COMMITTEE REPORT

January 25, 2012

**H. 4614**

Introduced by Reps. Pitts, Lucas, Hearn, Brannon, Weeks and Spires

S. Printed 1/25/12--H.

Read the first time January 17, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4614) to amend the Code of Laws of South Carolina, 1976, by adding Article 2 to Chapter 15, Title 63 so as to specify certain procedures and requirements for court‑ordered child custody, 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, by striking all after the enacting words and inserting:

/SECTION 1. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Article 2

Court‑Ordered Child Custody

Section 63‑15‑210. (A) As used in this article:

(1) ‘Court‑approved arbitrator’ means a certified mediator or certified arbitrator who the chief administrative family court judge for a particular judicial circuit, certifies to arbitrate a dispute between parents concerning their child. Court‑approved arbitrators may charge an hourly rate set by the chief administrative family court judge for a particular county.

(2) ‘Joint custody’ means both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training; however, a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions. Joint custody does not mean that a child must spend an equal amount of time with each parent.

(3) ‘Sole custody’ means a person, including but not limited to, a parent who has permanent custody of a child and, unless otherwise provided for by court order, the rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training. A noncustodial parent may have rights to visitation or parenting time as provided for by court order.

Section 63‑15‑220. (A) Prior to a temporary hearing at which custody is an issue, the court shall require each parent to prepare and submit to the court a parenting plan which reflects parental preferences, the allocation of parenting time to be spent with each parent, and major decisions including but not limited to the child’s education, medical and dental care, extracurricular activities and religious training. The court shall issue a temporary and final custody order only after considering this parenting plan; however, the failure by a party to submit a parenting plan to the court does not preclude the court from issuing a temporary or final custody order.

(B) At the final hearing, either party may submit an updated or amended parenting plan for the court’s consideration.

(C) Court administration shall develop a document on which a parenting plan may be prepared and submitted to the court.

Section 63‑15‑230. (A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.

(B) The court may award joint custody to both parents or sole custody to either parent.

(C) If custody is contested or if either parent seeks an award of joint custody, the court must consider joint custody and shall issue an order containing findings of fact as to why joint custody was or was not awarded.

Section 63‑15‑240. (A) In issuing or modifying an order for custody affecting the rights and responsibilities of the parents, the order may include, but is not limited to:

(1) approval of a parenting plan agreed to by the parents;

(2) award of sole custody to one parent with appropriate parenting time for the noncustodial parent;

(3) if joint custody is awarded to both parents, the order must include:

(a) residential arrangements with each parent in accordance with the needs of the child and parents; and

(b) how consultations and communications between the parents will take place, generally and specifically with regard to major decisions concerning the child’s health, medical and dental care, education, extracurricular activities, and religious training;

(4) other custody arrangements as the court may determine to be in the best interest of the child.

(B) In issuing or modifying a custody order, the court shall consider the best interest of the child, which may include, but is not limited to:

(1) the temperament and developmental needs of the child;

(2) the capacity and the disposition of the parents to understand and meet the needs of the child;

(3) relevant and material information obtained from the child, including the informed preferences of the child;

(4) the wishes of the parents as to custody;

(5) the past and current interaction and relationship of the child with each parent, the child’s siblings, and any other person who may significantly affect the best interest of the child;

(6) the willingness of each parent to facilitate and encourage the continuing parent‑child relationship between the child and the other parent, as is appropriate, including compliance with court orders;

(7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parents’ dispute;

(8) the ability of each parent to be actively involved in the life of the child;

(9) the child’s adjustment to his or her home, school, and community environments;

(10) the stability of the child’s existing and proposed residences;

(11) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining the continuity in the environment; however, the court may consider favorably a parent who voluntarily leaves the child’s family home pendente lite in order to alleviate stress in the household;

(12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;

(13) the child’s cultural background;

(14) whether the child or a sibling of the child has been abused or neglected;

(15) the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child;

(16) other factors as the court considers necessary.

Section 63‑15‑250. (A) When a final order is issued awarding joint custody and thereafter the parents are unable to agree on a significant decision concerning the child that does not require a modification of the court order, either parent may seek to have the matter arbitrated by a court‑approved arbitrator. The parties shall equally pay the cost of the arbitration; however, the arbitration order may require the prevailing party be reimbursed for all or part of the costs associated with the arbitration.

(B) The family court retains jurisdiction to modify a joint custody order based on a substantial change of circumstances.”

SECTION 2. Section 63‑15‑220(C) of the 1976 Code, as added by Section 1 of this Act, is effective 60 days after the approval of the Governor. All other sections and subsections of this act take effect upon approval by the Governor and apply to causes of action arising on or after the effective date of this act. /

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 ARTICLE 2 TO CHAPTER 15, TITLE 63 SO AS TO SPECIFY CERTAIN PROCEDURES AND REQUIREMENTS FOR COURT‑ORDERED CHILD CUSTODY, INCLUDING, BUT NOT LIMITED TO, DEFINING “JOINT CUSTODY” AND “SOLE CUSTODY”, REQUIRING PARENTS TO JOINTLY PREPARE AND SUBMIT A PARENTING PLAN, WHICH THE COURT MUST CONSIDER BEFORE ISSUING TEMPORARY AND FINAL CUSTODY ORDERS; REQUIRING THE COURT TO MAKE FINAL CUSTODY DETERMINATIONS IN THE BEST INTEREST OF THE CHILD BASED UPON THE EVIDENCE PRESENTED, REQUIRING THE COURT TO CONSIDER JOINT CUSTODY IF EITHER PARENT SEEKS IT, STATING FINDINGS OF FACT AS TO WHY OR WHY NOT JOINT CUSTODY WAS AWARDED, PROVIDING MATTERS THAT MAY BE INCLUDED IN A CUSTODY ORDER, PROVIDING FACTORS THE COURT MAY CONSIDER IN ISSUING OR MODIFYING A CUSTODY ORDER WHEN CONSIDERING THE BEST INTEREST OF THE CHILD, AND AUTHORIZING A PARENT TO SEEK ARBITRATION OF AN ISSUE THAT CANNOT BE RESOLVED BETWEEN THE PARENTS; AND TO AMEND SECTION 63‑5‑30, RELATING TO THE RIGHTS AND DUTIES OF PARENTS TO THEIR CHILDREN, SO AS TO PROVIDE THAT UNLESS OTHERWISE PROVIDED BY AN ORDER OF THE COURT, PARENTS HAVE EQUAL POWERS, RIGHTS, AND DUTIES CONCERNING ALL MATTERS AFFECTING THEIR CHILDREN.

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

SECTION 1. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Article 2

Court‑Ordered Child Custody

Section 63‑15‑210. (A) As used in this article:

(1) ‘Court‑approved arbitrator’ means an individual who a chief administrative family court judge for a particular county, certifies to arbitrate a dispute between parents concerning their child. Court‑approved arbitrators may charge an hourly rate set by a chief administrative family court judge for a particular county.

(2) ‘Joint custody’ means both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training; however, a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions. Joint custody does not mean that a child must spend an equal amount of time with each parent but does allow each parent to determine how and where, in accordance with the law and provisions of the court order, his or her time with the child will be spent.

(3) ‘Sole custody’ means a person, including but not limited to, a parent, has permanent custody of a child and, unless otherwise provided for by court order, the rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training. A noncustodial parent may have rights to visitation or parenting time as provided for by court order.

Section 63‑15‑220. (A) Before a temporary hearing in which custody is an issue before the court, the court shall require the parents jointly to prepare and submit a parenting plan to the court reflecting parental preferences, the allocation of parenting time to be spent with each parent, and major decisions concerning the child’s education, medical and dental care, extracurricular activities and religious training. The court shall issue a temporary and final custody order only after considering this parenting plan.

(B) From the issuance of a temporary order by the court until a final order on the merits is issued, the parenting plan must be updated or amended as circumstances require.

(C) Court administration shall develop a document on which a parenting plan may be prepared and submitted to the court.

Section 63‑15‑230. (A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.

(B) The court may award joint custody to both parents or sole custody to either parent.

(C) If custody is contested or if either parent seeks an award of joint custody, the court must consider joint custody and shall issue an order containing findings of fact as to why joint custody was or was not awarded.

Section 63‑15‑240. (A) In issuing or modifying an order for custody affecting the rights and responsibilities of the parents, the order may include, but is not limited to:

(1) approval of a parenting plan agreed to by the parents;

(2) award of sole custody to one parent with appropriate parenting time for the noncustodial parent;

(3) if joint custody is awarded to both parents, the order must include:

(a) residential arrangements with each parent in accordance with the needs of the child and parents; and

(b) how consultations and communications between the parents will take place, generally and specifically with regard to major decisions concerning the child’s health, medical and dental care, education, extracurricular activities, and religious training;

(4) other custody arrangements as the court may determine to be in the best interest of the child.

(B) In issuing or modifying a custody order, the court shall consider the best interest of the child, which may include, but is not limited to:

(1) the temperament and developmental needs of the child;

(2) the capacity and the disposition of the parents to understand and meet the needs of the child;

(3) relevant and material information obtained from the child, including the informed preferences of the child;

(4) the wishes of the parents as to custody;

(5) the past and current interaction and relationship of the child with each parent, the child’s siblings, and any other person who may significantly affect the best interest of the child;

(6) the willingness of each parent to facilitate and encourage the continuing parent‑child relationship between the child and the other parent, as is appropriate, including compliance with court orders;

(7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parent’s dispute;

(8) the ability of each parent to be actively involved in the life of the child;

(9) the child’s adjustment to his or her home, school, and community environments;

(10) the stability of the child’s existing and proposed residences;

(11) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining the continuity in the environment; however, the court may consider favorably a parent who voluntarily leaves the child’s family home pendente lite in order to alleviate stress in the household;

(12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;

(13) the child’s cultural background;

(14) whether the child or a sibling of the child has been abused or neglected;

(15) the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child;

(16) other factors as the court considers necessary.

Section 63‑15‑250. If a final order of joint custody is ordered by the court and thereafter the parents are unable to agree on a significant decision concerning the child that does not require a modification of the court order, either parent may seek to have the matter arbitrated by a court‑approved arbitrator. The parties shall pay an equal share for the cost of arbitration. However, the arbitration order may require the prevailing party be reimbursed for all or part of the costs associated with the arbitration.”

SECTION 2. Section 63‑5‑30 of the 1976 Code is amended to read:

“Section 63‑5‑30. The mother and father are the joint, natural guardians of their ~~minor~~ children and are equally charged with the welfare and education of their ~~minor~~ children and the care and management of the estates of their ~~minor~~ children~~; and~~. Unless otherwise provided by an order of the court, the mother and father have equal power, rights, and duties, and ~~neither~~ one parent ~~has any~~ does not have a right paramount to the right of the other concerning the custody of ~~the minor~~ their children or the control of the services or the earnings of ~~the minor~~ their children or any other matter affecting ~~the minor~~ their children. Each parent, whether the custodial or noncustodial parent of ~~the child~~ their children, has equal access and the same right to obtain all educational records and medical records of their ~~minor~~ children and the right to participate in their children’s school activities unless prohibited by order of the court. ~~Neither~~ A parent ~~shall~~ may not forcibly take a child from the guardianship of the parent legally entitled to custody of the child.”

SECTION 3. This act takes effect upon approval by the Governor.

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