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Indicates New Matter

COMMITTEE REPORT

January 25, 2017

**H. 3442**

Introduced by Reps. Delleney, Felder, Pope, Martin, Norrell, B. Newton, Simrill, Norman, Thayer, Putnam, Clary, Hamilton, Yow, W. Newton, Kirby, Erickson, Knight, Hixon, Elliott and Henderson

S. Printed 1/25/17--H.

Read the first time January 12, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3442) to amend Section 63‑9‑60, as amended, Code of Laws of South Carolina, 1976, relating to individuals who may adopt a child, 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.

**A** **BILL**

TO AMEND SECTION 63‑9‑60, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INDIVIDUALS WHO MAY ADOPT A CHILD, SO AS TO ADD CIRCUMSTANCES UNDER WHICH A NONRESIDENT MAY ADOPT AND TO PROVIDE FOR THE RIGHT TO FILE A PETITION FOR ADOPTION; AND TO AMEND SECTION 63‑9‑750, RELATING TO ADOPTION HEARINGS, SO AS TO MAKE TECHNICAL CORRECTIONS.

Whereas, recent South Carolina court opinions have so interpreted the meaning of Section 63‑9‑60 as to deny residents of this State standing to bring or maintain an action for the adoption of any child in the temporary custody of the Department of Social Services; and

Whereas the General Assembly by this act wishes to reassert its legislative intent with regard to the adoption of children in this State by residents of South Carolina only, except in unusual or exceptional circumstances, to affirm the right of residents of South Carolina to bring actions for the adoption of children in the temporary custody of the department, and to correct the typographical error in the cross‑reference in Section 63‑9‑750. Now, therefore,

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

SECTION 1. Section 63‑9‑60 of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“Section 63‑9‑60. (A)~~(1)~~ Any South Carolina resident may petition the court to adopt a child.

(B)(1) ~~Placement of children for adoption pursuant to this article is limited to South Carolina residents with exceptions being made~~ Any nonresident of South Carolina may petition the court to adopt a child in the following circumstances only:

(a) the child is a special needs child, as defined by Section 63‑9‑30;

(b) there has been public notoriety concerning the child or child’s family, and the best interests of the child would be served by placement outside this State;

(c) the child is to be placed for adoption with a relative related biologically or by marriage;

(d) at least one of the adoptive parents is in the military service stationed in South Carolina;

(e) there are unusual or exceptional circumstances such that the best interests of the child would be served by placement with or adoption by nonresidents of this State; ~~or~~

(f) the child has been in foster care for at least six months after having been legally freed for adoption and no South Carolina resident has been identified as a prospective adoptive home;

(g) a parent has specifically consented to the adoption by the nonresident; or

(h) the department or any agency under contract with the department has placed the child with the nonresident for purposes of adoption.

(2) Before a child is placed within or outside the boundaries of this State for adoption with nonresidents of this State, compliance with Article 11 (Interstate Compact on the Placement of Children) is required, and a judicial determination must be made in this State that one of the circumstances in ~~items (a) through (f) of subsection (A)(1)~~ subsection (B)(1)(a)‑(h) applies, whether or not the adoption proceedings are instituted in this State. Additionally, in order to determine if any of the circumstances in ~~items (a) through (f) of subsection (A)(1)~~ subsection (B)(1)(a)‑(h) apply so as to permit placement with a nonresident for the purpose of adoption or adoption by a nonresident, a petition may be brought for the determination before the birth of the child or before placement of the child with the prospective adoptive parents. In ruling on this question the court must include in its order specific findings of fact as to the circumstances allowing the placement of a child with a nonresident or the adoption of a child by a nonresident. The court also must analyze the facts against the objective criteria established in Sections 16‑3‑1060 and 63‑9‑310(F) and make specific findings in accordance with the pertinent law and evidence presented. The order resulting from this action does not prohibit or waive the right to refuse to consent to a release of rights or relinquish rights at a later time or to withdraw a consent or relinquish at a later time as provided in this article. The order must be merged with and made a part of any subsequent adoption proceeding, which must be initiated and finalized in this State.

~~(B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption.~~

(3) Neither the department nor its contractors may delay or deny the placement of a child for adoption by a nonresident if that nonresident has been approved for adoption of the child by another state authorized to approve such placements pursuant to the Interstate Compact on Placement of Children. The department shall provide an opportunity for a hearing, in accordance with the department’s fair hearing procedures, to a nonresident who believes that the department, in violation of this section, has delayed or denied placement of a child for adoption.

(C) A petition for adoption of a child may be filed pursuant to this section regardless of which individual or entity has custody of the child. When the department has custody of a child, the rights granted herein to South Carolina residents and nonresidents shall not be diminished, invalidated or negatively affected in any way.”

SECTION 2. Section 63‑9‑750(B)(7) of the 1976 Code is amended to read:

“(7) if the petitioner is a nonresident of this State, the findings pursuant to Section ~~63‑9‑50~~ 63‑9‑60(B) are included in the order, and there has been compliance with Article 11 (Interstate Compact on the Placement of Children).”

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

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