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Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

Amt. No. 1 (3465C002.NBD.VR17)

February 1, 2017

**H. 3465**

Introduced by Reps. Delleney, Felder, Martin, B. Newton, Knight, Douglas, Putnam, Simrill, Pope, Norman, Thayer, Clary, Hamilton, Yow, Hixon, Elliott and Henderson

S. Printed 1/25/17--H. [SEC 1/26/17 3:31 PM]

Read the first time January 12, 2017.

**A** **BILL**

TO AMEND SECTION 63‑7‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONAL TERMS USED IN THE CHILDREN’S CODE, SO AS TO CHANGE THE DEFINITION OF A “PARTY IN INTEREST”; TO AMEND SECTION 63‑7‑1630, RELATING TO CHILD PROTECTION HEARING NOTICE REQUIREMENTS, SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO PROVIDE NOTICE IN ADDITIONAL CIRCUMSTANCES; TO AMEND SECTION 63‑7‑1700, AS AMENDED, RELATING TO PERMANENCY PLANNING, SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO PROVIDE NOTICE OF PERMANENCY PLANNING HEARINGS TO CERTAIN INDIVIDUALS, TO ALLOW CERTAIN INDIVIDUALS TO FILE A MOTION FOR REVIEW OF A CASE AT ANY TIME, AND TO GRANT CERTAIN INDIVIDUALS THE RIGHT TO INTERVENE IN A CHILD ABUSE OR NEGLECT ACTION; TO AMEND SECTION 63‑7‑1710, AS AMENDED, RELATING TO STANDARDS FOR TERMINATION OF PARENTAL RIGHTS, SO AS TO REQUIRE CERTAIN EVIDENCE BEFORE SELECTING A PERMANENT PLAN OTHER THAN TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 63‑7‑2530, AS AMENDED, RELATING TO PETITIONS TO TERMINATE PARENTAL RIGHTS TO A CHILD, SO AS TO ALLOW A PARTY TO SEEK ADOPTION OF THE CHILD; TO AMEND SECTION 63‑9‑60, AS AMENDED, RELATING TO INDIVIDUALS WHO MAY ADOPT A CHILD, SO AS TO ADD CIRCUMSTANCES UNDER WHICH A NONRESIDENT MAY ADOPT AND TO PROVIDE FOR THE RIGHT TO FILE A PETITION FOR ADOPTION; TO AMEND SECTION 63‑9‑330, RELATING TO CONSENT AND RELINQUISHMENT, SO AS TO ALLOW A PERSON OR AGENCY TO SPECIFY A PERSON TO WHOM CONSENT AND RELINQUISHMENT IS DIRECTED; BY ADDING SECTION 63‑9‑370 SO AS TO ESTABLISH CERTAIN REQUIREMENTS PERTAINING TO THE ADOPTION OF A CHILD WHO IS IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES; TO AMEND SECTION 63‑9‑750, RELATING TO ADOPTION HEARINGS, SO AS TO MAKE TECHNICAL CORRECTIONS; AND TO AMEND SECTION 63‑11‑720, AS AMENDED, RELATING TO THE SOUTH CAROLINA FOSTER CARE REVIEW BOARD, SO AS TO CLARIFY CERTAIN RIGHTS OF FOSTER PARENTS.

Amend Title To Conform

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

SECTION 1. Section 63‑7‑20(15) and (17) of the 1976 Code, as last amended by Act 238 of 2016, is further amended to read:

“(15) ‘Legal custody’ means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care. The court may in its order place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, consent to an adoption, enlistment in the armed forces, and major nonemergency medical and surgical treatment, the obligation to provide financial support or other funds for the care of the child, and other residual rights or obligations as may be provided by order of the court.

(17) ‘Party in interest’ or ‘interested party’ includes the child, the child’s attorney and guardian ad litem, the natural parent, an individual or agency with physical or legal custody of the child, the foster parent, the caregiver, and the local foster care review board.”

SECTION 2. Section 63‑7‑1630 of the 1976 Code is amended to read:

“Section 63‑7‑1630. The department shall provide notice of a hearing held in connection with an action filed ~~or pursued under~~ pursuant to subarticle 3 or Section 63‑7‑1650, 63‑7‑1660, 63‑7‑1670, 63‑7‑1680, 63‑7‑1700, or 63‑7‑2550 to the foster parent, the caregiver, the preadoptive parent, or the relative who is providing care for a child. The department shall provide notice pursuant to this section even if the hearing was noticed by a party or interested party other than the department. The department shall send notice pursuant to this section at least ten days before the hearing, except where the parties to the action receive less than ten days’ notice. The notice must be in writing and may be delivered in person or by regular mail. The notice shall inform the foster parent, the caregiver, the preadoptive parent, or the relative of the date, place, and time of the hearing and of the right to attend the hearing and to address the court concerning the child. Notice provided pursuant to this section does not confer on the foster parent, the caregiver, the preadoptive parent, or the relative the status of a party to the action. The department shall file with the family court a certificate of service confirming compliance with the notice requirements of this section.”

SECTION 3.A. Section 63‑7‑1700(A) and (J) of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“(A) The family court shall review the status of a child placed in foster care upon motion filed by the department to determine a permanent plan for the child. The permanency planning hearing must be held no later than one year after the date the child was first placed in foster care. At the initial permanency planning hearing, the court shall review the status of the child and the progress being made toward the child’s return home or toward any other permanent plan approved at the removal hearing. The court’s order shall make specific findings in accordance with this section. An action for permanency planning must be brought for a child who enters the custody of the department by any mechanism, including subarticle 3 or Section 63‑7‑1660 or 63‑9‑330. If the child enters the custody of the department pursuant to Section 63‑9‑330 and no action is pending in the family court concerning the child, the department may initiate the permanency planning hearing with a summons and petition for review. All parties must be served with the motion or the summons and petition at least ten days before the hearing, and no responsive pleading is required. The department shall provide notice pursuant to this section to the foster parent, the caregiver, the preadoptive parent, or the relative who is providing care for the child even if the hearing was noticed by a party or interested party other than the department. The department shall send notice pursuant to this section at least ten days before the hearing, except where the parties to the action receive less than ten days’ notice. The department shall file with the family court a certificate of service confirming compliance with the notice requirements of this section.

(J) A named party, the child’s guardian ad litem, the foster parent or caregiver, or the local foster care review board may file a motion for review of the case at any time. ~~Any other party in interest may move to intervene in the case pursuant to the rules of civil procedure and if the motion is granted, may move for review. Parties in interest include, but are not limited to, the individual or agency with legal custody or placement of the child and the foster parent.~~ The notice of motion and motion for review must be served on the named parties, the child’s guardian ad litem, the foster parent or caregiver, and the local foster care review board at least ten days before the hearing date. The motion must state the reason for review of the case and the relief requested. As required by subsection (A), the department shall provide notice of motion and motion for review to the foster parent or caregiver even if the hearing was noticed by a party or interested party other than the department. The department shall send notice pursuant to this section at least ten days before the hearing, except where the parties to the action receive less than ten days’ notice. The department shall file with the family court a certificate of service confirming compliance with the notice requirements of this section.”

B. Section 63‑7‑1700 of the 1976 Code, as last amended by Act 238 of 2016, is further amended by adding a subsection at the end to read:

“( ) When a child in an out‑of‑home placement has resided with the same foster parent or other caregiver for more than one hundred twenty days, the foster parent or caregiver has the unconditional right to intervene in any court action pertaining to the child and to seek any relief pertaining to custody of the child and the child’s best interests. Any other person or entity may move to intervene in the case pursuant to the rules of civil procedure.”

SECTION 4. Section 63‑7‑1710(C)(1) of the 1976 Code is amended to read:

“(1) to a child for whom the family court has found that initiation of termination of parental rights is not in the best interests of the child, after applying the criteria of Section 63‑7‑1700(C), (D), (F), or (G) and entering the findings required to select a permanent plan for the child from Section 63‑7‑1700(C), (D), (F), or (G). For this exemption to apply, the court must find on the record through testimony of at least one witness subject to cross-examination by any party and any party in interest that there are exceptional circumstances regarding the child’s mental health, the absence of an adoptive resource, or other compelling reasons for selection of a permanent plan other than termination of parental rights;”

SECTION 5. Section 63‑7‑2530(A) of the 1976 Code is amended to read:

“(A) A petition seeking termination of parental rights may be filed by the Department of Social Services or any ~~interested~~ party in interest. Any petition seeking termination of parental rights filed by a party in interest also may seek adoption of the child.”

SECTION 6. Section 63‑9‑60 of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“Section 63‑9‑60. (A)~~(1)~~ Any South Carolina resident may petition the court to adopt a child.

(B)(1) ~~Placement of children for adoption pursuant to this article is limited to South Carolina residents with exceptions being made~~ Any nonresident of South Carolina may petition the court to adopt a child 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;

(g) a parent has specifically consented to the adoption by the nonresident; or

(h) the department or any agency under contract with the department has placed the child with the nonresident for purposes of adoption.

(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)~~ subsection (B)(1)(a)‑(h) 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)~~ subsection (B)(1)(a)‑(h) 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.~~

(3) 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.

(C) A petition for adoption of a child may be filed pursuant to this section regardless of which individual or entity has custody of the child. When the department has custody of a child, the rights granted herein to South Carolina residents and nonresidents shall not be diminished, invalidated or negatively affected in any way.”

SECTION 7. Section 63‑9‑330 of the 1976 Code is amended to read:

“Section 63‑9‑330. (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) Consent or relinquishment for the purpose of adoption, pursuant to Section 63‑9‑310, and which contains the information required in subsection (A), also may specify the identification of the prospective adoptive parent or agency to whom the consent or relinquishment is directed.

(C) When a ~~child placing~~ 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(C).”

SECTION 8. Subarticle 3, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

“Section 63‑9‑370. (A) If a parent executes a consent or relinquishment for the purpose of adoption directed to a child‑placing agency or qualified prospective adoptive parent, and the minor child is in the custody of the department but parental rights have not yet been terminated, the consent is valid, binding, and enforceable by the court to the same extent as if the minor child were not in the custody of the department.

(B) Upon execution of the consent or relinquishment of the parent, the child‑placing agency or prospective adoptive parent is permitted to intervene in any family court action pertaining to the child and must provide the family court a copy of the preliminary home study of the prospective adoptive parent and any other evidence of the suitability of the placement. The preliminary home study must be maintained with the strictest confidentiality within the court action and in the department’s file. A preliminary home study must be provided to the court in all cases in which a child‑placing agency or prospective adoptive parent has intervened pursuant to this section. Unless the court has concerns regarding the qualification of the home study provider or concerns that the home study may not be adequate to determine the best interest of the child, the department shall not be required to perform an additional home study. Nothing herein shall prevent the department from performing or procuring a separate home study.

(C) If a child‑placing agency or prospective adoptive parent files a motion to intervene in a family court action in accordance with this chapter, the family court promptly shall grant a hearing to determine whether the child‑placing agency or prospective adoptive parent has filed the required documents to be permitted to intervene and whether a change of placement of the child is appropriate and in the best interest of the child. The department and the child’s guardian ad litem shall be parties to the hearing required pursuant to this subsection. The custody or placement of the child shall not be modified prior to the hearing required pursuant to this subsection.

(D) Upon a determination by the family court that the prospective adoptive parent is properly qualified to adopt the minor child and that the adoption appears to be in the best interests of the minor child, the court shall immediately order the transfer of custody of the minor child to the prospective adoptive parent, under the supervision of the child‑placing agency, if any. The child‑placing entity, if any, shall thereafter provide monthly supervision reports to the department until finalization of the adoption. If there is no child‑placing agency involved, the department may make monthly contact with the prospective adoptive parent until the finalization of the adoption pursuant to Section 63‑9‑750. If custody is transferred pursuant to this subsection, the department may not be a named party to the adoption action but shall receive notice of the final hearing pursuant to Section 63‑9‑750 and have the right to attend the hearing and to address the court concerning the child. The department may move to intervene or may otherwise be added as a party in the adoption action pursuant to the rules of civil procedure.

(E) In determining whether the best interests of the child are served by transferring the custody of the minor child to the prospective adoptive parent selected by the parent or child‑placing agency, the court shall consider the rights of the parent to determine an appropriate placement for the child, the permanency offered, the child’s bonding with any potential adoptive home in which the child has been residing, and the importance of maintaining sibling relationships, if possible.

(F) The transfer of custody pursuant to subsection (D) shall not deprive the family court of its jurisdiction, responsibilities and authority over the adoption and the best interests of the child pursuant to Section 63‑9‑750.

(G) The child‑placing agency, if any, is responsible for keeping the family court informed of the status of the adoption proceedings at least every ninety days from the date of the order changing placement of the minor child until the date of the finalization of the adoption.

(H) In all actions instituted pursuant to Subarticle 3, Article 3, Chapter 7, Title 63 (Emergency Protective Custody), after if it is determined that reunification is not a viable alternative and before the filing of a petition for termination of parental rights by the department, the court shall advise any parent who is a party to the case of the right to participate in a private adoption plan.”

SECTION 9. Section 63‑9‑750(B)(7) of the 1976 Code is amended to read:

“(7) if the petitioner is a nonresident of this State, the findings pursuant to Section ~~63‑9‑50~~ 63‑9‑60(B) are included in the order, and there has been compliance with Article 11 (Interstate Compact on the Placement of Children).”

SECTION 10. Section 63‑11‑720(A)(5) of the 1976 Code, as last amended by Act 238 of 2016, is further amended to read:

“(5) to advise foster parents of their right to petition the family court for termination of parental rights and for adoption, which is the statutory right of the foster parents pursuant to Sections 63‑3‑550, 63‑7‑2530, and 63‑9‑60, and to encourage these foster parents to initiate these proceedings in an appropriate case when it has been determined by the local review board that return to the natural parent is not in the best interest of the child;”

SECTION 11. Section 63-9-1110 of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“Section 63-9-1110. 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 or necessary to meet the requirements of Section 63-9-370;

(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 12. This act takes effect upon approval by the Governor.

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