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COMMITTEE REPORT

March 3, 2016

**H. 3989**

Introduced by Reps. J.E. Smith, Bernstein, Pitts, Horne, McCoy, Thayer, McEachern and Hicks

S. Printed 3/3/16--H.

Read the first time April 16, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3989) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Persons with Disabilities Right to Parent Act” by adding Chapter 21 to Title 63, etc., respectfully

**REPORT:**

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

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “PERSONS WITH DISABILITIES RIGHT TO PARENT ACT” BY ADDING CHAPTER 21 TO TITLE 63 SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES, LAW ENFORCEMENT, AND THE FAMILY AND PROBATE COURTS, AMONG OTHERS, TO PROTECT THE PARENTING RIGHTS OF PERSONS WITH A DISABILITY BY ESTABLISHING CERTAIN REQUIREMENTS AND SAFEGUARDS APPLICABLE IN CHILD CUSTODY, CHILD PROTECTION, AND PROBATE GUARDIANSHIP PROCEEDINGS TO ENSURE THAT PERSONS WITH DISABILITIES ARE NOT DENIED THE RIGHT TO PARENT OR TO HAVE CUSTODY OF OR VISITATION WITH A CHILD BECAUSE OF THE DISABILITY; TO PROHIBIT CHILD PLACING AGENCIES, ADOPTION SERVICE PROVIDERS, AND ASSISTED REPRODUCTIVE TECHNOLOGY SERVICE PROVIDERS FROM DENYING PERSONS WITH A DISABILITY THE RIGHT TO ACCESS SERVICES BECAUSE OF THE PERSON’S DISABILITY, WITH EXCEPTIONS; BY ADDING SECTION 62‑1‑510 SO AS TO REQUIRE ASSESSMENTS AND EVALUATIONS OF CERTAIN PERSONS WITH A DISABILITY IN PROBATE COURT PROCEEDINGS, AND TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO ENABLE THE PERSON TO PARENT A CHILD ADEQUATELY; BY ADDING SECTIONS 63‑7‑1695, 63‑7‑2575, AND 63‑15‑270 SO AS TO REQUIRE ASSESSMENTS AND EVALUATIONS OF CERTAIN PERSONS WITH A DISABILITY IN FAMILY COURT PROCEEDINGS TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO ENABLE THE PERSON TO PARENT A CHILD ADEQUATELY; TO AMEND SECTION 63‑7‑720, RELATING TO REASONABLE EFFORTS REQUIREMENTS FOR PROBABLE CAUSE HEARINGS, SO AS TO REQUIRE SERVICES FOR PARENTS AND LEGAL GUARDIANS WITH A DISABILITY TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO AVOID REMOVAL OF THE CHILD; AND TO AMEND SECTION 63‑7‑1640, AS AMENDED, RELATING TO FAMILY COURT DETERMINATIONS WHETHER TO REQUIRE REASONABLE EFFORTS TO PRESERVE OR REUNIFY A FAMILY WHEN THE PARENT OR LEGAL GUARDIAN HAS A DISABILITY, SO AS TO REQUIRE THE COURT TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO PRESERVE OR REUNIFY THE FAMILY; AND FOR OTHER PURPOSES.

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

SECTION 1. This act may be cited as the “Persons with Disabilities Right to Parent Act”.

SECTION 2. Title 63 of the 1976 Code is amended by adding:

“CHAPTER 21

Persons with Disabilities Right to Parent Act

Section 63‑21‑10. As used in this chapter:

(1) ‘Adaptive parenting equipment’ means equipment or any other item that is used to increase, maintain, or improve the parenting capabilities of a person with a disability.

(2) ‘Adaptive parenting techniques’ means strategies for accomplishing childcare and other parenting tasks that enable a person with a disability to execute a task safely for themselves and their children alone or in conjunction with adaptive parenting equipment.

(3) ‘Adoption’ has the same meaning as provided for in Chapter 9, Title 63.

(4) ‘Assisted reproductive technologies’ or ‘ART’ means medical technologies designed to treat infertility or otherwise assist with conception including, but not limited to, drug or hormone therapy, artificial insemination by husband (AIH), artificial insemination by donor (AID), in vitro fertilization (IVF), or surrogacy.

(5) ‘Child custody proceeding’ means a proceeding in family or probate court in which a third party is seeking to be awarded temporary or permanent legal or physical custody of a child to obtain legal guardianship of a child, or to limit or deny visitation of a parent or legal guardian with a child, including an action filed by the other parent.

(6) ‘Child protection proceeding’ means a proceeding in family court provided for in Chapter 7, Title 63 relating to protection of children from abuse or neglect, access to services and other support for parents to preserve or reunify the family, and permanency planning for children whose parents are unable or unwilling to parent adequately.

(7) ‘Child placing agency’ has the same meaning as provided for in Section 63‑9‑30.

(8) ‘Covered entity’ has the same meaning as provided for in the Americans with Disabilities Act, as amended.

(9) ‘Department’ means the South Carolina Department of Social Services.

(10) ‘Disability’ means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of an impairment, or being regarded as having an impairment, consistent with the Americans with Disabilities Act, as amended, and as interpreted broadly under that act.

(11) ‘Supportive services’ means services that help a person with a disability compensate for those aspects of the disability that affect the ability to care for a child and that enables the person to fulfill parental responsibilities including, but not limited to, specialized or adapted training, evaluations, and assistance with effective use of adaptive equipment, and accommodations that enable a person with a disability to benefit from other services, such as braille text or sign language interpretation.

Section 63‑21‑20. (A) The department, family court, probate court, law enforcement, and any other covered entity shall comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fourteenth Amendment, before taking an action pursuant to Chapters 7, 9, or 15, Title 63, or Title 62 that could impact the parental rights of a person with a disability, including the actions provided for in subsections (B) through (D).

(B) Law enforcement shall inquire about and document the disability status of the parent or legal guardian when a child is taken into emergency protective custody and provide the information to the department.

(C)(1) The department shall:

(a) inquire about and document the disability status and the related needs of the parent or legal guardian when a child is removed from the home;

(b) ensure that reasonable efforts to avoid removal of the child from the home of a parent or legal guardian with a disability include access to adaptive parenting equipment, instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are made available to a parent or legal guardian who does not have a disability and must ensure that the reasonable efforts are individualized based on the specific needs of the parent’s or legal guardian’s disability;

(c) offer a comprehensive array of preventive, maintenance, and reunification services, such as supportive housing, assertive community treatment, crisis services, peer supports, household management training, homemaker services, substance abuse services, occupational therapy and parenting skills training, adaptive parenting equipment, and adaptive parenting technique training, tailored to address the parent’s or legal guardian’s specific disability needs; and

(d) make reasonable accommodations to a parent or legal guardian with a disability as part of placement and visitation decisions; preventive, maintenance, and reunification services; and evaluations or assessments of parenting capacity.

(2) The department, and any other covered entity, must not:

(a) deny a parent or legal guardian with a disability reunification services solely on the basis of the disability of the person or speculation of the impact of the disability on the capacity or fitness to parent; or

(b) require a parent or legal guardian with a disability to submit to additional testing to qualify for reunification services provided without additional testing to a parent or legal guardian without a disability.

(D)(1) The family court shall determine and include as findings in the probable cause order:

(a) the nature of the disability of the parent or legal guardian;

(b) the reasonable efforts made by the department to avoid removal of the child from the parent or legal guardian, including reasonable efforts made to address the parenting limitations caused by the disability; and

(c) reasonable accommodations the department, and any other covered entity, shall make to ensure the parent or legal guardian has the opportunity to participate fully in the child protection proceedings throughout the duration of the case.

(2) The family court must not order removal of the child pursuant to Section 63‑7‑1660, approve a placement plan pursuant to Section 63‑7‑1680, award custody or guardianship of the child to another person pursuant to Section 63‑7‑1700(G), order the department to file a petition for termination of parental rights pursuant to Section 63‑7‑1700(E), or terminate parental rights pursuant to Section 63‑7‑2570 with respect to a parent or legal guardian with a disability solely on the grounds that the disability makes the person unfit to parent the child, unless the court finds by clear and convincing evidence, which may include testimony of qualified expert witnesses, that the disability renders the parent or legal guardian unfit to parent the child and that retention of the child in or return of the child to the home places the child at unreasonable risk of harm affecting the child’s life, physical health or safety, or mental well‑being.

(3) If a family court or probate court considers a parent’s or legal guardian’s disability as a reason not to award custody of or allow visitation with a child, the court shall make specific written findings as to the nexus between the parent’s or legal guardian’s disability and harm, or risk of harm, to the child, the effect the harm has, or could have, on the best interests of the child, and whether or not adaptive parenting equipment or supportive services could alleviate the harm or risk of harm.

Section 63‑21‑30. If a family court or probate court finds that the department or other covered entity has failed to accommodate a parent with a disability during the pendency of child protection, child custody, or probate guardianship proceedings, as required pursuant to this chapter, Chapters 7, 9, and 15, Title 63, Title 62, or another provision of state or federal law, the Americans with Disabilities Act is a defense to termination of parental rights.

Section 63‑21‑40. (A) An assisted reproductive technologies (ART) service provider must not deny a person with a disability access to services solely on the basis of the disability, or on speculation that the disability makes the person unfit to parent, without considering whether adaptive parenting equipment, instruction on adaptive parenting techniques, or other supportive services could enable the person to parent adequately.

(B) An ART service provider shall seek consultation before denying a person with a disability access to services if the service provider lacks expertise about available or suitable adaptive parenting equipment, adaptive parenting techniques, or other supportive services.

(C) An ART service provider that denies a person with a disability access to assisted reproductive technologies based, in whole or in part, on the belief that the disability renders the person unfit to parent shall provide the person with a written statement to that effect.

(D) A person with a disability who is denied the right to access assisted reproductive technologies by an ART service provider because the service provider decides that the disability renders the person unfit to parent may petition the family court or probate court for a determination whether the disability is likely to have a detrimental impact on the person’s ability to parent or is likely to be a threat to the health and safety of a child and for an order compelling the ART service provider to allow the person to access services. The ART service provider has the burden of demonstrating by clear and convincing evidence that the person’s disability makes him unfit to parent a child and that there is not adaptive parenting equipment, adaptive parenting techniques, or other services that could make the person fit to parent.

Section 63‑21‑50. (A) A psychiatrist or psychologist performing an assessment or evaluation of a person’s ability to parent adequately as part of a family court or probate court proceeding involving child protection, child custody, visitation, guardianship, adoption, or termination of parental rights shall:

(1) ensure that the measures administered are intended for use with the disability population of which the person is a member; and

(2) include as part of an evaluation or assessment:

(a) observation of the parent or legal guardian with the child, unless there is a risk of physical or psychological harm to the child; and

(b) an inquiry into how adaptive parenting equipment, adaptive parenting techniques, and other supportive services for a person with a disability might affect the capacity or fitness of the person to parent.

(B) A psychiatrist or psychologist performing an assessment or evaluation pursuant to subsection (A) must be familiar with adaptive parenting equipment, supportive services, and the assessment and evaluation of persons with a disability, or secure consultation or assistance if unfamiliar with available equipment and services.

Section 63‑21‑60. (A) In a family court or probate court proceeding that may result in the loss of custody of or visitation with a child or termination of parental rights, a parent or legal guardian with a disability that renders the person unable to participate meaningfully in court proceedings must be appointed legal counsel at the initial court hearing.

(B) Evidence regarding the role that adaptive parenting equipment, adaptive parenting techniques, and other supportive services can play in improving the parental fitness and capacity of a person with a disability to parent is relevant and admissible.

(C) When a disability of a parent or legal guardian is alleged to have a detrimental impact on the child, the party raising the allegation bears the burden of proving a causal relationship between the disability and the detriment by clear and convincing evidence.

(D) If a family court or probate court decides that the disability of a parent or legal guardian is a relevant factor in a child protection, child custody, or probate guardianship proceeding, the court shall include such a finding in the order and explain how the disability is relevant to the custody or visitation determination.

Section 63‑21‑70. (A) A child placing agency must not deny a person with a disability the right to pursue adoption of a child solely on the basis of the disability or on speculation that the disability makes the person unfit to parent, without considering whether adaptive parenting equipment, instruction in adaptive parenting techniques, and other supportive services could enable the person to parent adequately.

(B) A child placing agency shall seek appropriate consultation before denying a person with a disability the right to pursue adoption of a child because of the disability if the child placing agency lacks expertise about available or suitable adaptive parenting equipment, adaptive parenting techniques, or other supportive services.

(C) A child placing agency who denies a person with a disability the opportunity to adopt a child based, in whole or in part, on the child placing agency’s belief that the disability renders the person unfit to parent shall provide the person with a written statement to that effect.

(D) A person with a disability who is denied the right to pursue adoption by a child placing agency because the child‑placing agency decides that the disability renders the person unfit to parent may petition the family court for a determination whether the disability is likely to have a detrimental impact on the person’s ability to parent or is likely to be a threat to the health and safety of the child and for an order compelling the child placing agency to allow the person to pursue adoption. The child placing agency has the burden of demonstrating by clear and convincing evidence that the person’s disability makes him unfit to parent a child and that there is not adaptive parenting equipment, adaptive parenting techniques, or other services that could make the person fit to parent.

Section 63‑21‑80. (A) The department or other covered entity that provides pre‑ or postadoption services must not deny a person with a disability the right to access services solely on the basis of the disability or on speculation that the disability makes the person unfit to parent, without considering whether adaptive parenting equipment, instruction in adaptive parenting techniques, and other supportive services could enable the person to parent adequately.

(B) An adoption service provider shall seek appropriate consultation before denying a person with a disability the right to access pre‑ or postadoption services because of the disability, if the adoption service provider lacks expertise about available or suitable adaptive parenting equipment, adaptive parenting techniques, or other supportive services.

(C) An adoption service provider that denies a person with a disability access to pre‑ or postadoption services based, in whole or in part, on the adoption service provider’s belief that the disability renders the person unfit to parent shall provide the person with a written statement to that effect.

(D) A person with a disability who is denied the right to access pre‑ or postadoption services because the adoption service provider decides that the disability renders the person unfit to parent may petition the family court for a determination whether the disability is likely to have a detrimental impact on the person’s ability to parent or is likely to be a threat to the health and safety of the child and for an order compelling the adoption service provider to allow the person to access services. The adoption service provider has the burden of demonstrating by clear and convincing evidence that the person’s disability makes the person unfit to parent a child and that there is not adaptive parenting equipment, adaptive parenting techniques, or other services that could make the person fit to parent.

Section 63‑21‑90. A parent with a disability must be afforded meaningful access, and reasonable accommodations to facilitate access, to daycare and school facilities, including preschool.”

SECTION 3. Part 5, Article 1, Title 62 of the 1976 Code is amended by adding:

“Section 62‑1‑510. (A) A psychiatrist or psychologist performing an assessment or evaluation of a person’s ability to parent as part of a guardianship or other proceeding in probate court shall:

(1) ensure that the measures administered are intended for use with the disability population of which the person is a member; and

(2) include as part of an evaluation or assessment:

(a) observation of the parent or legal guardian with the child, unless there is a risk of physical or psychological harm to the child; and

(b) an inquiry into how adaptive parenting equipment, adaptive parenting techniques, and other supportive services for a person with a disability might affect the capacity or fitness of the person to parent.

(B) A psychiatrist or psychologist performing an assessment or evaluation pursuant to subsection (A) must be familiar with adaptive parenting equipment, supportive services, and the assessment and evaluation of persons with a disability, or secure consultation or assistance if unfamiliar with available equipment and services.”

SECTION 4. Subarticle 11, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑1695. (A) A psychiatrist or psychologist performing an assessment or evaluation of a person’s ability to parent as part of a child protection or permanency planning proceeding in family court shall:

(1) ensure that the measures administered are intended for use with the disability population of which the person is a member; and

(2) include as part of an evaluation or assessment:

(a) observation of the parent or legal guardian with the child, unless there is a risk of physical or psychological harm to the child; and

(b) an inquiry into how adaptive parenting equipment, adaptive parenting techniques, and other supportive services for a person with a disability might affect the capacity or fitness of the person to parent.

(B) A psychiatrist or psychologist performing an assessment or evaluation pursuant to subsection (A) must be familiar with adaptive parenting equipment, supportive services, and the assessment and evaluation of persons with a disability, or secure consultation or assistance if unfamiliar with available equipment and services.”

SECTION 5. Article 7, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑2575. (A) A psychiatrist or psychologist performing an assessment or evaluation of a person’s ability to parent as part of a termination of parental rights proceeding in family court shall:

(1) ensure that the measures administered are intended for use with the disability population of which the person is a member; and

(2) include as part of an evaluation or assessment:

(a) observation of the parent or legal guardian with the child, unless there is a risk of physical or psychological harm to the child; and

(b) an inquiry into how adaptive parenting equipment, adaptive parenting techniques, and other supportive services for a person with a disability might affect the capacity or fitness of the person to parent.

(B) A psychiatrist or psychologist performing an assessment or evaluation pursuant to subsection (A) must be familiar with adaptive parenting equipment, supportive services, and the assessment and evaluation of persons with a disability, or secure consultation or assistance if unfamiliar with available equipment and services.”

SECTION 6. Article 2, Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑270. (A) A psychiatrist or psychologist performing an assessment or evaluation of a person’s ability to parent as part of a child custody or visitation proceeding in family court shall:

(1) ensure that the measures administered are intended for use with the disability population of which the person is a member; and

(2) include as part of an evaluation or assessment:

(a) observation of the parent or legal guardian with the child, unless there is a risk of physical or psychological harm to the child; and

(b) an inquiry into how adaptive parenting equipment, adaptive parenting techniques, and other supportive services for a person with a disability might affect the capacity or fitness of the person to parent.

(B) A psychiatrist or psychologist performing an assessment or evaluation pursuant to subsection (A) must be familiar with adaptive parenting equipment, supportive services, and the assessment and evaluation of persons with a disability, or secure consultation or assistance if unfamiliar with available equipment and services.”

SECTION 7. Section 63‑7‑720 of the 1976 Code is amended to read:

“Section 63‑7‑720. (A) An order issued as a result of the probable cause hearing held pursuant to Section 63‑7‑710 concerning a child of whom the department has assumed legal custody shall contain a finding by the court of whether reasonable efforts were made by the department to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child. The order shall state:

(1) the services made available to the family before the department assumed legal custody of the child and how they related to the needs of the family;

(2) the efforts of the department to provide services to the family before assuming legal custody of the child;

(3) why the efforts to provide services did not eliminate the need for the department to assume legal custody;

(4) whether a meeting was convened as provided in Section 63‑7‑640, the persons present, and the outcome of the meeting or, if no meeting was held, the reason for not holding a meeting;

(5) what efforts were made to place the child with a relative known to the child or in another familiar environment;

(6) whether the efforts to eliminate the need for the department to assume legal custody were reasonable including, but not limited to, whether services were reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child and realistic under the circumstances, and whether efforts to place the child in a familiar environment were reasonable.

(B) Reasonable efforts required pursuant to subsection (A) to prevent removal of the child from a parent or legal guardian who has a disability must include access to adaptive parenting equipment, instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are made available to a parent or legal guardian who does not have a disability and must ensure that the reasonable efforts are individualized based on the specific needs of the parent’s or legal guardian’s disability.

(C) If the court finds that reasonable services would not have allowed the child to remain safely in the home, the court shall find that removal of the child without services or without further services was reasonable.”

SECTION 8. Section 63‑7‑1640(A) of the 1976 Code is amended to read:

“(A)(1) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child’s health and safety must be the paramount concern.

(2) Reasonable efforts required pursuant to item (1) to preserve or reunify a family in which the parent or legal guardian has a disability must include access to adaptive parenting equipment, instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are made available to a parent or legal guardian who does not have a disability and must ensure that the reasonable efforts are individualized based on the specific needs of the parent’s or legal guardian’s disability.”

SECTION 9. This act takes effect upon approval by the Governor.

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