~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 4, 2009

**H. 3311**

Introduced by Reps. Brady, Harrison, Erickson, Umphlett, A.D. Young, Agnew, Allison, Battle, Bowen, Bowers, Clemmons, Cooper, Duncan, Gambrell, Hardwick, Hearn, Horne, Kirsh, Long, Lowe, McLeod, Parker, Simrill, Whitmire, Willis, Toole, Harvin, Hutto, Neilson, Nanney, Miller, G.R. Smith, Hamilton, Jennings, T.R. Young, Limehouse, Sottile, Viers, Williams, White, Weeks, Wylie and Forrester

S. Printed 3/4/09--H.

Read the first time January 27, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3311) to amend the Code of Laws of South Carolina, 1976, by adding Subarticle 8 to Article 1, Chapter 9, Title 63 so as to establish the Responsible Father Registry, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, Section 63‑9‑730(B)(4) on page 6, line 21 after /action / by inserting / pursuant to a subpoena / so when amended, Section 63‑9‑730(B)(4) reads:

/ (4) ~~any~~ a person who is recorded on the child’s birth certificate as the child’s father. The Department of Health and Environmental Control shall release this information to any attorney representing a party in an adoption or termination of parental rights action pursuant to a subpoena; /

Amend the bill further Section 63‑7‑2530(C) on page 7, beginning on line 7 by deleting / A continuance may not be granted by consent order / so when amended Section 63‑7‑2530(C) reads:

(C) The hearing on the petition to terminate parental rights must be held within one hundred twenty days of the date the termination of parental rights petition is filed. A party may request a continuance that would result in the hearing being held more than one hundred twenty days after the petition was filed; however, the court may only grant the continuance if exceptional circumstances exist. If a continuance is granted, the court must issue a written order stating the exceptional circumstances and scheduling the case for trial on a date and time certain.”

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SUBARTICLE 8 TO ARTICLE 1, CHAPTER 9, TITLE 63 SO AS TO ESTABLISH THE RESPONSIBLE FATHER REGISTRY WITHIN THE DEPARTMENT OF SOCIAL SERVICES AND TO PROVIDE THAT A UNMARRIED BIOLOGICAL FATHER OF A CHILD, OR A MALE CLAIMING TO BE THE UNMARRIED BIOLOGICAL FATHER OF A CHILD, MUST FILE A CLAIM OF PATERNITY WITH THIS REGISTRY IN ORDER TO RECEIVE NOTICE OF A TERMINATION OF PARENTAL RIGHTS ACTION OR AN ADOPTION ACTION PERTAINING TO THIS CHILD, TO PROVIDE THAT FAILURE TO FILE A CLAIM CONSTITUTES IMPLIED IRREVOCABLE CONSENT TO THE TERMINATION OF HIS PARENTAL RIGHTS AND TO THE CHILD’S ADOPTION, TO PROVIDE THAT CERTAIN CONDUCT BY AN UNMARRIED BIOLOGICAL FATHER IS DEEMED TO BE NOTICE TO THIS FATHER OF THE BIOLOGICAL MOTHER’S PREGNANCY, AND TO FURTHER ESTABLISH FILING PROCEDURES AND PROCEDURES FOR THE OPERATION OF THE REGISTRY; TO AMEND SECTION 63‑9‑730, RELATING TO PERSONS AND ENTITIES ENTITLED TO NOTICE OF TERMINATION OF PARENTAL RIGHTS ACTIONS AND ADOPTION ACTIONS, SO AS TO INCLUDE A PERSON WHO HAS REGISTERED WITH THE RESPONSIBLE FATHER REGISTRY; TO AMEND SECTION 63‑7‑2530, RELATING TO THE FILING OF A PETITION FOR TERMINATION OF PARENTAL RIGHTS, SO AS TO REQUIRE A TERMINATION OF PARENTAL RIGHTS ACTION TO BE HEARD WITHIN ONE HUNDRED TWENTY DAYS OF THE DATE THE PETITION IS FILED AND TO PROVIDE CONDITIONS UNDER WHICH A CONTINUANCE MAY BE GRANTED; TO AMEND SECTION 63‑7‑2550, RELATING TO PERSONS OR ENTITIES ENTITLED TO BE SERVED WITH A PETITION FOR TERMINATION OF PARENTAL RIGHTS, SO AS TO FURTHER SPECIFY THE AGE AS FOURTEEN FOR SERVING A CHILD, TO PROVIDE SERVICE ON THE GUARDIAN AD LITEM OF A CHILD UNDER FOURTEEN YEARS OF AGE, AND TO SPECIFY THE NOTICE PROVISIONS APPLICABLE TO AN UNMARRIED BIOLOGICAL FATHER OF A CHILD WHOSE PARENTAL RIGHTS ARE BEING TERMINATED.

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

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

“Subarticle 8

Responsible Father Registry

Section 63‑9‑810. The State has a compelling interest in promptly providing stable and permanent homes for adoptive children and in preventing the disruption of adoptive placements. It is the purpose of the Responsible Father Registry to provide notice to unmarried biological fathers who affirmatively assume responsibility for children they may have fathered by registering with the Responsible Father Registry.

Section 63‑9‑820. (A) There is established within the Department of Social Services the Responsible Father Registry, which the department shall maintain.

(B) As used in this section:

(1) ‘Department’ means the Department of Social Services.

(2) ‘Registrant’ means an unmarried biological father or a male who claims to be the unmarried biological father of a child.

(3) ‘Registry’ means the Responsible Father Registry as established by this section.

(4) ‘Unmarried biological father’ means a male who is not married to the biological mother of a child of whom he is or claims to be the natural father.

(C) Except as set forth in Section 63‑9‑730(B), in order to preserve the right to notice of an adoption proceeding or the right to notice of a petition for termination of parental rights, a registrant must file a claim of paternity with the registry. A claim of paternity filed with the registry must not be deemed to be an acknowledgment of paternity, and a claim of paternity filed with the registry is not admissible as evidence in any proceeding except by order of the court for good cause shown.

(D) Except for a person who is required to receive notice pursuant to Section 63‑9‑730(B), an unmarried biological father’s failure to file a claim of paternity with the registry constitutes implied irrevocable consent to the termination of his parental rights and to the child’s adoption.

(E) A claim of paternity must be signed by the registrant and must include:

(1) the registrant’s name, address, and date of birth;

(2) the mother’s name and, if known, her address and date of birth;

(3) if known, the child’s name, place of birth, and date of birth;

(4) if known, the date, county, and state of conception of the child; and

(5) the date the claim is filed.

(F) The claim of paternity may be filed with the registry before or after the birth of the child; however, a claim of paternity filed with the registry is null and void if it is filed on or after the date a petition for termination of parental rights or a petition for adoption is filed.

(G) Only the registrant may file the claim of paternity. No other person may file the claim of paternity on behalf of the registrant. The registrant must notify the registry of any change of address in the manner prescribed by the department. Failure to notify the registry of a change of address in the manner prescribed by the department is deemed to be a waiver of a right to notice or to any other right to which the registrant may be entitled as a result of filing a claim of paternity pursuant to this section, including, but not limited to, notice by publication.

(H) The department shall issue a certificate to the registrant verifying that the claim of paternity, revocation, or change of address has been filed.

(I) No fee may be charged for filing a claim of paternity, a revocation, or a change of address with the registry. The department may charge a reasonable fee for processing searches of the registry.

(J) A registrant may at any time revoke a claim of paternity and shall file the revocation with the department in the manner prescribed by the department. The filing of a revocation of a claim of paternity with the registry in the manner prescribed by the department makes the prior claim of paternity filed by the registrant null and void.

(K) Except as set forth in Section 63‑9‑730(B), no unmarried biological father who fails to file a claim of paternity with the registry is entitled to notification of any adoption proceeding or of any termination of parental rights proceeding concerning the unmarried biological father’s child.

(L) An unmarried biological father’s failure to file a claim of paternity with the registry is deemed to be a lack of proper diligence under Section 63‑9‑770(B). An unmarried biological father’s lack of knowledge of the biological mother’s pregnancy does not excuse an unmarried biological father’s failure to file a claim of paternity pursuant to this chapter. An unmarried biological father’s sexual intercourse or his consent to artificial insemination with the biological mother is deemed to be notice to the unmarried biological father of the biological mother’s pregnancy.

(M)(1) The registry is not available for public inspection and is not subject to disclosure under the Freedom of Information Act pursuant to Chapter 4, Title 30 except that:

(a) the department shall disclose the contents of the registry upon order of a court of competent jurisdiction for good cause shown;

(b) the department may file a written request with the registry regarding a child for whom the department has an open case for child welfare services;

(c) the department shall provide the names and addresses of all registrants who have filed a claim of paternity for the child in question upon written request of a child placing agency or an attorney assisting in the adoption or termination of parental rights of a child. The written request may be filed with the registry before or after the birth of the child and must include:

(i) the mother’s name and, if known, her address and date of birth;

(ii) if known, the child’s date of birth and place of birth; and

(iii) if known, the date, county, and state of conception of the child.

(2) If a written request is submitted by or to the department pursuant to item (b) or (c) of subsection (M)(1) and no claim of paternity for the registrant is found, the department shall issue a certificate of diligent search verifying that a search of the registry has been conducted and that no claim of paternity regarding that registrant or child was found.

(N) A registrant who has filed a claim of paternity must be served with notice of any adoption proceeding and any termination of parental rights proceeding involving any child identified in the registrant’s filed claim of paternity within ten days of receipt of the registrant’s name and address by the attorney or child placing agency pursuant to item (c) of subsection (M)(1).

(O) Should the department issue a certificate of diligent search, the attorney for the requesting party in an adoption proceeding or in a termination of parental rights proceeding shall file the certificate of diligent search with the court in which the proceeding is pending within ten days of receipt of the certificate.

(P) A registrant’s claim of paternity shall remain on the registry until nineteen years after the claim of paternity has been filed with the registry, at which time the information may be purged from the registry. A registrant’s claim of paternity shall be purged from the registry if the registrant revokes his claim of paternity pursuant to subsection (J).

(Q) The department may promulgate regulations and forms necessary to implement the provisions of this section. The department shall produce and distribute a pamphlet or publication informing the public of the Responsible Father Registry. The pamphlet or publication shall indicate the procedure for registering and the consequences for failure to register.

(R)(1) Any unauthorized use, or attempted unauthorized use, of the registry is expressly prohibited, and any person or organization seeking, receiving, using, or publishing, or attempting to do so, of any information contained in the registry in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(2) A person who knowingly, maliciously, or in bad faith files a false claim of paternity with the registry is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.”

SECTION 2. Section 63‑9‑730(B) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“(B) The following persons or agencies are entitled to notice as provided in subsection (A) ~~of this section~~:

(1) ~~any~~ a person adjudicated by a court in this State to be the father of the child;

(2) ~~any~~ a person or agency required to give consent or relinquishment pursuant to ~~subsections (A) or (B) of~~ Section 63‑9‑310(A) or (B) from whom consent or relinquishment cannot be obtained;

(3) ~~the father of the child whose consent or relinquishment is not required pursuant to items (4) or (5) of subsection (A) of Section 63‑9‑310~~ a person who has properly registered with the Responsible Father Registry at the time of the filing of the petition for termination of parental rights or adoption;

(4) ~~any~~ a person who is recorded on the child’s birth certificate as the child’s father. The Department of Health and Environmental Control shall release this information to any attorney representing a party in an adoption or termination of parental rights action;

(5) ~~any~~ a person who is openly living with the child or the child’s mother, or both, at the time the ~~adoption~~ proceeding is initiated~~,~~ and who is holding himself out to be the child’s father;

(6) ~~any~~ a person who has been identified as the child’s father by the mother in a sworn, written statement; and

(7) ~~any~~ a person from whom consent or relinquishment is not required pursuant to ~~item (2) of subsection (A) of~~ Section 63‑9‑320(A)(2).”

SECTION 3. Section 63‑7‑2530 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑7‑2530. (A) A petition seeking termination of parental rights may be filed by the Department of Social Services or any interested party.

(B) The department may file an action for termination of parental rights without first seeking the court’s approval of a change in the permanency plan pursuant to Section 63‑7‑1680 and without first seeking an amendment of the placement plan pursuant to Section 63‑7‑1700.

(C) The hearing on the petition to terminate parental rights must be held within one hundred twenty days of the date the termination of parental rights petition is filed. A party may request a continuance that would result in the hearing being held more than one hundred twenty days after the petition was filed; however, the court may only grant the continuance if exceptional circumstances exist. If a continuance is granted, the court must issue a written order stating the exceptional circumstances and scheduling the case for trial on a date and time certain. A continuance may not be granted by consent order.”

SECTION 4. Section 63‑7‑2550 of 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑7‑2550. (A) A summons and petition for termination of parental rights must be filed with the court and served on:

(1) the child, if the child is fourteen years of age or older;

(2) the child’s guardian ad litem, appointed pursuant to Section 63‑7‑2560(B), if the child is under fourteen years of age;

(3) the parents of the child; and

~~(3)~~(4) an agency with placement or custody of the child.

(B) The right of an unmarried biological father, as defined in Section 63‑9‑820, to receive notice of a termination of parental rights action must be governed by the notice provisions of Section 63‑9‑730(B)(1), (3), (4), (5), and (6), and Subarticle 8, Chapter 9.”

SECTION 5. This act takes effect upon approval by the Governor, except that those provisions of Section 1 of this act pertaining to the establishment of the Responsible Father Registry and the receipt of claims of paternity by the registry take effect six months after approval by the Governor and those provisions of Section 1 of this act and Section 63‑9‑730 of the 1976 Code, as amended by Section 2 of this act, affecting an unmarried biological father’s right to receive notice in a termination of parental rights or an adoption action by filing a claim of paternity and Section 63‑7‑2250(B) of the 1976 Code, as added by Section 4 of this act, apply to termination of parental rights actions and adoption actions filed one year after approval by the Governor.

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