AMENDED

April 22, 2010

**S. 1188**

Introduced by Senators Malloy, McConnell, Ford, Pinckney, Rose and Campsen

S. Printed 4/22/10--S.

Read the first time February 17, 2010.

**A** **BILL**

TO AMEND TITLE 20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CHILDREN’S CODE, BY ADDING CHAPTER 6 ENTITLED THE “SOUTH CAROLINA FAMILY COURT HEARING OFFICER ACT”, SO AS TO PROVIDE FOR VOLUNTEER FAMILY COURT HEARING OFFICERS APPOINTED BY THE CHIEF JUSTICE OF THE SOUTH CAROLINA SUPREME COURT AND WHO ARE PROTECTED PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT; TO PROVIDE THAT HEARING OFFICERS MUST BE MEMBERS OF THE SOUTH CAROLINA BAR IN GOOD STANDING WITH A MINIMUM OF TEN YEARS OF FAMILY COURT EXPERIENCE; TO PROVIDE THAT RETIRED JUDGES, EXCEPT SUMMARY COURT JUDGES, MAY BE APPOINTED AS HEARING OFFICERS ABSENT TEN YEARS OF EXPERIENCE IN FAMILY COURT MATTERS, TO REQUIRE HEARING OFFICERS TO RECEIVE AT LEAST SIX HOURS OF FAMILY LAW CONTINUING LEGAL EDUCATION EVERY YEAR; TO PROVIDE THAT HEARING OFFICERS MAY BE ASSIGNED TO ALL UNCONTESTED DOMESTIC RELATIONS MATTERS, THAT THEY MAY MAKE FINDINGS AND RECOMMENDATIONS FOR THE FAMILY COURT JUDGE ON UNIFORM INTERSTATE FAMILY SUPPORT ACT ACTIONS, THAT THEY MAY BE ASSIGNED MOTION HEARINGS FOR TEMPORARY RELIEF IN DOMESTIC RELATIONS MATTERS, WITH THE CONSENT OF THE PARTIES, AND MAY MAKE RECOMMENDATIONS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE FAMILY COURT JUDGES, THAT THE CHIEF JUSTICE MUST ISSUE DIRECTIVES CONCERNING OTHER TYPES OF CASES THAT MAY BE ASSIGNED ONLY TO RETIRED JUDGE HEARING OFFICERS, TO PROVIDE A LIST OF TYPES OF CASES THAT MAY BE ASSIGNED, THAT THE CLERK OF COURT SHALL MAINTAIN A FAMILY COURT HEARING OFFICER DOCKET, THAT HEARING OFFICERS SHALL HAVE THE SAME AUTHORITY AS A FAMILY COURT JUDGE TO ADMINISTER OATHS, PRESERVE AND ENFORCE ORDER IN THE COURT, HOLD PERSONS IN CONTEMPT AND SANCTION THEM, EXAMINE WITNESSES, ISSUE BENCH WARRANTS, ISSUE ORDERS AND RULINGS ON MOTIONS, ACT AS A FINDER OF FACT AND LAW, TAKE MINORS AND VULNERABLE ADULTS INTO EMERGENCY PROTECTIVE CUSTODY, TO ISSUE TEMPORARY ORDERS RELATING TO EQUITABLE DIVISION OF MARITAL PROPERTY, CHILD SUPPORT, CUSTODY, VISITATION, ATTORNEY’S FEES, DISCOVERY, AND RESTRAINING ORDERS, AND TO APPOINT GUARDIANS AD LITEM AS APPROPRIATE; TO PROVIDE THAT MATTERS DIRECTLY APPEALABLE TO THE SUPREME COURT ARE NOT SUBJECT TO REFERRAL TO A HEARING OFFICER, TO PROVIDE THAT PROCEEDINGS SHALL BE HELD IN THE COUNTY OF APPROPRIATE VENUE UNLESS THE PARTIES CONSENT TO ANOTHER COUNTY; TO PROVIDE THAT ORDERS ISSUED BY RETIRED JUDGE HEARING OFFICERS SHALL BE CONSIDERED FINAL AND SHALL BE APPEALED DIRECTLY TO THE COURT OF APPEALS; TO PROVIDE THAT ORDERS ISSUED BY OTHER HEARING OFFICERS ARE SUBJECT TO REVIEW BY A FAMILY COURT JUDGE; TO PROVIDE THAT HEARING OFFICERS ARE NOT BARRED FROM THE PRACTICE OF LAW IN FAMILY COURT; TO PROVIDE THAT THE FAMILY COURT RULES APPLY IN PROCEEDINGS BEFORE HEARING OFFICERS; AND TO PROVIDE THAT HEARING OFFICERS SHALL RECEIVE CREDIT FOR COURT APPOINTMENTS.

Amend Title To Conform

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

SECTION 1. Title 20 of the 1976 Code is amended by adding:

“CHAPTER 6

South Carolina Family Court Hearing Officer Act

Section 20‑6‑10. This act shall be cited as the ‘South Carolina Family Court Hearing Officer Act’.

Section 20‑6‑20. Family court hearing officers, herein referred to as hearing officer, shall be appointed by and serve on a voluntary basis at the pleasure of the Chief Justice of the South Carolina Supreme Court. Hearing officers shall be accountable to the Chief Justice and are subject to the Code of Judicial Conduct while acting in the capacity of hearing officers. Hearing officers shall be afforded protection pursuant to the South Carolina Tort Claims Act, located in Chapter 78 of Title 15, while acting in the capacity of hearing officers.

Section 20-6-30. Any person appointed to serve as a hearing officer must be a member of the South Carolina Bar in good standing with a minimum of ten years’ experience in family court matters. Pursuant to the provisions of Section 2‑19‑100, retired judges, not including probate judges, magistrates, municipal court judges, recorders, or any other summary court judges, may be appointed as hearing officers without having a minimum of ten years of experience in family court matters. Hearing officers must annually receive a minimum of six hours of continuing legal education on family court issues and shall be subject to additional standards as the South Carolina Supreme Court deems appropriate.

Section 20‑6‑40. (A) Hearing officers may be assigned all uncontested domestic relations matters by the Chief Administrative Judge for the circuit in which the hearing officer serves.

(B) Hearing officers may be assigned to hear Uniform Interstate Family Support Act matters and make recommendations of findings of fact and conclusions of law to a family court judge for consideration of an order by the family court judge as deemed just, equitable, and proper.

(C) Hearing officers may be assigned motion hearings for temporary relief in domestic relations matters, with consent of the parties, and make recommendations of findings of fact and conclusions of law with proposed relief to the family court judge for an order by the family court judge as deemed just, equitable, and proper.

(D) In addition to the cases listed in subsections (A), (B), and (C), the chief justice must issue directives concerning the other types of cases that may be assigned only to hearing officers who are retired judges. For purposes of this subsection, the term ‘retired judge’ does not include probate judges, magistrates, municipal court judges, recorders, or any other summary court judges. Pursuant to the chief justice’s directives and statutory authority, the chief administrative judge of the circuit in which the hearing officer serves may refer specific cases by order to the retired judge hearing officer.

The types of cases that may be assigned to hearing officers only if they are retired judges include, but limited to:

(1) motion hearings for temporary relief in domestic relations actions, with consent of the parties;

(2) hearings in the following Department of Social Services (DSS) cases: child abuse and neglect cases, including probable cause, merits hearings pursuant to Sections 20‑7‑736 and 20‑7‑738, and review hearings, permanency planning for children in foster care, termination of parental rights, and adoption, and motions or other applications to the court in these cases;

(3) hearings in DSS Adult Protective Services cases, including probable cause, merits, and motions;

(4) determinations of indigency; and

(5) rule to show cause hearings, including any private and agency child support actions when there are no other substantive matters at issue.

(C) The clerk of court shall maintain a family court hearing officer docket. The clerk of court must assign a date and time for each proceeding to be heard by a hearing officer. The clerk of court also must maintain a record of each proceeding in the same manner as prescribed for the family court. The party requesting a hearing must provide notice to all parties in the same manner as prescribed for the family court.

Section 20‑6‑50. A hearing officer shall have the same authority as a family court judge in those cases assigned to him, subject to any limitations imposed by statute and the directives of the chief justice. A hearing officer’s powers include, but are not limited to:

(1) administer oaths;

(2) preserve and enforce order during hearings;

(3) hold persons in contempt of court and sanction them accordingly, provided the hearing officer is a retired judge;

(4) examine witnesses;

(5) issue bench warrants for failure to appear, provided the hearing officer is a retired judge;

(6) issue orders and rulings on motions;

(7) act as the finder of fact and law;

(8) take minors and vulnerable adults into emergency protective custody, provided the hearing officer is a retired judge;

(9) issue temporary orders relating to temporary allocation of use and possession of marital property, child support, custody, visitation, attorney’s fees, discovery, and restraining orders as they relate to domestic relations actions, provided the hearing officer is a retired judge;

(10) require additional hearings for review of cases as necessary; and

(11) appoint attorneys and guardians ad litem as appropriate and permitted by law, provided the hearing officer is a retired judge.

Section 20‑6‑60. No matter directly appealable to the Supreme Court shall be subject to referral to any hearing officer.

Section 20‑6‑70. Proceedings shall be held in the county of appropriate venue unless the parties consent to conducting the proceedings in another county. The South Carolina Judicial Department shall maintain a list of qualified hearing officers for each county.

Section 20‑6‑80. The orders and rulings issued by a retired judge hearing officer shall be considered final and, where allowed, shall be appealed directly to the Court of Appeals, as provided by the South Carolina Appellate Court Rules. All orders and rulings issued by a hearing officer who is not a retired judge must be reviewed by a family court judge. No further hearing is required for the family court judge’s review; however, further hearing may be ordered if the family court judge determines it is necessary. Orders and rulings affirmed by a family court judge shall be appealed directly to the Court of Appeals, as provided by the South Carolina Appellate Court Rules.

Section 20‑6‑90. Hearing officers shall not be barred from the private practice of law in family court. However, they shall not preside over any matter in which they have participated as a lawyer.

Section 20‑6‑100. All applicable Rules of Family Court and Rules of Civil Procedure shall apply in all proceedings presided over by a hearing officer.

Section 20‑6‑110. Hearing officers shall receive credit for court appointments as determined by the Supreme Court.”

SECTION 2. This act takes effect upon approval by the Governor.

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