~~Indicates Matter Stricken~~

Indicates New Matter

RECALLED

April 29, 2014

**H. 4346**

Introduced by Reps. Forrester and Allison

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Read the first time January 14, 2014.

**A** **BILL**

TO AMEND SECTION 63‑7‑1230, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE IMMEDIATE ENTRY OF, AMONG OTHERS, FOSTER PARENTS IN THE CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT, SO AS TO REQUIRE THE DEPARTMENT TO FILE A PETITION WITH THE COURT BEFORE DOING SO; TO ESTABLISH REQUIREMENTS FOR FILING A PETITION WITH THE COURT PURSUANT TO SECTION 63‑7‑1230 AND FOR PROVIDING NOTICE OF, SCHEDULING, AND HOLDING A HEARING; TO EXEMPT PETITIONS FILED PURSUANT TO SECTION 63‑7‑1230 FROM THE REQUIREMENTS OF SECTION 63‑7‑1620 AND TO CHANGE REQUIREMENTS REGARDING PARTY STATUS OF THE CHILD AND PARENTS OF THE CHILD IN CERTAIN CIRCUMSTANCES; TO ESTABLISH REQUIREMENTS BEFORE A COURT MAY ORDER A PERSON TO BE ENTERED IN THE CENTRAL REGISTRY PURSUANT TO SECTION 63‑7‑1230, TO PROHIBIT PARTIES FOR WAIVING PLACEMENT IN THE REGISTRY AND TO ALLOW THE DEPARTMENT TO PETITION THE COURT FOR IMMEDIATE RELIEF IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 63‑7‑1410, RELATING TO THE ADMINISTRATIVE APPEAL OF INDICATED CASES OF CHILD ABUSE OR NEGLECT IN CERTAIN CIRCUMSTANCES, SO AS TO PROVIDE AN APPEAL PROCESS FOR, AMONG OTHERS, FOSTER PARENTS FOR CASES INDICATED PURSUANT TO SECTION 63‑7‑1230; AND TO AMEND SECTION 63‑7‑1430, RELATING TO NOTICE AND OPPORTUNITY TO BE HEARD IN AN ADMINISTRATIVE APPEAL OF AN INDICATED FINDING OF ABUSE OR NEGLECT, SO AS TO ELIMINATE REFERENCE TO ADMINISTRATIVE APPEALS OF CASES IN WHICH THERE HAS BEEN IMMEDIATE ENTRY OF, AMONG OTHERS, A FOSTER PARENT INTO THE CENTRAL REGISTRY.

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

SECTION 1. Section 63‑7‑1230 of the 1976 Code is amended to read:

“Section 63‑7‑1230. (A) When the investigation performed pursuant to this subarticle results in a determination that ~~an individual~~ a person has harmed a child or threatened a child with harm, as defined in Section 63‑7‑20, ~~the name of that individual must be entered immediately in the Central Registry of Child Abuse and Neglect. The department~~ ~~must notify the individual in writing by certified mail that his name has been entered in the registry, of his right to request an appeal of the decision to enter his name in the registry, and of the possible ramifications regarding future employment and licensing if he allows his name to remain in the registry. The procedures set forth in Subarticle 9 apply when an individual challenges the entry of his name in the registry and challenges of the entry in the registry pursuant to this section must be given expedited review in the appellate process.~~ the department:

(1) shall petition the family court for an order placing the person in the Central Registry of Child Abuse and Neglect if there is a preponderance of evidence that the person physically or sexually abused or wilfully or recklessly neglected the child; or

(2) may, except as provided in item (1), petition the family court for an order placing the person in the Central Registry of Child Abuse and Neglect if the department determines by a preponderance of evidence that:

(a) the person abused or neglected the child in any manner, including the use of excessive corporal punishment; and

(b) the nature and circumstances of the abuse indicate that the person would present a significant risk of committing physical or sexual abuse or wilful or reckless neglect if the person were in a position or setting outside of the person’s home that involves care of or substantial contact with children.

(B) The petition shall contain a full description of facts that support entry of the name in the Central Registry of Child Abuse and Neglect.

(C) Upon receipt of a petition under this section, the family court shall schedule a hearing to be held within thirty‑five days of the filing date to determine whether to grant the relief requested by the department.

(D) The person determined by the department to have harmed the child must be served with a summons and notice of the hearing date and time along with the petition. Personal jurisdiction over the person is effected if the person is served at least seventy‑two hours before the hearing. No responsive pleading to the petition is required. The court may authorize service by publication in appropriate cases and may waive the thirty‑five days requirement when necessary to achieve service. A party may waive service or appear voluntarily.

(E) An action filed pursuant to this section is not subject to Section 63‑7‑1620. Neither the child victim nor the parents of the child victim are parties to the action, although if the parent is the person determined by the department to have harmed the child or threatened the child with harm, the parent is a party.

(F) The family court shall order that the person be entered in the Central Registry of Child Abuse and Neglect if the department establishes the facts alleged in the petition by a preponderance of evidence.

(G) If the only form of physical abuse found by the court is excessive corporal punishment, the court only may order that the person’s name be entered in the Central Registry of Child Abuse and Neglect if subsection (A)(2) applies.

(H) The parties may not waive placement in the Central Registry of Child Abuse and Neglect.

(I) The department may move for emergency or temporary relief pursuant to court rules when necessary to assure protection of children pending a hearing on the merits.”

SECTION 2. Section 63‑7‑1410 of the 1976 Code is amended to read:

“Section 63‑7‑1410. The purpose of this subarticle is to provide a child protective services appeals process for reports that have been indicated pursuant to Subarticles 5 and 13 and are not being brought before the family court for disposition ~~and for reports indicated and entered~~ or have been indicated pursuant to Subarticle 7 and are not being brought before the family court for entry in the Central Registry pursuant to Section 63‑7‑1230 ~~and not being brought before the family court for disposition~~. The appeals hearing must be scheduled and conducted in accordance with the department’s fair hearing regulations. This process is available only to the person determined to have abused or neglected the child.”

SECTION 3. Section 63‑7‑1430 of the 1976 Code is amended to read:

“Section 63‑7‑1430. (A) If the department determines that a report of suspected child abuse or neglect is indicated and the department is not taking the case to the family court for disposition~~,~~ or ~~if the case was entered in the Central Registry pursuant to 63‑7‑1230 and the department is not taking the case to family court for disposition~~ for Central Registry entry pursuant to Section 63‑7‑1230, the department shall provide notice of the case decision by certified mail to the person determined to have abused or neglected the child. The notice must inform the person of the right to appeal the case decision and that, if he intends to appeal the decision, he must notify the department of his intent in writing within thirty days of receipt of the notice. The notice also must advise the person that the appeal process is for the purpose of determining whether a preponderance of evidence supports the case decision that the person abused or neglected the child. If the person does not notify the department of his intent to appeal in writing within thirty days of receipt of the notice, the right to appeal is waived by the person and the case decision becomes final.

(B) Within fourteen days after receipt of a notice of intent to appeal, an appropriate official of the department designated by the director must conduct an interim review of case documentation and the case determination. The interim review may not delay the scheduling of the contested case hearing. If the official conducting the interim review decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department’s case record and database as provided in Section 63‑7‑930(B)(2) or (3). ~~If the person’s name was in the Central Registry as a result of a determination pursuant to Section 63‑7‑1230 and the interim review results in a reversal of the decision that supports that entry, the person’s name must be removed from the Central Registry.~~

(C) The state director shall appoint a hearing officer to conduct a contested case hearing for each case decision appealed. The hearing officer shall prepare recommended findings of fact and conclusions of law for review by the state director or the state director’s designee who shall render the final decision. The designee under this subsection must not be a person who was involved in making the original case decision or who conducted the interim review of the original case decision. The purpose of the hearing is to determine whether there is a preponderance of evidence that the appellant was responsible for abuse or neglect of the child.

(D) After a contested case hearing, if the state director or the director’s designee decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department’s case record and database as provided in Section 63‑7‑930(B)(2) or (3). ~~If the person’s name was in the Central Registry as a result of a determination pursuant to Section 63‑7‑1230 and the state director or the director’s designee reverses the decision that supports that entry, the person’s name must be removed from the Central Registry.~~ If the state director or the director’s designee affirms the determination against the appellant, the appellant has the right to seek judicial review in the family court of the jurisdiction in which the case originated.”

SECTION 4. This act takes effect six months after approval of the Governor.

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