COMMITTEE REPORT

May 14, 2014

**S. 687**

Introduced by Senator L. Martin

S. Printed 5/14/14--H.

Read the first time March 6, 2014.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 687) to amend Chapter 15, Title 63, South Carolina Code of Laws, 1976, relating to child custody and visitation, to enact the "South Carolina Blind Person’s Right To Parent Act”, 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.

**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:**

Department of Social Services

Commission for the Blind

The agencies estimate this bill will have no fiscal impact on the state general fund or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND CHAPTER 15, TITLE 63, SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO CHILD CUSTODY AND VISITATION, TO ENACT THE "SOUTH CAROLINA BLIND PERSON’S RIGHT TO PARENT ACT”, BY ADDING ARTICLE 4 TO THE CHAPTER SO AS TO PROVIDE THAT A COURT MAY NOT MAKE A DECISION ON GUARDIANSHIP, CUSTODY, OR VISITATION BASED UPON A SOLE CONSIDERATION OF THE BLINDNESS OF A CHILD’S PARENT OR GUARDIAN, AND THAT DECISIONS CONCERNING ADOPTIONS MAY NOT BE BASED UPON THE SOLE CONSIDERATION THAT THE PERSON SEEKING TO ADOPT A CHILD IS BLIND.

Whereas, all blind South Carolinians have the right to establish a family, to freely and responsibly decide on the number and spacing of their children, and to retain the custody of their offspring on an equal basis with others. This right to parent is rooted in the due process clause of the Fourteenth Amendment of the United States Constitution; however, blind people are often stripped of these constitutional rights when state statutes, judicial decisions, and child welfare practices are based on the presumption that blindness automatically means parental incompetence; and

Whereas, the presumption that blindness automatically means parental incompetence is a misconception and that, given the proper tools and education, blindness can be reduced to a physical nuisance. Because many sighted people do not understand the techniques that blind people use to accomplish everyday tasks, sighted judges, social workers, and state officials assume that those tasks cannot be completed by a blind person. Using alternative techniques, blind people are capable of living independent, productive lives, which include providing safe and loving homes for their children. For example, blind people put small tactile dots over markers on stoves, washing machines, and other flat surfaces so that they can independently operate those devices. Specific to raising children, blind parents may have their young children wear a small bell on their shoes so the child’s location can be known to the parents. Blind parents will also pull a stroller behind them rather than push the stroller in front of them so their long white cane or guide dog will find obstacles or enter an intersection before the child and stroller; and

Whereas, when sighted parents are involved in a guardianship, custody, or visitation proceeding, their parental capabilities and how those capabilities affect the best interest of the child are thoroughly evaluated through a careful review of evidence. Too often, however, judges summarily dismiss a blind parent’s capabilities under the misconception that blind people are incapable of most anything, despite evidence on record proving otherwise. Blind parents involved in these proceedings must first overcome any bias or low expectations of the judge and then also provide evidence negating those misconceptions above and beyond the normal burden placed on sighted parents; and

Whereas, widespread misconceptions about blindness often trigger a state agency to act, unsolicited, against the wishes of a blind parent. One of many countless, devastating reports of discrimination occurred in 2010, when the state of Missouri wrongfully deemed a blind couple unable to care for their two‑day‑old daughter, who remained in protective custody until the family was reunited after a fifty-seven-day battle. These parents had done nothing to demonstrate parental incompetence other than happening to have had a child and been blind, and yet the agency solely considered their blindness and decided to take action. In fact, in the Missouri case and many others, the parents had voluntarily contacted social service officials themselves in order to seek advice and assistance and to ensure that all of their child’s needs were being met but instead found themselves stripped of custody. Thus, hasty actions on the part of state social welfare officials can discourage blind parents from seeking services and assistance for which they and their children are eligible; and

Whereas, during custody proceedings in cases of divorce, where one parent is blind and the other parent is sighted, the sighted parent will often try to use the other parent’s blindness as a tool to deny the blind parent custodial rights. Because custody proceedings related to a divorce are often hostile, the court should demand that each party demonstrate evidence of the other party’s incompetence. However, courts often assume that the sighted party is accurate in portraying the blind parent as incompetent, and make custody and visitation decisions based solely on the fact that one parent is blind. These decisions can range from limiting or denying visitation unless a sighted person is present at all times to simply denying the blind parent all custodial rights. This is not only discriminatory, it denies the blind parent a fair chance at custody and opens courts to manipulation. Now, therefore,

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

SECTION 1. This act may be cited as the “South Carolina Blind Person’s Right to Parent Act”.

SECTION 2. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Article 4

South Carolina Blind Person’s Right to Parent Act

Section 63-15-400. In making decisions on guardianship, custody, or visitation where a party to the action is blind, the court may not deny the party guardianship, custody, or visitation of a child solely because the party is blind. The blindness of a party shall only be used to determine whether or not granting guardianship, custody, or visitation to the party would be in the best interest of the child.

Section 63-15-410. (A) When the Department of Social Services, a guardian, or a child placement agency considers an adoption petition, the department, guardian, or child placement agency may not deny the petition solely because the petitioner is blind.

(B) In making a determination of adoption where the petitioner is blind, the court may not deny the petition solely because the petitioner is blind. The blindness of the petitioner shall only be used to determine whether or not granting the adoption would be in the best interest of the child.

Section 63-15-420. Within one year of the adoption of this act, the Department of Social Services shall promulgate regulations prohibiting a local department from removing a child from a home and placing the child in foster care solely because the child’s parent or guardian is blind.

Section 63-15-430. For purposes of this act, the term ‘blind’ or ‘blindness’ means:

(A) vision that is 20/200 or less in the best corrected eye; or

(B) vision that subtends an angle of not greater than twenty degrees in the best corrected eye.”

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

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