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Title 63 - South Carolina Children's Code

CHAPTER 9.

ADOPTIONS

ARTICLE 1.

SOUTH CAROLINA ADOPTION ACT

SUBARTICLE 1.

GENERAL PROVISIONS

SECTION 63-9-10. Short title.

This article may be cited as the "South Carolina Adoption Act".

SECTION 63-9-20. Legislative purpose.

The purpose of this article is to establish fair and reasonable procedures for the adoption of children and to provide for the well-being of the child, with full recognition of the interdependent needs and interests of the biological parents and the adoptive parents. However, when the interests of a child and an adult are in conflict, the conflict must be resolved in favor of the child. Children may be adopted by or placed for adoption with residents of South Carolina only, except in unusual or exceptional circumstances.

SECTION 63-9-30. Definitions.

As used in this article unless the context requires otherwise:

- (1) "Adoptee" means a person who is proposed to be or who has been legally adopted.
- (2) "Adoption" means the judicial act of creating the relationship of parent and child where it did not exist previously.
- (3) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption.
- (4) "Child" means any person under eighteen years of age.
- (5) "Child placing agency" or "agency" means the State Department of Social Services and any person or entity who holds legal or physical custody of a child for the purpose of placement for adoption or a person or entity who facilitates the placement of children for the purpose of adoption. For the purposes of this subsection, a person or entity who offers services for compensation where the intent of those services is to arrange or secure adoptions must be considered "facilitating the placement of children for adoption", whether those services constitute counseling, referrals, searches, or any other form of adoption services. However, an attorney engaged in the practice of law who represents a client in an adoption or who otherwise facilitates an adoption in the course of that practice is exempt from this definition.
- (6) "Consent" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent for the purpose of adoption, or the informed and voluntary release in writing of all custodial or guardianship rights, or both, with respect to a child by the child placing agency or person facilitating the placement of the child for adoption where the child's parent previously has executed a relinquishment to that agency or person.
- (7) "Court" means any family court in this State.
- (8) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption and to whom the parent has given the right to consent to the adoption of the child.
- (9) "South Carolina resident" means a person who has established a true, fixed principal residence and place of habitation in this State, and who intends to remain or expects to return upon leaving without establishing residence in another state. Temporary absences for short periods of time do not affect the establishment of residency.
- (10) "Special needs child" means children who fall into one or more of the following categories:
 - (a) children who are members of a sibling group;
 - (b) children of mixed racial heritage;
 - (c) children aged six or older; or
 - (d) children with physical, mental, or emotional disabilities.

SECTION 63-9-40. Jurisdiction; venue.

(A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article. Proceedings for adoption by residents of this State may be brought in the family court of the county in which the petitioner resides or is in military service, or in the county in which the child resides or is born. For nonresidents of this State proceedings for adoption must be brought in the county in which the child resides, in which the child is born, or in which the agency having custody of the child is

located.

(B) The family court may order a change of venue as in civil proceedings in this State.

SECTION 63-9-50. Children who may be adopted.

Any child present within this State at the time the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

SECTION 63-9-60. Persons who may adopt.

(A)(1) Any South Carolina resident may petition the court to adopt a child. Placement of children for adoption pursuant to this article is limited to South Carolina residents with exceptions being made in the following circumstances only:

(a) the child is a special needs child, as defined by Section 63-9-30;

(b) there has been public notoriety concerning the child or child's family, and the best interests of the child would be served by placement outside this State;

(c) the child is to be placed for adoption with a relative related biologically or by marriage;

(d) at least one of the adoptive parents is in the military service stationed in South Carolina;

(e) there are unusual or exceptional circumstances such that the best interests of the child would be served by placement with or adoption by nonresidents of this State; or

(f) the child has been in foster care for at least six months after having been legally freed for adoption and no South Carolina resident has been identified as a prospective adoptive home.

(2) Before a child is placed within or outside the boundaries of this State for adoption with nonresidents of this State, compliance with Article 11 (Interstate Compact on the Placement of Children) is required, and a judicial determination must be made in this State that one of the circumstances in items (a) through (f) of subsection (A)(1) applies, whether or not the adoption proceedings are instituted in this State. Additionally, in order to determine if any of the circumstances in items (a) through (f) of subsection (A)(1) apply so as to permit placement with a nonresident for the purpose of adoption or adoption by a nonresident, a petition may be brought for the determination before the birth of the child or before placement of the child with the prospective adoptive parents. In ruling on this question the court must include in its order specific findings of fact as to the circumstances allowing the placement of a child with a nonresident or the adoption of a child by a nonresident. The court also must analyze the facts against the objective criteria established in Sections 16-3-1060 and 63-9-310(F) and make specific findings in accordance with the pertinent law and evidence presented. The order resulting from this action does not prohibit or waive the right to refuse to consent to a release of rights or relinquish rights at a later time or to withdraw a consent or relinquish at a later time as provided in this article. The order must be merged with and made a part of any subsequent adoption proceeding, which must be initiated and finalized in this State.

(B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption. Neither the department nor its contractors may delay or deny the placement of a child for adoption by a nonresident if that nonresident has been approved for adoption of the child by another state authorized to approve such placements pursuant to the Interstate Compact on Placement of Children. The department shall provide an opportunity for a hearing, in accordance with the department's fair hearing procedures, to a nonresident who believes that the department, in violation of this section,

has delayed or denied placement of a child for adoption.

SECTION 63-9-70. Advertising prohibited to place or accept child for adoption; exception; penalties.

(A) No person or entity other than the Department of Social Services, a child placing agency licensed in this State, or an attorney licensed in this State may advertise that the person or entity will place or accept a child for adoption.

(B) Notwithstanding the provisions of subsection (A), a person is not prohibited from advertising that the person desires to adopt if the person has a current preplacement home investigation finding that the person is suitable to be an adoptive parent.

(C)(1) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(2) The family court shall enjoin a person or entity from violating a provision of this section.

(D) For purposes of this section, "advertise" means to communicate by newspaper, radio, television, hand bills, placards or other print, broadcast or electronic medium that originates within this State.

SUBARTICLE 3. CONSENT AND RELINQUISHMENT

SECTION 63-9-310. Persons who must give consent or relinquishment.

(A) Consent or relinquishment for the purpose of adoption is required of the following persons:

(1) the adoptee, if over fourteen years of age, except where the court finds that the adoptee does not have the mental capacity to give consent, or that the best interests of the adoptee are served by not requiring consent; and either

(2) the parents or surviving parent of a child conceived or born during the marriage of the parents; or

(3) the mother of a child born when the mother was not married; and either

(4) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents more than six months after the child's birth, but only if the father has maintained substantial and continuous or repeated contact with the child as demonstrated by:

(a) payment by the father toward the support of the child of a fair and reasonable sum, based on the father's financial ability; and either

(b) visits by the father to the child at least monthly when the father is physically and financially able to do so, and when the father is not prevented from doing so by the person or agency having lawful custody of the child; or

(c) regular communication by the father with the child or with the person or agency having lawful custody of the child, when the father is physically and financially unable to visit the child, or when the father is prevented from visiting the child by the person or agency having lawful custody of the child.

The subjective intent of the father, if unsupported by evidence of the acts specified in subitems (a), (b), and (c) of this item (4) of subsection (A) of this section, does not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making

this determination, the court may not require a showing of diligent efforts by any person or agency having lawful custody of the child to encourage the father to perform the acts. A father of a child born when the father was not married to the child's mother, who openly lived with the child for a period of six months within the one-year period immediately preceding the placement of the child for adoption, and who during the six-months period openly held himself out to be the father of the child is considered to have maintained substantial and continuous or repeated contact with the child for the purpose of this item (4) of subsection (A) of this section; or

(5) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six months or less after the child's birth, but only if:

(a) the father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or

(b) the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.

(B) Consent or relinquishment for the purpose of adoption is required of the legal guardian, child placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and:

(1) both the parents of the child are deceased; or

(2) the parental rights of both the parents have been judicially terminated.

(C) Consent is required of the child placing agency or person facilitating the placement of the child for adoption if the child has been relinquished for adoption to the agency or person.

(D) If the consent of a child placing agency required by this subsection is not provided to any person eligible under Section 63-9-60, the agency has an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial.

(E) Consent or relinquishment for the purpose of adoption given by a parent who is a child is not subject to revocation by reason of the parent's minority.

(F) Under no circumstances may a child-placing agency or any person receive a fee, compensation, or any other thing of value as consideration for giving a consent or relinquishment of a child for the purpose of adoption and no child-placing agency or person may receive a child for payment of such fee, compensation, or any other thing of value.

However, costs may be assessed and payment made, subject to the court's approval, for the following:

(1) reimbursements for necessary, actual medical, and reasonable living expenses incurred by the mother and child for a reasonable period of time;

(2) the fee for obtaining investigations and reports as required by Section 63-9-520;

(3) the fee of the individuals required to take the consent or relinquishment, as required by Section 63-9-340(A);

- (4) the fee of a guardian ad litem appointed pursuant to Section 63-9-720;
- (5) reasonable attorney's fees and costs for actual services rendered;
- (6) reasonable fees to child-placing agencies; and
- (7) reasonable fees to sending agencies as defined in Section 63-9-2200(2)(b), the Interstate Compact on the Placement of Children.

The court may approve an adoption while not approving unreasonable fees and costs.

SECTION 63-9-320. Persons not required to give consent or relinquishment.

(A) Notwithstanding the provisions of Section 63-9-310, consent or relinquishment for the purpose of adoption is not required of the following persons:

- (1) a parent whose rights with reference to the adoptee have been terminated pursuant to Article 7, Chapter 7;
- (2) a parent whom the family court finds to be mentally incapable of giving consent or relinquishment for the purpose of adoption and whom the court finds to be unlikely to provide minimally acceptable care of the adoptee and whose capacity is unlikely to be restored for a reasonable period of time, and, in the court's judgment, it would be detrimental to the adoptee to delay adoption. The court shall appoint a guardian ad litem for an incompetent parent for whom there has been no prior appointment and shall appoint independent counsel for an incompetent parent who is indigent. However, upon good cause shown, the court may waive the requirement for the appointment of independent counsel for an incompetent and indigent parent;
- (3) the biological parent of a child conceived as a result of that parent's criminal sexual conduct or incest as found by a court of competent jurisdiction unless, with respect to a conviction for criminal sexual conduct, the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

(B) A parent who has executed a relinquishment pursuant to Section 63-9-330 to a person facilitating the adoption or to a child placing agency for the purpose of adoption of his child is not required to execute a separate consent document also.

SECTION 63-9-330. Form and content of consent and relinquishment.

(A) Consent or relinquishment for the purpose of adoption, pursuant to Section 63-9-310, must be made by a sworn document, signed by the person or the head of the agency giving consent or relinquishment after the birth of the adoptee, and must specify the following:

- (1) the permanent address of the person or agency making the sworn written statement;
- (2) the date, time, and place of the signing of the statement;
- (3) the date of birth, race, and sex of the adoptee and any names by which the adoptee has been known;
- (4) the relationship of the adoptee to the person or agency giving consent or relinquishment;

(5) the name and address of the adoptee's mother or father;

(6) that the consent or relinquishment by the person or agency forfeits all rights and obligations of the person or agency with respect to the named adoptee, including any future child support obligation. Giving consent or relinquishment does not relieve a person from the obligation to pay a child support arrearage unless approved by the court;

(7) that consent or relinquishment once given must not be withdrawn except by order of the court upon a finding that it is in the best interests of the child, and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion; and that the entry of the final decree of adoption renders any consent or relinquishment irrevocable;

(8) that the person or agency giving the consent or relinquishment understands that consent or relinquishment must not be given if psychological or legal advice, guidance, or counseling is needed or desired and that none is needed or desired;

(9) that the person or agency giving the consent or relinquishment waives further notice of the adoption proceedings, unless the proceedings are contested by another person or agency;

(10) that the person or agency giving the consent or relinquishment is doing so voluntarily, and the consent or relinquishment is not being obtained under duress or through coercion; and

(11) that the person or agency giving the consent or relinquishment has received a copy of the document.

(B) When a child placing agency accepts a relinquishment for the purpose of adoption, which gives the agency the right to consent to an adoption of the child, and which contains the information required in subsection (A) of this section, the consent of the agency for the purpose of adoption is not required to meet the requirements of subsection (A). However, the sworn document relinquishing the child must be filed with the court pursuant to subsection (C) of Section 63-9-710.

SECTION 63-9-340. Signing consent and relinquishment.

(A) The sworn document provided for in Section 63-9-330, which gives consent or relinquishment for the purpose of adoption, must be signed in the presence of two witnesses one of whom must be one of the following:

(1) a judge of any family court in this State;

(2) an attorney licensed to practice law in South Carolina who does not represent the prospective adoption petitioners;

(3) a person certified by the State Department of Social Services, pursuant to Section 63-9-360, to obtain consents or relinquishments;

(4) when the consent or relinquishment is obtained outside of this State, by an attorney licensed to practice law in that state, by a person designated by an agency of that state, by a person or agency authorized by that state's law to obtain consents or relinquishments or to conduct investigations for adoptions, or by a qualified resident of that state authorized by a South Carolina family court. When a consent or relinquishment is obtained outside of this State, it may be accepted as valid in this State, provided the court determines:

(a) the consent or relinquishment complies with the laws of the state where it is obtained; and

(b) the relinquishing party or agency is domiciled in that state at the time of the signing of the consent

or relinquishment; or

(c) the content of the consent or relinquishment is in substantial compliance with the intent of Section 63-9-330(A).

(B) The persons who witness the signing of the sworn document, as provided for in subsection (A) of this section shall attach to the document written certification signed by each witness that before the signing of the document, the provisions of the document were discussed with the person giving consent or relinquishment, and that based on this discussion, it is each witness' opinion that consent or relinquishment is being given voluntarily and that it is not being obtained under duress or through coercion.

(C) A copy of the document must be delivered to the person giving the consent or relinquishment at the time of the signing of the document.

SECTION 63-9-350. Withdrawal of consent or relinquishment.

Withdrawal of any consent or relinquishment is not permitted except by order of the court after notice and opportunity to be heard is given to all persons concerned, and except when the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. Any person attempting to withdraw consent or relinquishment shall file the reasons for withdrawal with the family court. The entry of the final decree of adoption renders any consent or relinquishment irrevocable.

SECTION 63-9-360. Consent and relinquishment certification.

(A) With the exception of the persons provided for in Section 63-9-340(A)(1), (2), and (4), any person obtaining a consent or relinquishment for the purpose of adoption must be certified by the State Department of Social Services. Any person conducting an investigation for the adoption of a child pursuant to Section 63-9-520 also must be certified by the department. However, where the adoption petitioner or prospective adoption petitioner is a nonresident of this State, a South Carolina family court may authorize a qualified nonresident to conduct any investigations required under Section 63-9-520.

(B) The department shall promulgate regulations to provide for the following: certification of investigators; issuance, monitoring, and revocation of certificates; and sanctioning of noncompliance with regulations. Any person certified by the department may charge a fee which may not exceed the reasonable costs of the services rendered. The fee must be approved by the department during the certification process.

(C) The department shall develop, revise, and publish quarterly a directory of persons certified pursuant to this section. A reasonable fee may be charged by the department for copies of this directory.

SUBARTICLE 5.
INVESTIGATIONS AND REPORTS

SECTION 63-9-510. Temporary placement and custody of adoptee.

Once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner has temporary custody of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including necessary medical or surgical treatment, except as provided in Article 7. A postplacement investigation and report of this investigation pursuant to Section 63-9-520 must be completed before the final hearing. Unless the adoptee is removed pursuant to Subarticle 3, Article 3, Chapter 7, when adoptive parents have received the adoptee into their home for the purpose

of adoption but no petition has been filed pursuant to Section 63-9-710, the child-placing agency shall secure an order from the family court before removal of the child from the adoptive parents. At the hearing the burden of proof is on the child-placing agency to prove that continued placement with the adoptive family is not in the adoptee's best interest.

SECTION 63-9-520. Investigations and reports.

(A) Before the final hearing for adoption of a child, investigations and reports must be completed in accordance with the following:

(1) Before the placement of any child by any agency or by any person with a prospective adoptive parent, a preplacement investigation, a background investigation, and reports of these investigations must be completed:

(a) preplacement investigations must answer all of the following:

(i) whether the home of the prospective adoptive parent is a suitable one for the placement of a child;

(ii) how the emotional maturity, finances, health, relationships, and any other relevant characteristics of the prospective adoptive parent affect the parent's ability to accept, care, and provide a child with an adequate environment as the child matures;

(iii) whether the prospective adoptive parent has ever been involved in any proceeding concerning allegedly neglected, abandoned, abused, or delinquent children;

(iv) whether the prospective adoptive parent has completed a course or counseling in preparation for adoption;

(v) whether the prospective adoptive parent is approved for placement of a child for purposes of adoption, and if not approved, a statement of the reasons for not approving the prospective adoptive parent; and

(vi) any other information that is disclosed by the investigation that would be of value to or would assist the court in deciding the case;

(b) if the waiting period for an adoptive placement exceeds one year from the date the preplacement investigation report is completed, the report must be updated before the placement of a child for the purpose of adoption to determine any change in circumstances;

(c) a background information investigation and a report of this investigation may not disclose the identity of the biological parents of the adoptee and shall provide the following:

(i) a medical history of the biological family of the adoptee, including parents, siblings, and other family members related to the adoptee including ages, sex, race, and any known genetic, psychological, metabolic, or familial disorders; and

(ii) a medical and developmental history of the adoptee.

(d) notwithstanding any provision of this section, upon good cause shown, the court in its discretion may permit the temporary custody and placement of a child with a prospective adoptive parent before the completion of the preplacement or background investigation and reports required pursuant to this article.

(2) A postplacement investigation and report of this investigation must be completed after the filing of

the adoption petition. Copies of this report must be provided to the adoption petitioner and must be filed with the court at the final hearing on the adoption provided for in Section 63-9-750. A postplacement investigation and report of this investigation must:

(a) answer all of the following:

(i) the race, sex, and age of the adoptee and whether the child is a suitable child for adoption by the prospective adoptive parent;

(ii) the reason for the adoptee's placement away from the biological parents;

(iii) whether the adoptee, if of appropriate age and mental capacity, desires to be adopted;

(b) review and where indicated, investigate the allegations of the adoption petition and its attachments and of the accounting of disbursements required under Section 63-9-740;

(c) evaluate the progress of the placement of the adoptee; and

(d) determine whether adoption by the petitioner is in the best interests of the adoptee.

(B) The investigators and all persons participating in, conducting, or associated with the preparation of reports required under this section must be available for examination and cross-examination by any party to an adoption proceeding concerning the contents of and recommendations contained in the reports.

SUBARTICLE 7. JUDICIAL PROCEDURES

SECTION 63-9-710. Petition for adoption; use of fictitious names.

(A) A petition for adoption shall specify:

(1) the full name, age, address, and place of residence of each petitioner, and, if married, the place and date of the marriage;

(2) when the petitioner acquired, or intends to acquire, custody or placement of the child and from what person or agency;

(3) the date and place of birth of the child, if known;

(4) the name used for the child in the proceeding, and if a change in name is desired, the new name;

(5) that it is the desire of the petitioner to establish the relationship of parent and child between the petitioner and the child, and that the petitioner is a fit and proper person and able to care for the child and to provide for the child's welfare;

(6) a full description and statement of value of all real property and of any personal property of value owned or possessed by the child;

(7) facts, if any, which excuse consent on the part of a parent to the adoption or which excuse notice of the adoption proceedings to a parent;

(8) facts, if any, which may permit placement with or adoption by nonresidents of this State, pursuant

to Section 63-9-60;

(9) the existence and nature of any prior court orders known to the petitioner which affect the custody, support, or visitation of the child;

(10) the relationship, if any, of each petitioner to the child; and

(11) the name and address of the child placing agency or the person facilitating placement of the child for adoption, if any.

(B) The petition must be filed within sixty days of the date the adoptee is placed for the purpose of adoption in the home of the petitioner.

(C) All of the following must be filed at the time the adoption petition is filed or, after the filing, upon good cause shown:

(1) any consent or relinquishment required by Section 63-9-310;

(2) the preplacement investigation report;

(3) the background investigation report;

(4) a statement of all payments of money or anything of value made within the past five years or agreed to be made in the future by or on behalf of the petitioner to any person, agency, or organization connected with the adoption that is not a disbursement made and reported pursuant to Section 63-9-740.

(D) For purposes of this article, the petitioner may employ the use of fictitious names where necessary to avoid disclosure of identities of parties or persons, so long as service of process or notice is considered sufficient by the court.

SECTION 63-9-720. Appointment of guardian ad litem.

Before any hearing is held on the adoption or any matter related to the adoption, the court shall appoint a guardian ad litem for the adoptee as in other family court actions, and the adoptee must be served with a copy of the pleadings. However, if the adoptee is fourteen years of age or younger, the child may be served by service upon his guardian ad litem or other person with whom he resides.

SECTION 63-9-730. Notice of adoption proceedings.

(A) Notice of any proceeding initiated pursuant to this article must be given to the persons or agencies specified in subsection (B) of this section, unless the person has given consent or relinquishment or parental rights have been terminated.

(B) The following persons or agencies are entitled to notice as provided in subsection (A):

(1) a person adjudicated by a court in this State to be the father of the child;

(2) a person or agency required to give consent or relinquishment pursuant to Section 63-9-310(A) or (B) from whom consent or relinquishment cannot be obtained;

(3) a person who has properly registered with the Responsible Father Registry at the time of the filing

of the petition for termination of parental rights or adoption;

(4) a person who is recorded on the child's birth certificate as the child's father. The Department of Health and Environmental Control shall release this information to any attorney representing a party in an adoption or termination of parental rights action pursuant to a subpoena;

(5) a person who is openly living with the child or the child's mother, or both, at the time the proceeding is initiated and who is holding himself out to be the child's father;

(6) a person who has been identified as the child's father by the mother in a sworn, written statement; and

(7) a person from whom consent or relinquishment is not required pursuant to Section 63-9-320(A)(2).

(C) Persons specified in subsection (B) of this section are not entitled to notice if the child who is the subject of the adoption proceeding was conceived as a result of criminal sexual conduct or incest.

(D) Any person or agency entitled to notice pursuant to this section must be given notice that adoption proceedings have been initiated. Notice must be given in the manner prescribed by law for personal service of summons in civil actions. If notice cannot be effected by personal service, notice may be given by publication or by the manner the court decides will provide notice.

(E) Notice given pursuant to this section must include notice of the following:

(1) within thirty days of receiving notice the person or agency shall respond in writing by filing with the court in which the adoption is pending notice and reasons to contest, intervene, or otherwise respond;

(2) the court must be informed of the person's or agency's current address and of any changes in address during the adoption proceedings; and

(3) failure to file a response within thirty days of receiving notice constitutes consent to adoption of the child and forfeiture of all rights and obligations of the person or agency with respect to the child.

(F) When notice of intent to contest, intervene, or otherwise respond is filed with the court within the required time period, the person or agency must be given an opportunity to appear and to be heard before the final hearing on the merits of the adoption.

(G) Petitioners must be notified by the court of notice and reasons to contest, intervene, or otherwise respond, and petitioners also must be given the opportunity to be represented or to appear and to be heard at any hearing held relating to the adoption.

SECTION 63-9-740. Itemized accounting of disbursements.

(A) At the final hearing on the adoption, the petitioner shall file a full, itemized accounting of disbursements of anything of value made, agreed to be made, or anticipated being made by or on behalf of the petitioner for expenses incurred or fees for services rendered in connection with the adoption. The accounting must be verified by the petitioner under penalty of perjury.

(B) The accounting by the petitioner must include:

(1) dates and amounts of disbursements made, agreed to be made, or anticipated being made and by

whom the disbursements were or are to be made;

(2) names and addresses of persons to whom the disbursements were made or are to be made;

(3) services received for the disbursements and by whom the services were received;

(4) receipts for reasonable living expenses incurred by the mother and child assessed as costs under Section 63-9-310(F)(1). No assessment is allowed for a cost which does not have a corresponding receipt or which is unreasonable.

SECTION 63-9-750. Final hearing.

(A) The final hearing on the adoption petition must not be held before ninety days and no later than six months after the filing of the adoption petition. In the case of a special needs child, the hearing must not be held before ninety days and no later than twelve months after the filing of the adoption petition. In its discretion, upon good cause shown, the court may extend, or in the case of a special needs child extend or shorten the time within which the final hearing on the adoption petition may be held.

(B) Upon satisfactory examination by the court of the record, including the reports required in Section 63-9-520, and following the final hearing on the adoption petition the court shall issue an order granting the adoption if it finds that:

(1) the adoptee has been in the actual custody of the petitioner for a period of ninety days unless the court finds as provided in subsection (A) that there is good cause for modifying the time within which the final hearing may be held;

(2) all necessary consents or relinquishments for the purpose of adoption have been obtained;

(3) notice of the adoption proceeding has been given to all persons entitled to receive notice under Sections 63-9-310 and 63-9-730, and any hearing resulting from the notice has been held and handled according to the satisfaction of the court;

(4) the disbursements made and accounted for pursuant to Section 63-9-740 are reasonable costs for expenses incurred or for fees for services rendered;

(5) the petitioner is a fit and proper person and able to care for the child and to provide for the child's welfare, and the petitioner desires to establish the relationship of parent and child with the adoptee;

(6) the best interests of the adoptee are served by the adoption; and

(7) if the petitioner is a nonresident of this State, the findings pursuant to Section 63-9-50 are included in the order, and there has been compliance with Article 11 (Interstate Compact on the Placement of Children).

(C) The court shall enter its findings in a written decree which shall also include the new name of the adoptee, if appropriate, and may not include any other name by which the adoptee has been known or the names of the biological or presumed parents of the adoptee. The final adoption decree shall order what effect, if any, the adoption has on the legal rights and responsibilities of the adoptee's biological parents, that the adoptee is the child of the petitioner, and that the adoptee must be accorded the status provided for in Section 63-9-760.

SECTION 63-9-760. Effect of final decree.

(A) After the final decree of adoption is entered, the relationship of parent and child and all the rights, duties, and other legal consequences of the natural relationship of parent and child exist between the adoptee, the adoptive parent, and the kindred of the adoptive parent.

(B) After a final decree of adoption is entered, the biological parents of the adoptee are relieved of all parental responsibilities and have no rights over the adoptee.

(C) Notwithstanding any other provision to the contrary in this section, the adoption of a child by an adoptive parent does not in any way change the legal relationship between the child and either biological parent of the child whose parental responsibilities and rights are not expressly affected by the final decree.

(D) The validity of the final decree of adoption is not affected by an agreement entered into before the adoption between adoptive parents and biological parents concerning visitation, exchange of information, or other interaction between the child and any other person. Such an agreement does not preserve any parental rights with the biological parents and does not give to them any rights enforceable in the courts of this State.

SECTION 63-9-770. Attacks on final orders; appeals.

(A) Except as provided in subsection (B), after the final order, judgment, or decree of adoption is entered, no party to an adoption proceeding, and no one claiming under a party, may question the validity of the adoption because of any defect or irregularity, jurisdictional or otherwise, in the proceeding, and a party, and anyone claiming under a party, is fully bound by the order. No adoption may be attacked either directly or collaterally because of any procedural or other defect by anyone who was not a party to the adoption. The failure on the part of the court or an agency to perform duties or acts within the time required by this article does not affect the validity of any adoption proceeding.

(B) A party to an adoption proceeding may appeal a final order, judgment, or decree of adoption in the manner provided for appeals from the court in other family court matters. In addition, this section may not be construed to preclude a court's inherent authority to grant collateral relief from a judgment on the ground of extrinsic fraud. For purposes of this subsection, "extrinsic fraud" is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. However, a court is under no obligation to grant a person relief from a judgment based upon extrinsic fraud if the person might have prevented the judgment by the exercise of proper diligence.

SECTION 63-9-780. Confidentiality of hearings and records.

(A) Unless the court otherwise orders, all hearings held in proceedings under this article and Article 7 are confidential and must be held in closed court without admittance of any person other than those persons involved in the proceedings and their counsel.

(B) All papers and records pertaining to the adoption and filed with the clerk of court are confidential from the time of filing and upon entry of the final adoption decree must be sealed and kept as a permanent record of the court and withheld from inspection. No person may have access to the records except for good cause shown by order of the judge of the court in which the decree of adoption was entered.

(C) All files and records pertaining to the adoption proceedings in the State Department of Social Services, or in any authorized agency, or maintained by any person certified by the department under the provisions of Section 63-9-360, are confidential and must be withheld from inspection except upon court order for good cause shown.

(D) The provisions of this section must not be construed to prevent any adoption agency from furnishing to adoptive parents, biological parents, or adoptees nonidentifying information when in the

sole discretion of the chief executive officer of the agency the information would serve the best interests of the persons concerned either during the period of placement or at a subsequent time nor must the provisions of this article and Article 7 be construed to prevent giving nonidentifying information to any other person, party, or agency who in the discretion of the chief executive officer of the agency has established a sufficient reason justifying the release of that nonidentifying information. As used in this subsection "nonidentifying information" includes but is not limited to the following:

(1) the health and medical histories of the biological parents;

(2) the health and medical history of the adoptee;

(3) the adoptee's general family background without name references or geographical designations; and

(4) the length of time the adoptee has been in the care and custody of the adoptive parent.

(E)(1) The public adoption agencies responsible for the placement shall furnish to an adoptee the identity of the adoptee's biological parents and siblings and to the biological parents and siblings the identity of the adoptee under the following conditions:

(a) the adoptee must be twenty-one years of age or older, and the applicants shall apply in writing to the adoption agency for the information;

(b) the adoption agency must have a current file containing affidavits from the adoptee and the biological parents and siblings that they are willing to have their identities revealed to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address;

(c) the adoption agency shall establish and maintain a confidential register containing the names and addresses of the adoptees and biological parents and siblings who have filed affidavits. It is the responsibility of a person whose name and address are in the register to provide the agency with his current name and address;

(d) the adoptee and his biological parents and siblings shall undergo counseling by the adoption agency concerning the effects of the disclosure. The adoption agency may charge a fee for the services, but services must not be denied because of inability to pay.

(2) No disclosure may be made within thirty days after compliance with these conditions. The director of the adoption agency may waive the thirty-day period in extreme circumstances.

(3) The adoption agency may delay disclosure for twenty days from the expiration of the thirty-day period to allow time to apply to a court of competent jurisdiction to enjoin the disclosure for good cause shown.

(F)(1) It is unlawful for a person having custody of or access to the papers, records, or files described in subsection (B) or (C) to disseminate or permit dissemination of information contained in them except as otherwise authorized in this section.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

SECTION 63-9-790. Amended birth certificates.

(A) For each adoption handled through a child placing agency as defined in Section 63-9-30, the attorney for the petitioner shall, within fifteen days of the filing of the final decree, transmit to the appropriate agency a certified copy of the adoption decree and a Certificate of Adoption with Part II completed and verified by the adoptive parent and Part III certified by the clerk of court. The agency shall complete Part I of the Certificate of Adoption and transmit the form to the State Registrar of Vital Statistics within thirty days of the filing of the final decree.

(B) For other adoptions, the attorney for the petitioner shall complete Parts I and II of the Certificate of Adoption form provided by the State Registrar of Vital Statistics and file with the clerk of court at the time of filing of the final decree. The clerk of court shall certify Part III of the Certificate of Adoption and transmit the form to the State Registrar within thirty days of the filing of the final decree.

(C) In the case of a person who was born in a foreign country and who was not a United States citizen at birth, the court shall require evidence from sources determined to be reliable by the court as to the date and place of birth of the person and shall set forth in the order of the court the date and place of birth as established by the evidence. The court order and evidence submitted to the court must be attached to the Certificate of Adoption and transmitted to the State Registrar.

(D) The Certificate of Adoption form provided by the State Registrar must not be used in conjunction with any legal procedure affecting a birth certificate other than adoption.

(E) The State Registrar, upon receipt of a certified Certificate of Adoption, shall take action as provided by Section 44-63-140 with respect to the issuance and filing of an amended certificate.

SUBARTICLE 8. RESPONSIBLE FATHER REGISTRY

SECTION 63-9-810. State interest; purpose of registry.

The State has a compelling interest in promptly providing stable and permanent homes for adoptive children and in preventing the disruption of adoptive placements. It is the purpose of the Responsible Father Registry to provide notice to unmarried biological fathers who affirmatively assume responsibility for children they may have fathered by registering with the Responsible Father Registry.

SECTION 63-9-820. Registry established; definitions; claims of paternity; promulgation of regulations; unauthorized use.

(A) There is established within the Department of Social Services the Responsible Father Registry, which the department shall maintain.

(B) As used in this section:

(1) "Department" means the Department of Social Services.

(2) "Registrant" means an unmarried biological father or a male who claims to be the unmarried biological father of a child.

(3) "Registry" means the Responsible Father Registry as established by this section.

(4) "Unmarried biological father" means a male who is not married to the biological mother of a child of whom he is or claims to be the natural father.

(C) Except as set forth in Section 63-9-730(B), in order to preserve the right to notice of an adoption proceeding or the right to notice of a petition for termination of parental rights, a registrant must file a

claim of paternity with the registry. A claim of paternity filed with the registry must not be deemed to be an acknowledgment of paternity, and a claim of paternity filed with the registry, as well as any other information contained in the registry, is not admissible as evidence in any proceeding.

(D) Except for a person who is required to receive notice pursuant to Section 63-9-730(B), an unmarried biological father's failure to file a claim of paternity with the registry constitutes an implied irrevocable waiver of the father's right to notice of any proceedings pertaining to the termination of his parental rights and to the child's adoption. Such waiver includes a waiver of any right of the parent to be named as a party in or served with a summons or any other document prepared in conjunction with a termination of parental rights proceeding or an adoption proceeding.

(E) A claim of paternity must be signed by the registrant and must include:

- (1) the registrant's name, address, and date of birth;
- (2) the mother's name and, if known, her address and date of birth;
- (3) if known, the child's name, place of birth, and date of birth;
- (4) if known, the date, county, and state of conception of the child; and
- (5) the date the claim is filed.

(F) The claim of paternity may be filed with the registry before or after the birth of the child; however, a claim of paternity filed with the registry is null and void if it is filed on or after the date a petition for termination of parental rights or a petition for adoption is filed.

(G) Only the registrant may file the claim of paternity. No other person may file the claim of paternity on behalf of the registrant. The registrant must notify the registry of any change of address in the manner prescribed by the department. Failure to notify the registry of a change of address in the manner prescribed by the department is deemed to be a waiver of a right to notice or to any other right to which the registrant may be entitled as a result of filing a claim of paternity pursuant to this section, including, but not limited to, notice by publication.

(H) The department shall issue a certificate to the registrant verifying that the claim of paternity, revocation, or change of address has been filed.

(I) No fee may be charged for filing a claim of paternity, a revocation, or a change of address with the registry. No fee may be charged to the department for its searches of the registry. The department may charge a fee for processing searches of the registry to a child-placing agency or an attorney assisting in the adoption or termination of parental rights of a child in accordance with a fee schedule established in the annual appropriations act.

(J) A registrant may at any time revoke a claim of paternity and shall file the revocation with the department in the manner prescribed by the department. The filing of a revocation of a claim of paternity with the registry in the manner prescribed by the department makes the prior claim of paternity filed by the registrant null and void.

(K) Except as set forth in Section 63-9-730(B), no unmarried biological father who fails to file a claim of paternity with the registry is entitled to notice of any adoption proceeding or of any termination of parental rights proceeding concerning the unmarried biological father's child.

(L) An unmarried biological father's failure to file a claim of paternity with the registry is deemed to be a lack of proper diligence under Section 63-9-770(B). An unmarried biological father's lack of knowledge of the biological mother's pregnancy does not excuse an unmarried biological father's

failure to file a claim of paternity pursuant to this chapter. An unmarried biological father's sexual intercourse or his consent to artificial insemination with the biological mother is deemed to be notice to the unmarried biological father of the biological mother's pregnancy.

(M)(1) The registry is not available for public inspection and is not subject to disclosure under the Freedom of Information Act pursuant to Chapter 4, Title 30 except that:

(a) the department may file a written request with the registry regarding a child for whom the department has an open case for child welfare services;

(b) the department shall provide the names and addresses of all registrants who have filed a claim of paternity for the child in question upon written request of a child-placing agency or an attorney assisting in the adoption or termination of parental rights of a child. The written request may be filed with the registry before or after the birth of the child and must include:

(i) the mother's name and, if known, her address and date of birth;

(ii) if known, the child's date of birth and place of birth; and

(iii) if known, the date, county, and state of conception of the child.

(2) If a written request is submitted by or to the department pursuant to item (a) or (b) of subsection (M)(1), and no claim of paternity for the registrant is found, the department shall issue a certificate of diligent search verifying that a search of the registry has been conducted and that no claim of paternity regarding that registrant or child was found.

(N) A registrant who has filed a claim of paternity must be served with notice of any adoption proceeding and any termination of parental rights proceeding involving any child identified in the registrant's filed claim of paternity within ten days of receipt of the registrant's name and address by the attorney or child-placing agency pursuant to item (b) of subsection (M)(1).

(O) Should the department issue a certificate of diligent search, the attorney for the requesting party in an adoption proceeding or in a termination of parental rights proceeding shall file the certificate of diligent search with the court in which the proceeding is pending within ten days of receipt of the certificate.

(P) A registrant's claim of paternity shall remain on the registry until nineteen years after the claim of paternity has been filed with the registry, at which time the information may be purged from the registry. A registrant's claim of paternity shall be purged from the registry if the registrant revokes his claim of paternity pursuant to subsection (J).

(Q) The department may promulgate regulations and forms necessary to implement the provisions of this section. The department shall produce and distribute a pamphlet or publication informing the public of the Responsible Father Registry. The pamphlet or publication shall indicate the procedure for registering and the consequences for failure to register.

(R)(1) Any unauthorized use, or attempted unauthorized use, of the registry is expressly prohibited, and any person or organization seeking, receiving, using, or publishing, or attempting to do so, any information contained in the registry in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

(2) A person who knowingly, maliciously, or in bad faith files a false claim of paternity with the registry is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred

dollars or imprisoned for not more than thirty days, or both.

SUBARTICLE 9.
FOREIGN ADOPTIONS

SECTION 63-9-910. Foreign adoptions.

(A) Notwithstanding the provisions of Section 63-9-790(A) and (B), in the case of a child born in a foreign country who was not a United States citizen at birth and whose adoption was finalized in a foreign country, the court shall review the documentation as required by this section and, if it finds the documentation to be satisfactory, shall issue an order stating that the documentation required by this section has been submitted and is satisfactory and that the foreign adoption must be recognized and domesticated in South Carolina. The court shall transmit the order and the certificate of adoption to the State Registrar of Vital Statistics without the necessity of a hearing unless the court finds the documentation submitted pursuant to subsection (B) is unsatisfactory and such finding is stated in the order resulting from the hearing.

(B) Documentation required to be submitted to the court includes, but is not limited to:

(1) a verified petition seeking domestication of the foreign adoption;

(2) a post foreign adoption home study completed by a person certified pursuant to Section 63-9-360 which evaluates the adjustment and progress of the child and family since adoption;

(3) naturalization papers, if available;

(4) other documentation as the court may request as stated in materials developed pursuant to subsection (C).

(C) Court administration in consultation with the Department of Health and Environmental Control shall develop petition forms, including documentation required to be filed with the petition, and guidelines for obtaining the domestication of a foreign adoption. These forms and guidelines must be available to the public upon request at all county clerks of court offices and at Department of Health and Environmental Control offices.

(D) The state registrar, upon receipt of the order and certificate of adoption shall take action as provided in Section 44-63-140 with respect to the issuance and filing of an amended certificate of birth.

SECTION 63-9-920. Effect of foreign decrees of adoption.

When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this State must be determined by Section 63-9-760.

SUBARTICLE 11.
STEPPARENT, RELATIVE, AND ADULT ADOPTIONS

SECTION 63-9-1110. Adoption by stepparent or relative.

Any person may adopt his spouse's child, and any person may adopt a child to whom he is related by blood or marriage. In the adoption of these children:

(1) no investigation or report required under the provisions of Section 63-9-520 is required unless

otherwise directed by the court;

(2) no accounting by the petitioner of all disbursements required under the provisions of Section 63-9-740 is required unless the accounting is ordered by the court;

(3) upon good cause shown, the court may waive the requirement, pursuant to Section 63-9-750, that the final hearing must not be held before ninety days after the filing of the adoption petition;

(4) upon good cause shown, the court may waive the requirement, pursuant to Section 63-9-320(A)(2), of the appointment of independent counsel for an indigent parent; and

(5) upon good cause shown, the court may waive the requirement, pursuant to Section 63-9-60(A)(2), that the adoption proceeding must be finalized in this State.

SECTION 63-9-1120. Adult adoption.

An adult person may be adopted by another adult person with the consent of the person to be adopted or his guardian and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. The provisions of Section 62-2-109 and Sections 63-9-30 through 63-9-760, excluding Section 63-9-740, do not apply to the adoption of an adult person. A petition for the adoption must be filed with the family court in the county where the adoptive parents reside. After a hearing on the petition and after those investigations as the court considers advisable, if the court finds that it is in the best interests of the persons involved, a decree of adoption may be entered which has the legal consequences stated in Section 62-2-109.

ARTICLE 3.
STATE ADOPTION SERVICES

SECTION 63-9-1310. Declaration of purpose.

It is the purpose of this article to achieve the objective of the best interests of the child, as the primary client. Adoption programs must be structured so that all questions of interpretation are resolved with that objective in mind. To achieve this objective, adoption services must be delivered in the most effective and cost-efficient manner with assurances for the provision of quality services.

SECTION 63-9-1320. Department of Social Services adoption program only state public adoption program.

The Adoption and Birth Parent Services Program within the South Carolina Department of Social Services is the only public adoption program in South Carolina.

SECTION 63-9-1330. Department of Social Services to administer program.

The Department of Social Services shall administer an adoption program on behalf of the State. Adoption services must be available statewide. The adoption program provided by the department must be a centrally administered state program. The department shall designate regions which will be administered by the state office. The adoption unit shall constitute a separate and distinct unit within the department so as to assure specialization of effort and effective access to the department director. This unit must be staffed with qualified personnel professionally trained in the social work or other related fields. The department shall continually evaluate its staffing, functions, policies, and practices on the basis of nationally recognized standards. A committee to advise the department on all children's services must be appointed by the department director. Persons appointed to the committee must be knowledgeable on adoption, protective services, foster care, and other children's services.

SECTION 63-9-1340. Children's Bureau transferred; monitoring placements.

(A) The General Assembly finds that there should no longer be two public adoption agencies in South Carolina and that a single system within a comprehensive children's services agency is needed to assure that public adoption services are provided in the most effective and efficient manner. Therefore, the functions of the Children's Bureau of South Carolina are transferred to the adoption program within the Department of Social Services.

(B) The public adoption agency shall monitor and evaluate all public placements so as to insure that placements are suitable and in the best interests of the child. Any administrative costs savings accrued through the establishment of a single public adoptive system must be directed into the provision of adoption services.

SECTION 63-9-1350. Department of Social Services to obtain accreditation.

The department shall take all actions necessary to achieve accreditation of its adoption program by a nationally recognized accreditation organization, such as the Council on Accreditation of Services for Families and Children, as soon as practicable.

SECTION 63-9-1360. Birth parent informational brochure; waiting period.

(A) The Department of Social Services, before it may accept as a client a parent or parents, or prospective parent or parents who wish to relinquish their child for adoption, must first provide them with an informational brochure which outlines the services available from and the procedure used to select adoptive parents by the department and by the licensed private adoption agencies in this State. It must also contain a listing of the licensed private adoption agencies in this State. The information contained in the brochure relating to the private adoption agencies must be jointly authored by the private adoption agencies and furnished to the department.

(B) The department may not accept in subsection (A) persons as clients until a period of forty-eight hours has elapsed from the time they are furnished this brochure, and the department upon accepting these persons as clients must have them sign an affirmative statement that they have received this brochure and this statement must be kept in the adoption file maintained by the department.

SECTION 63-9-1370. Adoption services fees.

(A) The department shall establish fees for certain adoption and related services. The fees must be charged on a scale related to income as established by the state board, but the inability to pay a fee does not preclude the providing of any service.

(B) A fee may not be charged for the placement of a child with special needs, as defined in Section 63-9-30, into an adoptive home.

(C) Fees collected under this section must be forwarded to the State Treasurer who shall hold them in a separate account. These funds may be expended only as provided for by the General Assembly. Of the funds authorized to be expended, not less than seventy-five percent must be used for the sole purpose of paying for the medical and maternity home expenses incurred by clients:

(1) who are pregnant;

(2) who have requested the services of the Department of Social Services in planning for permanence for their child; and

(3) for whom other public or private funds are not available, and the remainder of the funds may be

used to defray other operating expenses related to adoption service delivery.

ARTICLE 5.
STATEWIDE ADOPTION EXCHANGE

SECTION 63-9-1510. Statewide adoption exchange.

(A) The State Department of Social Services shall establish, either directly or through purchase of services, a statewide adoption exchange with a photograph listing component.

(B) The adoption exchange must be available to serve all authorized, licensed child-placing agencies in the State as a means of recruiting adoptive families for any child who meets one or more of the following criteria:

(1) the child is legally free for adoption;

(2) the child has been permanently committed to the department or to a licensed child-placing agency;

(3) the court system requires identification of an adoptive family for the child before ties to the biological parents are severed;

(4) the department has identified adoption as the child's treatment plan.

(C) The department shall register with the adoption exchange each child in its care who meets any one or more of the above criteria and for whom no adoptive family has been identified. This registration must be made at least thirty days from the determination date of the child's adoptable status and updated at least monthly.

(D) If an adoption plan has not been made within at least three months from the determination date of the child's adoptable status, the department shall provide the adoption exchange with a photograph, description of the child, and any other necessary information for the purpose of recruitment of an adoptive family for the child, including registration with the photograph listing component of the exchange which must be updated monthly. The department shall establish criteria by which a determination may be made that recruitment or photograph listing is not required for a child. The department also shall establish procedures for monitoring the status of children for whom that determination is made.

(E) In accordance with guidelines established by the department, the adoption exchange may accept from licensed child-placing agencies, referrals and registration for recruitment and photograph listing of children meeting the criteria of this section.

(F) The department shall refer appropriate children to regional and national exchanges when an adoptive family has not been identified within one hundred eighty days of the determination of the child's adoptable status. The department shall establish criteria by which a determination may be made that a referral to regional or national exchanges is not necessary, and the department shall monitor the status of those children not referred.

(G) The department shall provide orientation and training to appropriate staff regarding the adoption exchange procedures and utilization of the photograph listing component.

ARTICLE 7.
SUPPLEMENTAL BENEFITS TO ASSURE ADOPTION

SECTION 63-9-1700. Short title.

This article may be cited as the "South Carolina Adoption Supplemental Benefits Act".

SECTION 63-9-1710. Purpose.

The purpose of this article is to supplement the South Carolina adoption law by making possible through public supplemental benefits the most appropriate adoption of each child certified by the Department of Social Services as requiring a supplemental benefit to assure adoption.

SECTION 63-9-1720. Definitions.

As used in this article:

- (1) "Child" means an individual up to twenty-one years of age.
- (2) "Supplemental benefits" means payments made by the State Department of Social Services to provide services, including medical subsidies for payment for treatment pursuant to Section 63-9-1780, for children who without these services may not have been adopted.
- (3) "Department" means the Department of Social Services.

SECTION 63-9-1730. Program established.

The department shall establish and administer an ongoing program of supplemental benefits for adoption. Supplemental benefits and services for children under this program must be provided out of funds appropriated to the department for these purposes.

SECTION 63-9-1740. Notice to adoptive parents.

At the time of placement for adoption, the department shall inform in writing the prospective adoptive parents of the:

- (1) availability of supplemental benefits;
- (2) conditions for which the supplemental benefits are available;
- (3) procedure for application for supplemental benefits.

SECTION 63-9-1750. Eligibility criteria.

In order for a child to be eligible for supplemental benefits the department shall determine that the child legally is free for adoption, the child has been placed for adoption by the department, and one of the following provisions applies to the child:

- (1) is a special needs child pursuant to Section 63-9-30;
- (2) is at high risk of developing a physical, mental, or emotional disability;
- (3) is one for whom other factors, as determined by the department, interfere with the child's ability to be placed for adoption;

(4) has established significant emotional ties with prospective adoptive parents while in their care as a foster child, and it is considered by the agency to be in the best interest of the child to be adopted by the foster parents.

SECTION 63-9-1760. Eligible children.

A child meeting criteria specified in Section 63-9-1750 for whom the department believes supplemental benefits are necessary to improve opportunities for adoption is eligible for the program. The agency shall document that reasonable efforts have been made to place the child in adoption without supplemental benefits through the use of adoption resource exchanges, recruitment, and referral to appropriate specialized adoption agencies.

SECTION 63-9-1770. Adoptive parents; nature of supplemental benefits.

(A) When the department determines that a child is eligible for supplemental benefits, a written agreement must be executed between the parents and the department.

(B) In individual cases supplemental benefits may begin with the adoptive placement or at the appropriate time after the adoption decree and will vary with the needs of the child as well as the availability of other resources to meet the child's needs.

(C) The supplemental benefits may be for special services only, or for money payments, and either for a limited period, for a long term, or for a combination of them. The amount of time-limited, long-term supplemental benefits may not exceed that which currently would be allowable for the child under foster family care or, in the case of a special service, the reasonable fee for the service rendered.

(D) When supplemental benefits last for more than one year the adoptive parents shall certify that the child remains under the parents' care and that the child's need for supplemental benefits continues. Based on the certification and investigation by the agency and available funds, the agency may approve continued supplemental benefits. These benefits may be extended so long as the continuing need of the child is verified and the child is the legal dependent of the adoptive parents.

(E) A child who is certified as eligible for supplemental benefits remains eligible and shall receive supplemental benefits, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption, or after adoption.

SECTION 63-9-1780. Eligibility for supplemental benefits.

Only certain children who have been certified as eligible for supplemental benefits may receive payments for medical, rehabilitative, or other treatment services under their supplemental benefits certification. To receive these payments, a child shall fall into one of the following categories:

(1) receiving payments for medical, rehabilitative, or other treatment services immediately before adoption for a physical, mental, or emotional condition;

(2) identified before adoption as being at a high risk for developing a physical, mental, or emotional condition in the future; or

(3) with a physical, mental, or emotional condition diagnosed after adoption if the condition existed before adoption but was not recognized or if substantial risk factors for the condition existed before adoption but were not recognized.

SECTION 63-9-1790. Review of decisions.

A decision concerning supplemental benefits by the department which the adoptive parents consider adverse to the child is reviewable according to department regulations.

SECTION 63-9-1800. Benefits to substitute caregivers.

Supplemental benefits may not end solely because the death or disability of the adoptive parents requires placement of the adopted child with another caregiver. The caregiver of the adopted child has the rights and duties imposed on the adoptive parents in this article.

SECTION 63-9-1810. Authority to promulgate regulations.

The department shall promulgate regulations to carry out the provisions of this article.

ARTICLE 9.
INTERSTATE COMPACT FOR ADOPTION AND MEDICAL ASSISTANCE

SECTION 63-9-2000. Compact authorized.

(A) The Department of Social Services may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this State with other states to implement one or more of the purposes set forth in this article. The compact has the effect of law.

(B) For the purposes of this article:

(1) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

(2) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(3) "Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

SECTION 63-9-2010. Compact contents.

A compact entered into pursuant to the authority conferred by this article must contain:

(1) a provision making it available for joinder by all states;

(2) a provision for withdrawal from the compact upon written notice to the parties but one year between the date of the notice and the effective date of the withdrawal;

(3) a requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) a requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance;

(5) other provisions as may be appropriate to implement the proper administration of the compact.

SECTION 63-9-2020. Additional provisions.

A compact entered into pursuant to the authority conferred by this article may contain provisions in addition to those required by Section 63-9-2010 as follows:

(1) establishing procedures and entitlements to medical, developmental, child care, or other social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services;

(2) other provisions as may be appropriate or incidental to the proper administration of the compact.

SECTION 63-9-2030. Medical assistance identification.

(A) A child with special needs who is a resident in the State who is the subject of an adoption assistance agreement with another state may receive medical assistance identification from this State upon the filing with the Department of Social Services of a certified copy of the agreement obtained from the adoption assistance state. In accordance with regulations of the department, the adoptive parents at least annually shall show that the agreement is still in force or has been renewed.

(B) The Department of Health and Human Services shall consider the holder of medical assistance identification pursuant to this section as any other holder of medical assistance identification under the laws of this State and shall process and make payment on claims on account of the holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(C) The Department of Health and Human Services or the Department of Social Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and must be reimbursed for them. However, there is no reimbursement for services or benefit amounts covered under insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall promulgate regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection are for the costs of services for which there is no federal contribution, or which, if federally aided, are not provided by the residence state. The regulations must include, but are not limited to, procedures to be followed in obtaining prior approval for services in those instances where required for the assistance.

(D) The provisions of this section apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this State under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this State. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this State are eligible to receive assistance in accordance with the laws and procedures applicable to the agreements.

SECTION 63-9-2040. Compliance with federal law.

Consistent with federal law, the Department of Social Services in connection with the administration of this article and a compact pursuant to it must include in a state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, Titles IV (e) and XIX of the Social Security Act, and other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply

for and administer all relevant federal aid in accordance with the law.

SECTION 63-9-2050. Penalties.

A person who submits a claim for payment or reimbursement for services or benefits pursuant to this article or makes a statement in connection with payment or reimbursement, which he knows or should know to be false, misleading, or fraudulent, is guilty of a misdemeanor. Upon conviction, the person must be fined not more than ten thousand dollars or imprisoned not more than two years, or both.

ARTICLE 11.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

SECTION 63-9-2200. Compact enacted.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Subsection 1. Purpose and Policy:

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Subsection 2. Definitions:

As used in this compact:

- (a) "Child" means a person who, by reason of minority, is legally subject to parental guardianship or similar control.
- (b) "Sending agency" means a party state, officer or employee thereof, a subdivision of a party state, or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.
- (c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
- (d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in

a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Subsection 3. Conditions for Placement:

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this subsection and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state.

The notice shall contain:

(1) the name, date and place of birth of the child;

(2) the identity and address or addresses of the parents or legal guardian;

(3) the name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child;

(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to item (b) of this subsection may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Subsection 4. Penalty for Illegal Placement:

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Subsection 5. Retention of Jurisdiction:

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority

in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Subsection 6. Institutional Care of Delinquent Children:

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. equivalent facilities for the child are not available in the sending agency's jurisdiction;
2. institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Subsection 7. Compact Administrator:

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Subsection 8. Limitations:

This compact shall not apply to:

(a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(b) any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between states which has the force of law.

Subsection 9. Enactment and Withdrawal:

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the

withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Subsection 10. Construction and Severability:

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party, state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SECTION 63-9-2210. Financial responsibility for children.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Subsection 5 thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Article 23, Chapter 17 of this title also may be invoked.

SECTION 63-9-2220. "Appropriate public authorities" defined.

The "appropriate public authorities" as used in Subsection 3 of the Interstate Compact on the Placement of Children, with reference to this State, means the South Carolina Department of Social Services for adoptive and foster care purposes. The department shall receive and act with reference to notices required by Subsection 3.

SECTION 63-9-2230. "Appropriate authority in receiving state" defined.

As used in item (a) of Subsection 5 of the Interstate Compact on the Placement of Children, "appropriate authority in the receiving state" with reference to this State means the Department of Social Services as the compact administrator.

SECTION 63-9-2240. Agreements with other compact states.

The officers and agencies of this State and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to item (b) of Subsection 5 of the Interstate Compact on the Placement of Children. Any agreement which contains a financial commitment or imposes a financial obligation of this State or subdivision or agency of it is not binding unless it has the approval in writing of the State Treasurer in the case of the State and of the Commissioner of the Department of Social Services in the case of a subdivision of the State, as their respective functions and duties may appear and be appropriate pursuant to this article.

SECTION 63-9-2250. Visitation, inspections by agreement.

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by item (b) of Subsection 5 of the Interstate Compact on the Placement of Children.

SECTION 63-9-2260. Out-of-state placements.

There shall be no legal restrictions on out-of-state placements made pursuant to the Interstate Compact on the Placement of Children.

SECTION 63-9-2270. Placement of delinquent children.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Subsection 6 of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Subsection 5 thereof.

SECTION 63-9-2280. "Executive head" defined.

As used in Subsection 7 of the Interstate Compact on the Placement of Children, "executive head" means the Governor. The Governor is authorized to designate the Department of Social Services as the compact administrator in accordance with the terms of Subsection 7.

SECTION 63-9-2290. Promulgation of procedures governing interstate adoptive and foster care.

The Department of Social Services shall promulgate procedures to govern all aspects of interstate adoptive and interstate foster care placements.