~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 25, 2012

**H. 4473**

Introduced by Reps. Limehouse, Brady and Neilson

S. Printed 4/25/12--S.

Read the first time March 6, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4473) to amend the Code of Laws of South Carolina, 1976, by adding Section 63‑15‑45 so as to prohibit a court from granting legal custody to a parent, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting:

/ A BILL

TO AMEND CHAPTER 15, TITLE 63 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑15‑45, SO AS TO PROHIBIT A COURT FROM GRANTING LEGAL CUSTODY TO A PARENT, GUARDIAN, OR ANOTHER PERSON WHO HAS BEEN FOUND GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE; TO AMEND SECTION 63-7-2340, RELATING TO FINGERPRINT REVIEWS, SO AS TO PROVIDE THAT A PERSON WHO IS APPLYING FOR APPROVAL FOR ADOPTION PLACEMENT MUST ALSO UNDERGO A FINGERPRINT REVIEW; TO AMEND SECTION 63-7-2345, RELATING TO PAYMENT OF COSTS TO THE FEDERAL BUREAU OF INVESTIGATIONS FOR FINGERPRINT REVIEWS, SO AS TO PROVIDE THAT THE DEPARTMENT OF SOCIAL SERVICES MAY USE FUNDS APPROPRIATED FOR FOSTER CARE TO PAY FOR FINGERPRINT REVIEWS CONDUCTED BY THE FEDERAL BUREAU OF INVESTIGATIONS FOR FOSTER CARE FAMILIES RECRUITED AND SELECTED AS POTENTIAL FOSTER CARE AND ADOPTIVE FAMILIES FOR CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES; TO AMEND SECTION 63‑7‑2350, RELATING TO RESTRICTIONS ON FOSTER CARE PLACEMENTS, SO AS TO RESTRICT THE PLACEMENT OF A CHILD IN FOSTER CARE WITH A PERSON WHO HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO CERTAIN OFFENSES OR IF A PERSON RESIDING IN THE HOME WHO IS EIGHTEEN YEARS OF AGE OR OLDER HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO CERTAIN OFFENSES; AND TO AMEND THE CODE OF LAWS, 1976, BY ADDING SECTION 63-9-65, SO AS TO PROVIDE THAT THE COURT MAY NOT GRANT AN ADOPTING PETITION OF A PERSON WHO HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO THE OFFENSE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE.

SECTION 1. Article 1, Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑45. In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must consider and may not grant custody of a minor child to a parent, guardian, or another person who has been convicted of or who has pled guilty or nolo contendere to the offense of criminal sexual conduct with a minor in the first degree.”

SECTION 2. Section 63-7-2340, as last amended by Act 361 of 2008, is further amended to read:

“Section 63-7-2340. (A) A person applying for licensure as a foster parent or for approval for adoption placement and a person eighteen years of age or older, residing in a home in which a person has applied to be licensed as a foster parent or an approved adoption placement, must undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprinting review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

(B) Any fee charged by the Federal Bureau of Investigation for the fingerprint review must be paid by the individual.”

SECTION 3. Section 63-7-2345, as last amended by Act 353 of 2008, is further amended to read:

“Section 63-7-2345. Notwithstanding the provisions of Section 63‑7‑2350, the department is authorized to pay from funds appropriated for foster care the costs of Federal Bureau of Investigation fingerprint reviews for foster care families recruited~~,~~ and selected~~, and licensed by~~ as potential adoption and foster care providers for children in the custody of the department.”

SECTION 4. Section 63-7-2350, as last amended by Act 361 of 2008, is further amended to read:

“Section 63-7-2350. (A) No child in the custody of the Department of Social Services may be placed in foster care or for adoption with a person if the person or anyone eighteen years of age or older residing in the home:

(1) ~~with~~ has a substantiated history of child abuse or neglect; or

(2) ~~who~~ has pled guilty or nolo contendere to or ~~who~~ has been convicted of:

(a) an ‘Offense Against the Person’ as provided for in Chapter 3, Title 16;

(b) an ‘Offense Against Morality or Decency’ as provided for in Chapter 15, Title 16;

(c) contributing to the delinquency of a minor as provided for in Section 16‑17‑490;

(d) the common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger;

(e) criminal domestic violence, as defined in Section 16‑25‑20;

(f) criminal domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65;

(g) a felony drug‑related offense under the laws of this State~~.~~;

(h) unlawful conduct toward a child as provided for in Section 63-5-70;

(i) cruelty to children as provided for in Section 63-5-80;

(j) child endangerment as provided for in Section 56-5-2947; or

(k) criminal sexual conduct with a minor in the first degree as provided for in Section 16-3-655 (A).

(B) A person who has been convicted of a criminal offense similar in nature to a crime enumerated in subsection (A) when the crime was committed in another jurisdiction or under federal law is subject to the restrictions set out in this section.

(C) This section does not prevent foster care placement or adoption placement when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in subsection (A) has been pardoned. However, notwithstanding the entry of a pardon, the department or other entity making placement or licensing decisions may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited to provide foster care services.”

SECTION 5. Subarticle 1, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

“Section 63-9-65. In making a decision regarding adoption of a minor child, in addition to other existing factors specified by law, the court must consider and may not grant an adoption petition of a person who has been convicted of or who has pled guilty or nolo contendere to the offense of criminal sexual conduct with a minor in the first degree.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

VINCENT A. SHEHEEN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Department of Social Services:

The department indicates that there would be no fiscal impact on the general fund or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑15‑45 SO AS TO PROHIBIT A COURT FROM GRANTING LEGAL CUSTODY TO A PARENT, GUARDIAN, OR ANOTHER PERSON WHO IS REQUIRED TO REGISTER PURSUANT TO THE SEX OFFENDER REGISTRY; AND TO AMEND SECTION 63‑7‑2350, RELATING TO RESTRICTIONS ON FOSTER CARE PLACEMENTS, SO AS TO RESTRICT THE PLACEMENT OF A CHILD IN FOSTER CARE WITH A PERSON WHO IS REQUIRED TO REGISTER PURSUANT TO THE SEX OFFENDER REGISTRY.

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

SECTION 1. Article 1, Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑45. In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must consider and may not grant custody of a minor child to a parent, guardian, or another person who was found guilty of criminal sexual conduct with a minor in the first degree.”

SECTION 2. Section 63‑7‑2350 (A) of the 1976 Code is amended to read:

“(A) No child may be placed in foster care with a person:

(1) with a substantiated history of child abuse or neglect; ~~or~~

(2) who has pled guilty or nolo contendere to or who has been convicted of:

(a) an ‘Offense Against the Person’ as provided for in Chapter 3, Title 16;

(b) an ‘Offense Against Morality or Decency’ as provided for in Chapter 15, Title 16;

(c) contributing to the delinquency of a minor as provided for in Section 16‑17‑490;

(d) the common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger;

(e) criminal domestic violence, as defined in Section 16‑25‑20;

(f) criminal domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65;

(g) a felony drug related offense under the laws of this State; or

(3) who was found guilty of criminal sexual conduct with a minor in the first degree.”

SECTION 3. Subarticle 1, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

“Section 63-9-65. In making a decision regarding adoption of a minor child, in addition to other existing factors specified by law, the court must consider and may not grant an adoption petition of a person who was found guilty of criminal sexual conduct with a minor in the first degree.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

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