion as to whom custody should be awarded and in receiving the written report of the GAL recommending that custody be awarded to the father, where the GAL interviewed 41 witnesses, approximately 20 of those witnesses testified, the names of all the persons interviewed by the GAL were made available to counsel, each interviewee could have been deposed by counsel for the mother, and full right of cross‑examination of the testifying witnesses was afforded. Richmond v. Tecklenberg (S.C.App. 1990) 302 S.C. 331, 396 S.E.2d 111. Evidence 318(3); Evidence 472(1)

It was error for a court to receive and utilize a guardian ad litem’s report in making its custody determinations without first affording the parties an opportunity to see the report, where the parties were left with the impression by the judge that it was not necessary for the guardian ad litem to furnish a written report after the hearing. The court also erred in not affording the parties the right to examine the guardian ad litem and other witnesses who furnished facts contained in the report. However, while some of the language contained in the court’s order was similar to that contained in the report, the court’s use of the report was harmless error in view of the fact that there was other evidence to support the findings of the trial judge. Shainwald v. Shainwald (S.C.App. 1990) 302 S.C. 453, 395 S.E.2d 441.

The extent to which a guardian ad litem is permitted to testify and give an opinion or recommendation in a child custody case is left to the sound discretion of the trial judge. The trial judge’s duty to assure that the child’s best interests are protected requires as a minimum that: (1) the judge select a competent person to serve as guardian ad litem; (2) the judge select a person with no adverse interests to the minor; and (3) the person so selected is adequately instructed on the proper performance of his or her duties. Shainwald v. Shainwald (S.C.App. 1990) 302 S.C. 453, 395 S.E.2d 441.

Upon the question of the custody of children as between their estranged parents, the recommendation of a master is entitled to more weight because of his opportunity to observe the witnesses while the court is confined in its consideration on appeal to the cold record of their testimony. Powell v Powell, 231 SC 283, 98 SE2d 764 (1957). Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

11. Removal of child from State

Under the provisions of this section [Code 1962 Section 31‑51] a father cannot maintain an action against his wife, the mother of their infant child, for damages for her forcible removal of the child from the State. Simmons v. Simmons, 1941, 41 F.Supp. 545.

Mother’s intended move out of state did not constitute a substantial change in circumstances affecting the welfare of the children as would support change of child custody from mother to father, under joint custody order giving mother the right to establish the primary residence of the children; children were flourishing in mother’s care, move would permit mother to better provide children with economic security, mother had family and friends in the new area, mother’s decision to move was not made on a whim, father stated he would move with mother and children to new location, mother would permit father to choose the neighborhood she would move to, and if father chose not to move, he would have continued visitation every other weekend and alternating holidays, with the added benefit of mother reimbursing him for one airline ticket per month if he chose to fly to visit the children. Walrath v. Pope (S.C.App. 2009) 384 S.C. 101, 681 S.E.2d 602. Child Custody 576

A mother would not be restrained from moving with her children to Virginia, nor would custody be given to the father if she moved, where (1) she was without fault in bringing about the divorce, which was granted on the ground of adultery admitted by the father, (2) she had family and full‑time employment in Virginia, (3) the father’s paramour stayed overnight at his residence, and (4) the record was silent as to how the father would care for the children if custody were granted to him. VanName v. VanName (S.C.App. 1992) 308 S.C. 516, 419 S.E.2d 373, rehearing granted, certiorari denied.

A mother’s move to Virginia to be nearer to her family and to obtain more advantageous employment, despite being a change of circumstance, would not, standing alone, warrant a change of custody to the father. VanName v. VanName (S.C.App. 1992) 308 S.C. 516, 419 S.E.2d 373, rehearing granted, certiorari denied. Child Custody 568

The family court erred in limiting a child custody award to a wife by requiring that she reside within 250 miles of the city in which she and her husband had lived, and where his business was located, where no showing was made that such a limitation would be in the best interests of the children, neither the husband nor the wife had any family living in the state, and the wife’s career as an engineer made it highly conceivable that she would be forced to move to another state in order to maximize her employment potential; the husband could petition for a change of custody if he could show that such a requirement would be in the children’s best interests. Eckstein v. Eckstein (S.C.App. 1991) 306 S.C. 167, 410 S.E.2d 578.

Under Section 21‑21‑10, the controlling consideration in making an award of custody of children is the welfare and best interest of the children; accordingly, in a divorce and custody proceeding, the best interest of the children was served by allowing the mother to relocate to Louisiana where the mother had friends and family there who would provide the love, support, and attention to the children as would the father’s family located in South Carolina. Marshall v. Marshall (S.C.App. 1984) 282 S.C. 534, 320 S.E.2d 44.

Removal of child from State is factor in determining welfare of child. Assuming that a mother in removing the child from the State deprived the father of visitation and this constituted a violation of the custodial decree, such could only be considered in determining the welfare of the child. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271.

Where the original decree granting custody to the mother was silent as to the place where the mother and child were to live, and, since the decree contained no directions as to place of residence, the mere fact that the mother went to another state to live with relatives did not constitute a material change in condition justifying a transfer of custody to the father. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271. Child Custody 568

Wife, by taking child from State without husband’s knowledge or consent, violated this section [Code 1962 Section 31‑51]. Graydon v. Graydon (S.C. 1929) 150 S.C. 117, 147 S.E. 749. Child Custody 261

12. Grant of custody to nonparent

The aunt and uncle of a child, who had raised the child since shortly after its birth and the death of its mother, should not have been granted custody where the Family Court judge failed to make a finding that the biological father was unfit. Hogan v. Platts (S.C. 1993) 312 S.C. 1, 430 S.E.2d 510.

The Family Court properly awarded a mother the custody of her 6‑year‑old son, even though he had been living with his grandparents since he was 9‑months‑old, where the mother was fit and in a stable marriage, had maintained contact with him in the form of visits and financial support, had transferred his custody at a time when she was the victim of an abusive spouse, and had bonded with him, despite his having lived with his grandparents. Malpass v. Hodson (S.C. 1992) 309 S.C. 397, 424 S.E.2d 470.

The court should consider the following criteria in making custody determinations when a natural parent, who temporarily relinquished custody of his or her child, seeks to reclaim custody of the child: (1) the parent’s ability to properly care for the child and provide a good home; (2) the amount of contact, in the form of visits, financial support or both, which the parent had with the child while it was in the care of a third party; (3) the circumstances under which temporary relinquishment occurred; and (4) the degree of attachment between the child and the temporary custodian. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456. Child Custody 42; Child Custody 68

Although there might have existed a psychological parent‑child relationship between a child and foster parents to whom the child’s father had temporarily relinquished custody, the mere existence of such a bond was an inadequate ground to justify awarding permanent custody to the foster parents, particularly where such a relationship was built on the foster parents’ overt acts which inhibited the development of a normal relationship between the natural parent and his child. Bonding is only one of the major factors to be considered in deciding a custody dispute involving third parties seeking to deprive a natural parent of custody of his or her child. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456.

A court order granting custody of a child to a family acquaintance was not a court determination of the issue of the mother’s visitation where the order stated that the mother consented to the custody arrangement but said nothing about visitation. Duck v. Jenkins (S.C.App. 1988) 297 S.C. 136, 375 S.E.2d 178. Child Custody 577

Welfare of child and what is in his/her best interest is primary, paramount and controlling consideration of court in all child custody controversies; while, in contest for custody of child between grandparent and party not related to child, some weight should be given to grandparent’s status as relative, welfare and best interest of child are determinative. Kemry v. Fox (S.C. 1979) 273 S.C. 268, 255 S.E.2d 836.

Award of custody of 8‑year‑old child to her paternal grandparents upheld where mother had left child with grandparents for 3 years, the child regarded her grandparents as parent figures and herself as part of that family group, and the mother had moved to New York City to pursue a theatrical career and had adopted a “rather Bohemian life style.” Cook v. Cobb (S.C. 1978) 271 S.C. 136, 245 S.E.2d 612.

Grandparents normally have no standing to claim entitlement to custody of their grandchildren, as the mother and father are the joint natural guardians of their minor children and are charged under this section with their welfare; nevertheless, since it is provided by statute that the welfare of the minor shall be the first consideration concerning the custody of a minor, an award of custody of an 8‑year‑old child to the child’s paternal grandparents was upheld on a finding that such award was in the best interests of the child. Cook v. Cobb (S.C. 1978) 271 S.C. 136, 245 S.E.2d 612.

Mother entitled to custody as against grandparent who is of good character and proper person to have custody of her children and reasonably able to provide for them. Todd v. Todd (S.C. 1963) 242 S.C. 263, 130 S.E.2d 552. Child Custody 276

13. Modification of custody

Changed circumstances may authorize a change of custody. Ex parte Atkinson, 238 SC 521, 121 SE2d 4 (1961). Pullen v Pullen, 253 SC 123, 169 SE2d 376 (1969).

If a parent relinquishes custody of his or her child in good faith because of some temporary inability to provide for the child, the parent should be able to regain custody upon a showing that the condition which required relinquishment has been resolved. Child custody should not be subject to change because of adverse possession. Moore v. Moore (S.C. 1989) 300 S.C. 75, 386 S.E.2d 456. Child Custody 68

Judgment in other state does not prevent a change in custody by another court based upon a subsequent and substantial change of condition. Barrett v. Barrett (S.C. 1973) 261 S.C. 111, 198 S.E.2d 532.

A change of circumstances warranting a custody change must be such as would substantially affect the interest and the welfare of the child, not merely the parties, their wishes or convenience. Barrett v. Barrett (S.C. 1973) 261 S.C. 111, 198 S.E.2d 532.

Remarriage is of course a change of condition in determining the questions of the custody of a child but such “is not ordinarily of an adverse character and is most often used as a basis to gain custody rather than a reason to lose it.” Barrett v. Barrett (S.C. 1973) 261 S.C. 111, 198 S.E.2d 532.

The general rule is that a child custody decree is not final, but is subject to modification or change upon the showing of a material change in conditions affecting the welfare of the child. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271. Child Custody 553

The court may not award or change custody to punish a parent for acting in violation of the orders of the court. Smith v. Smith (S.C. 1973) 261 S.C. 81, 198 S.E.2d 271. Child Custody 552

The custody of children is always to some extent subject to reexamination. Adams v. Miller (S.C. 1969) 253 S.C. 118, 169 S.E.2d 391.

The general rule is that the divorce court may modify or revise its decree or order as to custody as changed circumstances or conditions may require or justify. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376. Child Custody 555

To get a change of custody there must be a showing of new facts and circumstances. Pullen v. Pullen (S.C. 1969) 253 S.C. 123, 169 S.E.2d 376.

A judicial award of the custody of a child is never final. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

The court may at any time on the application of any interested party or even on its own motion, upon sufficient showing, make further disposition of the custody of a child, if new facts and circumstances make it necessary or desirable for the child’s welfare. Ex parte Atkinson (S.C. 1961) 238 S.C. 521, 121 S.E.2d 4.

14. —— Burden of proving changed circumstances

Party seeking to upset custody of child and bring about a change of custody must prove a change of conditions which substantially affects the interest and welfare of the child. Cook v. Cobb (S.C. 1978) 271 S.C. 136, 245 S.E.2d 612. Child Custody 553

It is incumbent upon the moving party to show that the welfare of the child requires the court to ignore and set aside the agreement of the parties incorporated in the decree. Barrett v. Barrett (S.C. 1973) 261 S.C. 111, 198 S.E.2d 532.

15. Obligations of parents

Mother, in her individual capacity, was real party in interest with respect to future medical expenses that would be incurred while daughter, who allegedly suffered nerve injuries in her shoulder and arm as result of medical malpractice during delivery, was still a minor, since mother owned substantive right to recover damages for such expenses in medical malpractice action because parental responsibilities included legal obligation to pay for a child’s medical expenses. Patton v. Miller (S.C. 2017) 804 S.E.2d 252. Health 812

Mother, in her individual capacity, was real party in interest with respect to past medical expenses incurred to treat minor daughter, who allegedly suffered nerve injuries in her shoulder and arm as result of medical malpractice during delivery, since mother owned substantive right to recover damages for such expenses in medical malpractice action because parental responsibilities included legal obligation to pay for a child’s medical expenses. Patton v. Miller (S.C. 2017) 804 S.E.2d 252. Health 812

**SECTION 63‑5‑40.** Breastfeeding.

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

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

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.

Obscenity 3.

Parent and Child 1.

Westlaw Topic Nos. 211, 281, 285.

C.J.S. Infants Sections 110 to 114, 118 to 121.

C.J.S. Obscenity Sections 9 to 10.

C.J.S. Parent and Child Sections 1 to 12, 201.

RESEARCH REFERENCES

Encyclopedias

146 Am. Jur. Trials 119, Suit Against Employer Under Title VII for Failing to Accommodate or for Taking Adverse Employment Action Against Female Employee Who Wishes to Express Breast Milk at Work.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 45:60.50, South Carolina.

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

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

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13, 15.

Westlaw Topic No. 211.

C.J.S. Infants Sections 110 to 115, 118 to 121.

Attorney General’s Opinions

If a court finds the child to be incorrigible, then parents or guardians are not required to continue supporting the child. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

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

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

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

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

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

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

HISTORY: 2008 Act No. 361, Section 2.

Library References

Parent and Child 13.5.

Westlaw Topic No. 285.

C.J.S. Parent and Child Sections 191, 309 to 315.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Parent and Child Section 107 , Introductory Comments.

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

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

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

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

 (3) wilfully abandon the child.

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

HISTORY: 2008 Act No. 361, Section 2.

Federal Aspects

Victims of child abuse act of 1990, P. L. 101‑647 Sections 201 et seq., 42 U.S.C.A. Section 13001 et seq.

Library References

Child Support 652.

Infants 13.

Westlaw Topic Nos. 76E, 211.

C.J.S. Infants Sections 110 to 114, 118 to 121.

C.J.S. Parent and Child Sections 208, 359 to 365, 377.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 153, Jurisdiction.

Attorney General’s Opinions

The Office of Attorney General will make no determination as to whether children in a private facility which is allegedly operating without meeting safety, fire, etc. standards are “abused or neglected” as provided in sections 63‑7‑310 or 63‑7‑20(4), consideration should be given to reporting the information to the appropriate authorities as specified in section 63‑7‑310 for further investigation and review. S.C. Op.Atty.Gen. (Oct. 7, 2010) 2010 WL 4391636.

NOTES OF DECISIONS

In general 1

Endangerment during pregnancy 3

Jury question 5

Neglect 2

Negligent entrustment insurance claims 4

Sufficiency of evidence 6

1. In general

By failing to include “knowingly” or other apt words to indicate criminal intent or motive, the Legislature intended that a person violates this section where he simply, without knowledge or intent that his act is criminal, fails to provide proper care and attention for a child or helpless person of whom he has legal custody, so that the life, health, and comfort of that child or helpless person is endangered, or is likely to be endangered. State v. Jenkins (S.C. 1982) 278 S.C. 219, 294 S.E.2d 44.

2. Neglect

In the prosecution of a father for child neglect, the State failed to prove that the father had legal custody of the child at the time of the neglect, as required by Section 20‑7‑50, where the father had never been married to the mother of the child. State v. Fowler (S.C.App. 1996) 322 S.C. 157, 470 S.E.2d 393, rehearing denied, certiorari granted, appeal dismissed. Infants 1705(2)

Mother, who left two of her children, ages eight and five, sleeping alone in her house while she went out for a ride with a friend and returned home approximately one hour later, to find the house burning resulting in the death of both children, would not be entitled to a directed verdict of not guilty. State v. Jenkins (S.C. 1982) 278 S.C. 219, 294 S.E.2d 44. Infants 1632(2)

3. Endangerment during pregnancy

Child abuse and endangerment statute gave mother fair notice that ingesting cocaine during third trimester of pregnancy was proscribed; statute forbids any person having legal custody of a child from refusing or neglecting to provide proper care and attention to the child so that the life, health, or comfort of child is endangered or is likely to be endangered; plain meaning of “child” as used in statute includes a viable fetus, and it is common knowledge that use of cocaine during pregnancy can harm viable unborn child. Whitner v. State (S.C. 1997) 328 S.C. 1, 492 S.E.2d 777, 70 A.L.R.5th 723, rehearing denied, certiorari denied 118 S.Ct. 1857, 523 U.S. 1145, 140 L.Ed.2d 1104. Infants 1006(12)

Prosecuting mother under child abuse and endangerment statute for using crack cocaine after her fetus attained viability did not unconstitutionally burden her right of privacy, or, more specifically, her right to carry her pregnancy to term. Whitner v. State (S.C. 1997) 328 S.C. 1, 492 S.E.2d 777, 70 A.L.R.5th 723, rehearing denied, certiorari denied 118 S.Ct. 1857, 523 U.S. 1145, 140 L.Ed.2d 1104. Constitutional Law 1238; Infants 1006(12)

4. Negligent entrustment insurance claims

Insured’s guilty plea to unlawful neglect of a child, offense that could be proven without proof of intent, did not collaterally estop insured from relitigating issue of her intent to harm grandchildren in her care, for purposes of negligent entrustment claim of her daughter in action against homeowner’s insurer. Manufacturers and Merchants Mut. Ins. Co. v. Harvey (S.C.App. 1998) 330 S.C. 152, 498 S.E.2d 222. Judgment 648; Judgment 751

Insured’s guilty plea to committing lewd acts on a child, although dispositive of issue of specific intent, did not collaterally estop insured from contesting negligent entrustment claim of his daughter in action against homeowner’s insurer. Manufacturers and Merchants Mut. Ins. Co. v. Harvey (S.C.App. 1998) 330 S.C. 152, 498 S.E.2d 222. Judgment 648; Judgment 751

5. Jury question

Issue of whether defendant, child homicide victim’s grandmother, placed victim at an unreasonable risk of harm was for the jury in prosecution for unlawful conduct towards a child; defendant told at least two people that she was continuing to give the victim an antihistamine drug after it was no longer medically indicated, and in amounts three to five times the recommended dosage, defendant admitted lacking patience, smacking the victim on his hands and behind, and shaking him, and unusual bruises were found on victim’s body. State v. Palmer (S.C. 2015) 413 S.C. 410, 776 S.E.2d 558, rehearing denied. Infants 1632(2)

Issue of whether defendants were guilty of charge of unlawful conduct towards a child was question for jury in joint trial for homicide by child abuse. State v. Palmer (S.C.App. 2014) 408 S.C. 218, 758 S.E.2d 195, rehearing denied, certiorari granted, affirmed in part, reversed in part 413 S.C. 410, 776 S.E.2d 558. Homicide 1322

State presented some evidence that defendant was a person responsible for victim’s welfare, as required to submit charge of unlawful conduct towards a child to jury, where defendant and victim’s mother had been dating for four months, defendant stayed overnight with them between two and four nights a week, defendant and victim’s mother had discussed moving in together, defendant would instruct victim verbally, defendant had changed victim’s diaper and had bathed her, and defendant had watched victim on prior occasions with others present. State v. Williams (S.C.App. 2013) 405 S.C. 263, 747 S.E.2d 194, rehearing denied. Infants 1665(2)

6. Sufficiency of evidence

There was sufficient evidence of defendants’ guilt to justify trial court’s denial of their directed verdict motions with respect to unlawful conduct toward a child charges; evidence indicated that defendants’ complicity in beatings of victim, their son, and their failure to seek medical treatment placed victim at unreasonable risk of harm, defendants failed to follow up with medical professionals’ recommendations for victim’s care while he was in their custody, witnesses saw defendants hitting victim and depriving victim of food, and victim’s blood was found on various places throughout defendants’ home. State v. Thompson (S.C.App. 2017) 420 S.C. 192, 802 S.E.2d 623. Infants 1632(2)

Evidence was insufficient to support defendants’ convictions for aiding and abetting homicide by child abuse in joint trial; there was no evidence other than rank speculation that either defendant abused the child in the presence of the other who then failed to seek medical help, and there was no evidence that more prompt treatment would have mitigated the victim’s injuries. State v. Palmer (S.C. 2015) 413 S.C. 410, 776 S.E.2d 558, rehearing denied. Homicide 1207; Infants 1706

Evidence was insufficient to support finding that defendant, the companion of child victim’s grandmother, either harmed the victim or was aware victim’s grandmother was harming him and, thus, would not support conviction for unlawful conduct toward a child; defendant was not alone with child victim until after victim sustained injuries and fell asleep, the only evidence was that victim was sleeping and breathing normally until grandmother found him in distress, and the only evidence was that the sleeping victim’s injuries would not have been immediately apparent. State v. Palmer (S.C. 2015) 413 S.C. 410, 776 S.E.2d 558, rehearing denied. Infants 1705(2)

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Care, custody and maintenance of children, see Section 20‑3‑160.

Federal Aspects

Victims of child abuse act of 1990, P. L. 101‑647 Sections 201 et seq., 42 U.S.C.A. Section 13001 et seq.

Library References

Infants 15.

Westlaw Topic No. 211.

C.J.S. Infants Sections 110 to 111, 115.

NOTES OF DECISIONS

In general 1

1. In general

County agency had no duty, under due process clause of Federal Constitution’s Fourteenth Amendment, to protect child against abuse by his father while child was in father’s custody. DeShaney v. Winnebago County Dept. of Social Services, U.S.Wis.1989, 109 S.Ct. 998, 489 U.S. 189, 103 L.Ed.2d 249.

ARTICLE 3

Legal Capacity of Minors

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

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

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Bank deposits of minors, see Section 34‑11‑20.

Capacity of infant to make will, see Section 62‑2‑501.

Lease of safe deposit box to minor, see Section 34‑19‑30.

Shares of minors in cooperative credit unions, see Section 34‑27‑160.

Uniform Gifts to Minors Act, see Sections 63‑5‑500 et seq.

Library References

Infants 57.

Westlaw Topic No. 211.

C.J.S. Infants Sections 214 to 223, 263 to 264.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 66, Ratification or Avoidance.

S.C. Jur. Children and Families Section 77, South Carolina Law.

S.C. Jur. Gifts Section 8, Capacity.

Treatises and Practice Aids

Williston on Contracts Section 9:17, Ratification.

Attorney General’s Opinions

Where a minor, unmarried female gives birth to a child and receives public assistance for herself and her child; such minor would represent a child support obligation on the part of her parents unless she is emancipated and such obligation may be enforced under the criminal sanctions of Section 20‑7‑40, CODE, 1976; Section 15‑1385, CODE, 1962 has been repealed by implication and is no longer in effect; determination of the emancipation of the Minor, entails an analysis of the facts of each individual case, only one of which is whether or not the minor and her offspring live in the minor’s parental home; an assignment executed by an unemancipated minor is voidable at the minor’s option but is not, however, subject to attack by third parties and is, therefore, valid for child support collection purposes absent voiding by the minor. 1978 Op. Atty Gen, No. 78‑7, p 16. [Under former law].

NOTES OF DECISIONS

In general 1

Confirmation of contract 4

Estoppel 5

Necessaries 2

Parental responsibility 3

1. In general

A simple acknowledgment after coming of age is not sufficient. Steele v Poe (1908) 79 SC 407, 60 SE 951, citing Exchange Bank v McMillan (1907) 76 SC 561, 57 SE 630.

Minor engaged in business in foreign state and executing mortgage there on land in this State, may disaffirm contract here in foreclosure of mortgage. Exchange Bank of Ft. Valley v. McMillan (S.C. 1907) 76 S.C. 561, 57 S.E. 630.

2. Necessaries

Fertilizers sold to minor for benefit of father held not “necessaries” so as to preclude defense of infancy to mortgage given therefor during minority. Virginia‑Carolina Chemical Corp. v. Chandler (S.C. 1933) 168 S.C. 425, 167 S.E. 663. Infants 1065; Infants 1126

3. Parental responsibility

Judgment allowing payment of costs of minor’s emergency hospital and medical treatment out of unspecified sum which minor recovered as damages for injuries sustained in accident requiring his hospitalization was remanded to lower court with instructions to court to determine whether minor’s parents were able to discharge their obligation to pay hospital bills, before allowing recovery from minor or his estate. Greenville Hospital System v. Smith (S.C. 1977) 269 S.C. 653, 239 S.E.2d 657.

Minor or estate not liable for emergency hospital services where minor is living with and being supported by parents, unless parents are unable to pay reasonable value of hospital services rendered. Greenville Hospital System v. Smith (S.C. 1977) 269 S.C. 653, 239 S.E.2d 657. Infants 1105

4. Confirmation of contract

Where the adult partner mortgaged partnership property, in which partnership the other partner, at the time of the mortgage, was an infant, the fact that the infant partner remained in the firm as a partner, drawing profits therefrom after his majority, confirmed the contract of partnership and subjected him to all the liabilities of the firm incurred during his minority. Salinas v. Bennett (S.C. 1890) 33 S.C. 285, 11 S.E. 968.

5. Estoppel

An infant purchaser, who did not ratify contract in writing after he reached his majority, as required by this section [Code 1962 Section 11‑152], and who by such contract received property worth merely $1,000 in consideration of the assumption of $3,500 indebtedness, was not estopped to deny the validity of the contract merely because he made an effort during a period of 3 months after he arrived at full age to sell or rent the property and to borrow money on it to pay the debt assumed. Beam v McBrayer (1925) 132 SC 72, 128 SE 34. Jones v Godwin (1938) 187 SC 510, 198 SE 36.

Infant may be estopped from relying on this section [Code 1962 Section 11‑152], but the conduct upon which the estoppel is sought to be based must be intentional and fraudulent and the infant must be, at the time, of years of discretion and also the other party must have believed and relied on the conduct of the infant to his detriment. Floyd v. Page (S.C. 1924) 129 S.C. 301, 124 S.E. 1.

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

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

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 53.

Westlaw Topic No. 211.

C.J.S. Infants Section 242.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 77, South Carolina Law.

Attorney General’s Opinions

A minor who has executed a promissory note or other written obligation for the purpose of defraying expenses incurred in his attending an institution of higher learning is legally bound thereby and may not avoid payment thereof on account of his immaturity on the date of the execution of such promissory note or other written obligation. 1963‑64 Op. Atty Gen, No. 1666, p 105. [Under former law].

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

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

HISTORY: 2008 Act No. 361, Section 2.

Library References

Health 911.

Infants 49.

Westlaw Topic Nos. 198H, 211.

C.J.S. Infants Sections 260 to 262.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 77, South Carolina Law.

S.C. Jur. Dead Bodies Section 26, Consent.

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Adolescent cervical cancer vaccinations, see Section 44‑29‑185.

Persons from whom consent is required for abortions, see Section 44‑41‑30.

Library References

Health 911.

Infants 49.

Westlaw Topic Nos. 198H, 211.

C.J.S. Infants Sections 260 to 262.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 29, Consent to Medical Treatment.

Treatises and Practice Aids

Williston on Contracts Section 9:8, Transactions that Cannot be Avoided by Infant‑Statutory Changes in Common‑Law Liability of Infants.

Attorney General’s Opinions

Minors, 16 years and older, are authorized by existing law to procure birth control pills without the consent of their parents or other persons. 1971‑72 Op. Atty Gen, No. 3364, p 213. [Under former Section 44‑45‑10].

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Persons from whom consent is required for abortions, see Section 44‑41‑30.

Library References

Health 911.

Infants 49.

Westlaw Topic Nos. 198H, 211.

C.J.S. Infants Sections 260 to 262.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 29, Consent to Medical Treatment.

Attorney General’s Opinions

A legitimate provider of health services may provide any health services (including family planning services) not involving an operation, to a minor under sixteen years of age without that minor’s parents’ or guardian’s consent, if, in the judgment of that provider, the services are necessary to maintain the well‑being of that child. The types of services involved must be the professional decision of the provider involved. 1975‑76 Op. Atty Gen, No 4291, p 109. [under former Section 44‑45‑20].

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

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

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Persons from whom consent is required for abortions, see Section 44‑41‑30.

Library References

Health 911.

Infants 49.

Westlaw Topic Nos. 198H, 211.

C.J.S. Infants Sections 260 to 262.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 29, Consent to Medical Treatment.

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

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

HISTORY: 2008 Act No. 361, Section 2.

Library References

Health 911.

Infants 49, 58.

Westlaw Topic Nos. 198H, 211.

C.J.S. Infants Sections 209 to 214, 224 to 235, 254 to 255, 260 to 264, 288 to 289.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 29, Consent to Medical Treatment.

ARTICLE 5

Uniform Gift to Minors Act

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

|  |  |
| --- | --- |
|  |  |
| NewSection | FormerSection |
| 63‑5‑500 | 20‑7‑140 |
| 63‑5‑510 | 20‑7‑150 |
| 63‑5‑520 | 20‑7‑160 |
| 63‑5‑530 | 20‑7‑170 |
| 63‑5‑540 | 20‑7‑180 |
| 63‑5‑550 | 20‑7‑190 |
| 63‑5‑560 | 20‑7‑200 |
| 63‑5‑570 | 20‑7‑210 |
| 63‑5‑580 | 20‑7‑220 |
| 63‑5‑590 | 20‑7‑230 |
| 63‑5‑600 | 20‑7‑240 |

CROSS REFERENCES

Probate code, subject matter jurisdiction, concurrent jurisdiction with family court, see Section 62‑1‑302.

**SECTION 63‑5‑500.** Short title.

 This article may be cited as the “South Carolina Uniform Gifts to Minors Act”.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Care and support of children, generally, see Sections 63‑5‑10, 63‑5‑20.

Disposal of property by will, see Sections 62‑2‑501 et seq.

Exclusion of custodial arrangements under this subarticle from the definition of “trust” for purposes of the South Carolina Probate Code, see Section 62‑1‑201.

Investment securities under the Uniform Commercial Code, see Sections 36‑8‑101 et seq.

Legal capacity of minors, see Sections 63‑5‑310 et seq.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 70, Gifts/Uniform Gifts to Minors Act.

S.C. Jur. Dead Bodies Section 10, Next of Kin.

S.C. Jur. Gifts Section 8, Capacity.

Forms

Am. Jur. Pl. & Pr. Forms Gifts Section 23 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

The Uniform Gifts to Minors Act was designed to meet other problems, not to restrict the voting powers of fiduciaries with respect to stock registered in the name of the fiduciary. Rogers v. First Nat. Bank of St. George (C.A.4 (S.C.) 1969) 410 F.2d 579. Corporations And Business Organizations 1617

Any conveyance made pursuant to the provisions of the Gift to Minors Act is a gift, thus conveyance of shares of stock would not be considered as child support. McLeod v. Sandy Island Corp. (S.C. 1975) 265 S.C. 1, 216 S.E.2d 746. Gifts 1

**SECTION 63‑5‑510.** Definitions.

 In this article, unless the context otherwise requires:

 (1) “Adult” is a person who has attained the age of twenty‑one years.

 (2) “Bank” is any bank, trust company, national banking association or industrial bank.

 (3) “Broker” is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account through a broker or otherwise as a part of a regular business.

 (4) “Court” means the court or branch having jurisdiction.

 (5) “Custodial property” includes:

 (a) all securities, life insurance policies, annuity contracts, real estate, tangible personal property and money and any other type of property under the supervision of the same custodian for the same minor as a consequence of a gift made to the minor in a manner prescribed in this article;

 (b) the income from the custodial property;

 (c) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts, real estate, tangible personal property and other property.

 (6) “Custodian” is a person so designated in manner prescribed in this article and the term includes a successor custodian.

 (7) “Financial institution” is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state, a federal credit union or a credit union chartered and supervised under the laws of a state; a “domestic financial institution” is one chartered and supervised under the laws of this State or chartered and supervised under federal law and having its principal office in this State; an “insured financial institution” is one in which deposits (including a savings, share, certificate or deposit account) are, in whole or in part, insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation or by a deposit insurance fund approved by this State.

 (8) “Guardian” of a minor means the general guardian, guardian, tutor or curator of his property or estate, appointed or qualified by a court of this State or another state.

 (9) “Issuer” is a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise, or to evidence his duty or undertaking to perform an obligation evidenced by the security or who becomes responsible for in place of any such person.

 (10) “Legal representative” of a person in his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

 (11) “Life insurance policy or annuity contract” means a life insurance policy or annuity contract issued by an insurance company on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this article or on the life of a member of the minor’s family.

 (12) “Member of a minor’s family” means any of the minor’s parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

 (13) “Minor” is a person who has not attained the age of twenty‑one years, excluding a person under the age of twenty‑one who is married or emancipated as decreed by the family court.

 (14) “Savings and loan association” is a state‑chartered savings and loan association or building and loan association or a federally‑chartered savings and loan association.

 (15) “Security” includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting ‑trust certificate or, in general, any interest or instrument commonly known as a security, any certificate of interest or participation in any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in “registered form” when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

 (16) “Transfer agent” is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities in the cancellation of surrendered securities.

 (17) “Trust company” is a bank, corporation or other legal entity authorized to exercise trust powers in this State.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Definitions of certain terms used in Children’s Code, see Section 63‑1‑40.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 70, Gifts/Uniform Gifts to Minors Act.

**SECTION 63‑5‑520.** Manner of making gift.

 (A) An adult person may, during his lifetime, make a gift of security, a life insurance policy or annuity contract or money or real estate, tangible personal property or any other property to a person who is a minor on the date of the gift:

 (1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company followed in substance by the words: “As custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”.

 (2) If the subject of the gift is a security not in registered form, by delivering it to an adult other than the donor, a guardian of the minor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

“GIFT UNDER THE SOUTH CAROLINA UNIFORM GIFTS TO MINORS ACT

\_\_\_\_\_\_\_\_\_\_(name of donor) \_\_\_\_\_\_\_\_\_\_ hereby delivers to \_\_\_\_\_\_\_\_\_\_ (name of custodian) \_\_\_\_\_\_\_\_\_\_ as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the South Carolina Uniform Gifts to Minors Act the following security: (insert an appropriate description of the security delivered sufficient to identify it)

(signature of donor)

\_\_\_\_\_\_\_\_\_\_ (name of custodian) \_\_\_\_\_\_\_\_\_\_ hereby acknowledges receipt of the above‑described security as custodian for the above minor under the Uniform Gifts to Minors Act.

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

(Signature of custodian)”

 (3) If the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for credit to an account in the name of the donor, another adult or a trust company followed in substance by the words: “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”.

 (4) If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult or a trust company followed in substance by the words “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”.

 (5) If the subject of the gift is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment or similar instrument in the name of the donor, another adult or guardian of the minor or a trust company followed in substance by the words: “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”.

 (6) If the subject of the gift is an interest in any property not described in items (1) through (5) above, by causing the ownership of the property to be transferred by any written document in the name of the donor, another adult, a guardian or the minor or a trust company followed in substance by the words: “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”.

 (7) If the gift is by will, by stating in the will that the bequest or devise is made under the South Carolina Uniform Gifts to Minors Act. Unless the testator in his will designates the custodian, who shall be an adult, a guardian of the minor or a trust company, his personal representative shall, subject to any limitations contained within the will, have the power to name as the custodian an adult, a guardian of the minor or a trust company and shall distribute the subject of the gift by transferring it in the manner and form provided in the preceding items of this subsection.

 (8) If the gift is preceded by a gift in trust to some other person, by stating in the will or inter vivos trust instrument that it is made under the South Carolina Uniform Gifts to Minors Act. Unless the custodian, who shall be an adult, a guardian of the minor or a trust company, is designated in the will or inter vivos trust instrument, the trustee shall, subject to any limitations contained within the will or inter vivos trust instrument, have the power to name as custodian an adult, a guardian of the minor or a trust company, and shall distribute the subject of the gift by transferring it in the manner and form provided in the preceding items of this subsection.

 (B) Any gift made in a manner prescribed in subsection (A) may be made to only one minor and only one person may be the custodian.

 (C) A donor who makes a gift to a minor in the manner prescribed in subsection (A) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian but the donor’s failure to comply with this subsection, his designation of an ineligible person as custodian, or renunciation by the person designated as custodian shall not affect the consummation of the gift.

 (D) Whether or not a gift of the ownership of a life insurance policy or annuity contract has been made, the owner of such a policy or contract may designate a custodian (or a successor custodian) as the beneficiary of any such policy or contract. When the custodian receives any proceeds of such policy or contract, the proceeds shall at that time become custodian property.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Appointment of successor custodians, see Section 63‑5‑570.

Insurance, generally, see Title 38.

Validity of parol gifts, see Section 27‑23‑70.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 70, Gifts/Uniform Gifts to Minors Act.

**SECTION 63‑5‑530.** Effect of gift.

 (A) A gift made in a manner prescribed in this article is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract, money, real estate or any other property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this article.

 (B) By making a gift in a manner prescribed in this article, the donor incorporates in his gift, inter vivos trust instrument or will all provisions of this article and grants to the custodian and to any issuer, transfer agent, bank, life insurance company, broker or third person, dealing with a person designated as custodian the respective powers, rights and immunities provided in this article.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 70, Gifts/Uniform Gifts to Minors Act.

NOTES OF DECISIONS

In general 1

1. In general

Because any conveyance made pursuant to the provisions of the Gift to Minors Act is a gift, conveyance of shares of stock would not be considered as child support. McLeod v. Sandy Island Corp. (S.C. 1975) 265 S.C. 1, 216 S.E.2d 746. Gifts 1

**SECTION 63‑5‑540.** Powers and duties of custodian.

 (A) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

 (B) The custodian shall pay over to the minor for expenditure by him, or expend for the minor’s benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the same time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

 (C) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all of the custodial property as is necessary for the minor’s support, maintenance or education.

 (D) To the extent that the custodial property is not so expended, the custodian must deliver or pay over the custodial property to the minor on his attaining the age of twenty‑one years or, if the minor dies before attaining the age of twenty‑one years, the custodian must then deliver or pay over the custodial property to the estate of the minor. Notwithstanding the requirements of this section, the custodian, in his discretion, may deliver or pay over the custodial property to the payee when the payee attains the age of eighteen.

 (E) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain custodial property given to the minor in a manner prescribed in this article or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

 (F) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian. With respect to any interest in real estate, he may perform the same acts that any unmarried adult could perform, including, but not limited to, the power to buy, sell, assign, transfer, convey, dedicate, partition, exchange, mortgage, create or redeem ground rents, deeds, grant or exercise options, effect and keep in force fire, rent, liability, casualty, and other insurance; make, execute, acknowledge, and deliver deeds, conveyances, mortgages, releases, leases, including leases for ninety‑nine years renewable forever, and leases extending beyond the minority of the minor; collect rents; improve, subdivide, or develop property; construct, alter, demolish or repair property; settle boundary lines and easements; pay taxes; and protect assessments.

 (G) The custodian shall register each security which is custodial property and in registered form in the name of the custodian followed in substance by the words: “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”. The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian followed in substance by the words: “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”. The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

 (H) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

 (I) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this article, all the rights and powers which a guardian has with respect to property not held as custodial property.

 (J) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

 (1) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor’s estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting;

 (2) may pay premiums on the policy or contract out of the custodial property.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 28, Property Under the Uniform Gifts to Minors Act.

S.C. Jur. Children and Families Section 28, Dna Fingerprinting Test.

S.C. Jur. Children and Families Section 70, Gifts/Uniform Gifts to Minors Act.

S.C. Jur. Gifts Section 28, Powers and Duties.

**SECTION 63‑5‑550.** Custodian expenses, liability.

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

 (B) A custodian may act without compensation for his services.

 (C) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

 (1) a direction by the donor when the gift is made;

 (2) a statute of this State applicable to custodians;

 (3) the statute of this State applicable to guardians and conservators;

 (4) an order of the court.

 (D) Except as otherwise provided in this article, a custodian shall not be required to give a bond for the performance of his duties.

 (E) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this article.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Petition that custodian be removed or required to give bond, see Section 63‑5‑570.

Regulations promulgated under authority of this subarticle see S.C. Code of Regulations R. 114‑4380.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gifts Section 29, Liability.

NOTES OF DECISIONS

In general 1

1. In general

Initially, a bond is not intended or required of a custodian. McLeod v. Sandy Island Corp. (S.C. 1973) 260 S.C. 209, 195 S.E.2d 178.

This chapter provides that upon petition by any of the designated interested parties, for cause shown, a custodian may be removed by the court, or, in the alternative, be required to give bond for the performance of his duties. McLeod v. Sandy Island Corp. (S.C. 1973) 260 S.C. 209, 195 S.E.2d 178.

**SECTION 63‑5‑560.** Person dealing with custodian immune from liability.

 No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this article, or is obliged to inquire into the validity or propriety under this article of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (A) of Section 63‑5‑570 by a minor to whom a gift has been made in a manner prescribed in this article and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this article of the instrument of designation.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

**SECTION 63‑5‑570.** Successor custodian, removal.

 (A) Only an adult member of the minor’s family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor, the instrument of designation may, but need not, contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this article.

 (B) The designation of a successor custodian as provided in subsection (A) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated, and the custodian or his legal representative:

 (1) Causes the item, if it is a security in registered form, or a life insurance policy or annuity contract, to be registered with the issuing insurance company in the case of a life insurance policy or annuity contract, or an interest in real property in the name of the successor custodian followed in substance by the words: “as custodian for \_\_\_\_\_\_\_\_\_\_ (name of minor) \_\_\_\_\_\_\_\_\_\_ under the Uniform Gifts to Minors Act”;

 (2) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof, and any additional instruments required for the transfer thereof to the successor custodian.

 (C) A custodian who executes an instrument of designation of his successor containing the custodian’s resignation as provided in subsection (A) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (A) by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (A) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

 (D) If a person designated as custodian or as a successor custodian by the custodian as provided in subsection (A) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of eighteen years and if the minor has a guardian, the guardian of the minor is successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or became legally incapacitated has been designated as provided in subsection (A), a donor, his representative, the legal representative of the custodian, or an adult member of the minor’s family may petition the court for the designation of a successor custodian. The provisions of this subsection do not affect the power of a personal representative or trustee to appoint a custodian pursuant to items (7) and (8) of subsection (A) of Section 63‑5‑520, or the power of an owner of a life insurance policy or annuity contract to appoint a successor custodian pursuant to subsection (D) of Section 63‑5‑520.

 (E) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor’s family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

 (F) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Responsibility of persons or institutions acting on instrument of designation of successor custodian executed by minor of age fourteen or older under subsection (1) of this section, see Section 63‑5‑560.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

NOTES OF DECISIONS

In general 1

1. In general

Initially, a bond is not intended or required of a custodian. McLeod v. Sandy Island Corp. (S.C. 1973) 260 S.C. 209, 195 S.E.2d 178.

**SECTION 63‑5‑580.** Accounting requirements.

 (A) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor’s family or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

 (B) The court, in a proceeding under this article or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gifts Section 30, Accounting for Custodial Account.

**SECTION 63‑5‑590.** Construction of article.

 (A) This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

 (B) This article shall not be construed as providing an exclusive method for making gifts to minors.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

**SECTION 63‑5‑600.** Gifts prior to article amendment.

 No amendment to this article shall be construed to adversely affect any gift legally made under its provisions in effect prior to the amendment.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 28.

Westlaw Topic No. 211.

C.J.S. Infants Sections 178, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gifts Section 8, Capacity.

ARTICLE 7

Military Parent Equal Protection Act

CROSS REFERENCES

Subject matter jurisdiction, concurrent jurisdiction with family court, see Section 62‑1‑301.

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

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

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

**SECTION 63‑5‑910.** Definitions.

 For purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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