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COMMITTEE REPORT

March 22, 2017

**H. 3538**

Introduced by Rep. J.E. Smith

S. Printed 3/22/17--H.

Read the first time January 19, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3538) to amend the Code of Laws of South Carolina, 1976, to enact the “Persons with Disabilities Right to Parent Act” by adding Chapter 21 to Title 63 so as, 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, 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; AND TO PROHIBIT CHILD PLACING AGENCIES AND ADOPTION SERVICE PROVIDERS FROM DENYING PERSONS WITH A DISABILITY THE RIGHT TO ACCESS SERVICES BECAUSE OF THE PERSON’S DISABILITY, WITH EXCEPTIONS; TO AMEND SECTION 63‑7‑720, RELATING TO REASONABLE EFFORTS REQUIREMENTS FOR PROBABLE CAUSE HEARINGS, SO AS TO REQUIRE CERTAIN EFFORTS IF A PARENT OR LEGAL GUARDIAN HAS A DISABILITY TO INCLUDE REFERRALS FOR SERVICES PROVIDING INSTRUCTION ON ADAPTIVE PARENTING TECHNIQUES AND OTHER REASONABLE ACCOMMODATIONS WITH REGARD TO ACCESSING SERVICES; 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; TO AMEND SECTION 63‑7‑2570, AS AMENDED, RELATING TO GROUNDS FOR TERMINATION OF PARENTAL RIGHTS, SO AS TO PROHIBIT TERMINATION OF PARENTAL RIGHTS SOLELY ON THE BASIS OF A DISABILITY.

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) ‘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.

(5) ‘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.

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

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

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

(9) ‘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. An individual who is currently engaging in the illegal use of drugs or the abuse of alcohol, drugs or other substances is not an individual with a ‘disability’ for purposes of this chapter.

(10) ‘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, 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 any 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.

(B)(1) The department shall, consistent with its purposes as mandated in Section 63‑7‑10:

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

(b) 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 deny reunification services to a parent or legal guardian with a disability solely on the basis of the disability.

(C) If any party to the proceedings alleges that the parent or legal guardian has a disability that affects the parent’s ability to fulfill parent responsibilities, the family court shall determine and include as findings in the probable cause order:

(1) the nature of the parent’s or legal guardian’s disability, if any, that affects the parent’s ability to fulfill parent responsibilities;

(2) 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

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

Section 63‑21‑30. (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, without considering whether adaptive parenting equipment, instruction in adaptive parenting techniques, and other supportive services could enable the person to parent adequately.

(B) 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, without considering whether adaptive parenting equipment, instruction in adaptive parenting techniques, and other supportive services could enable the person to parent adequately.”

SECTION 3. 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 efforts that are individualized and based upon a parent’s or legal guardian’s specific disability, including referrals for access to adaptive parenting equipment, referrals for instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are otherwise made available to a parent or legal guardian who does not have a 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 4. 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 efforts that are individualized and based upon a parent’s or legal guardian’s specific disability, including referrals for access to adaptive parenting equipment, referrals for instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are otherwise made available to a parent or legal guardian who does not have a disability.”

SECTION 5. Section 63‑7‑2570(6) of the 1976 Code, as last amended by Act 281 of 2014, is further amended to read:

“(6)(a) The following circumstances exist, subject to the requirements set forth in Section 63‑21‑20:

(i) the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, addiction to alcohol or illegal drugs~~,~~ or prescription medication abuse~~, mental deficiency, mental illness, or extreme physical incapacity,~~; and

(ii) the condition makes the parent unlikely to provide minimally acceptable care of the child.

(b) It is presumed that the parent’s condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.

(c) The department, and any other covered entity, must not terminate the rights of a parent or legal guardian with a disability solely on the basis of the disability.”

SECTION 6. This act takes effect upon approval by the Governor.

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