COMMITTEE REPORT

April 18, 2012

**H. 4614**

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

S. Printed 4/18/12--S.

Read the first time February 1, 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 the bill in its entirety after the title and inserting:

/ Whereas, fit parents have a right to make determinations concerning the care of their children; and

Whereas, the relationships between children and their fit parents should be respected and nurtured to the fullest extent possible; and

Whereas, the best interest of the child is the primary and controlling consideration of South Carolina courts in all child custody controversies. Now, therefore,

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. As used in this article:

(1) ‘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.

(2) ‘Sole custody’ means a person, including, but not limited to, a parent who has temporary or 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.

Section 63-15-220. (A) At all temporary hearings where custody is contested, each parent must prepare, file, 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. However, the parties may elect to prepare, file, and submit a joint parenting plan. The court shall issue temporary and final custody orders only after considering these parenting plans; 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 file and submit an updated parenting plan for the court’s consideration.

(C) South Carolina Court Administration shall develop a parenting plan form that must be prepared, filed, 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 shall consider all custody options, including, but not limited to, joint custody, and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision.

(D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

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) the approval of a parenting plan;

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

(3) the award of joint custody, in which case the order must include:

(a) residential arrangements with each parent in accordance with the needs of each child; 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 must 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) the preferences of each 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, including a grandparent, who may significantly affect the best interest of the child;

(6) the actions of each parent to 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) any effort by one parent to disparage the other parent in front of the child;

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

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

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

(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 and spiritual background;

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

(15) whether one parent has perpetrated domestic violence or child abuse or 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) whether one parent has relocated more than 100 miles from the child’s primary residence in the past year, unless the parent relocated for safety reasons; and

(17) other factors as the court considers necessary.

Section 63-15-250. In addition to all rights and duties given to parents pursuant to Section 63-5-30:

(A) when a court orders sole custody to one parent, the custodial parent, except in cases of abuse, neglect, or abandonment, should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the noncustodial parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child; and

(B) when a court orders joint custody to both parents, each parent should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the other parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child.

Section 63-15-260. Notwithstanding the custody arrangement and in addition to all rights and duties given to parents pursuant to Section 63-5-30, each parent has equal access and the same right to obtain all educational records and medical records of his or her minor children and the right to participate in the children’s school activities and extracurricular activities that are held in public locations unless prohibited by an order of the court or State law.”

SECTION 2. (A) The South Carolina Family Court Study Committee is created to study the feasibility of tracking the outcome of contested custody proceedings in the family court.

(B) The study committee shall be composed of the following members:

(1) one member of the judiciary appointed by the Chief Justice of the South Carolina Supreme Court;

(2) the Director of Court Administration, or his designee;

(3) the Speaker of the House of Representatives, or his designee;

(4) the President Pro Tempore of the Senate, or his designee;

(5) the Chairman of the House Judiciary Committee, or his designee;

(6) the Chairman of the Senate Judiciary Committee, or his designee; and

(7) the South Carolina Crime Victim Ombudsman, or his designee.

(C) The members of the study committee shall serve without compensation and may not receive mileage or per diem.

(D) Staff of the House of Representatives and the Senate shall serve as staff to the study committee, as needed.

(E) The study committee shall issue its findings concerning the feasibility of tracking the outcome of contested custody proceedings in the family court by January 31, 2013.

SECTION 3. Section 63-15-220, as added by SECTION 1 of this act, is effective 60 days after 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.

VINCENT A. SHEHEEN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department indicates that this bill will have no fiscal impact on the General Fund of the State, or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**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 a certified mediator or certified arbitrator selected by agreement of the parties or appointed by a family court judge to arbitrate a dispute between parents concerning their child. Court‑approved arbitrators may charge an hourly rate as agreed upon by the parties or as 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 temporary or 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) At all temporary hearings where custody is an issue, each parent shall prepare, file, 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 temporary and final custody orders only after considering these parenting plans; 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 file and submit an updated 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) the approval of a parenting plan agreed to by the parents;

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

(3) the award of joint custody in which case 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) the 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 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;

(12) the child’s cultural background;

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

(14) 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;

(15) 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.

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