~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT AMENDED AND ADOPTED

June 1, 2016

**H. 3989**

Introduced by Reps. J.E. Smith, Bernstein, Pitts, Horne, McCoy, Thayer, McEachern and Hicks

S. Printed 6/1/16--S.

Read the first time March 10, 2016.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “PERSONS WITH DISABILITIES RIGHT TO PARENT ACT” BY ADDING CHAPTER 21 TO TITLE 63 SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES, LAW ENFORCEMENT, AND THE FAMILY AND PROBATE COURTS, AMONG OTHERS, TO PROTECT THE PARENTING RIGHTS OF PERSONS WITH A DISABILITY BY ESTABLISHING CERTAIN REQUIREMENTS AND SAFEGUARDS APPLICABLE IN CHILD CUSTODY, CHILD PROTECTION, AND PROBATE GUARDIANSHIP PROCEEDINGS TO ENSURE THAT PERSONS WITH DISABILITIES ARE NOT DENIED THE RIGHT TO PARENT OR TO HAVE CUSTODY OF OR VISITATION WITH A CHILD BECAUSE OF THE DISABILITY; TO PROHIBIT CHILD PLACING AGENCIES, ADOPTION SERVICE PROVIDERS, AND ASSISTED REPRODUCTIVE TECHNOLOGY SERVICE PROVIDERS FROM DENYING PERSONS WITH A DISABILITY THE RIGHT TO ACCESS SERVICES BECAUSE OF THE PERSON’S DISABILITY, WITH EXCEPTIONS; BY ADDING SECTION 62‑1‑510 SO AS TO REQUIRE ASSESSMENTS AND EVALUATIONS OF CERTAIN PERSONS WITH A DISABILITY IN PROBATE COURT PROCEEDINGS, AND TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO ENABLE THE PERSON TO PARENT A CHILD ADEQUATELY; BY ADDING SECTIONS 63‑7‑1695, 63‑7‑2575, AND 63‑15‑270 SO AS TO REQUIRE ASSESSMENTS AND EVALUATIONS OF CERTAIN PERSONS WITH A DISABILITY IN FAMILY COURT PROCEEDINGS TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO ENABLE THE PERSON TO PARENT A CHILD ADEQUATELY; TO AMEND SECTION 63‑7‑720, RELATING TO REASONABLE EFFORTS REQUIREMENTS FOR PROBABLE CAUSE HEARINGS, SO AS TO REQUIRE SERVICES FOR PARENTS AND LEGAL GUARDIANS WITH A DISABILITY TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO AVOID REMOVAL OF THE CHILD; AND TO AMEND SECTION 63‑7‑1640, AS AMENDED, RELATING TO FAMILY COURT DETERMINATIONS WHETHER TO REQUIRE REASONABLE EFFORTS TO PRESERVE OR REUNIFY A FAMILY WHEN THE PARENT OR LEGAL GUARDIAN HAS A DISABILITY, SO AS TO REQUIRE THE COURT TO TAKE INTO CONSIDERATION THE DISABILITY AND WAYS IN WHICH TO ACCOMMODATE THE DISABILITY TO PRESERVE OR REUNIFY THE FAMILY; AND FOR OTHER PURPOSES.

Amend Title To Conform

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

SECTION 1. Article 4, Chapter 15, Title 63 of the 1976 Code is amended to read:

“South Carolina ~~Blind Person’s~~ Persons with Disabilities Right to Parent Act

Section 63-15-400. In making decisions on guardianship, custody, or visitation where a party to the action is ~~blind~~ a person with a disability, the court may not deny the party guardianship, custody, or visitation of a child solely because the party is ~~blind~~ a person with a disability or upon speculation that the disability makes the person unfit to parent, without considering whether readily available services enable the person to parent adequately. The ~~blindness~~ disability of a party only must 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 63-15-405. The Department of Social Services, a child placing agency, or other public entity shall comply with Title II of the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, before taking an action that could impact the parental rights of a person with a disability.

Section 63-15-410. (A) A person with a disability shall not be denied the opportunity to pursue an adoption of a child solely on the basis of the disability or upon speculation that the disability makes the person unfit to parent, without considering whether readily available services enable the person to parent adequately.

~~(A)~~(B) When the Department of Social Services~~, a guardian,~~ or a child ~~placement~~ placing agency considers an adoption petition, the department~~, guardian,~~ or child ~~placement~~ placing agency may not deny the petition solely because the petitioner is ~~blind~~ a person with a disability or upon speculation that the disability makes the person unfit to parent, without considering whether readily available services enable the person to parent adequately.

~~(B)~~(C) In making a determination of adoption where the petitioner is ~~blind~~ a person with a disability, the court may not deny the petition solely because the petitioner is ~~blind~~ a person with a disability or upon speculation that the disability makes the person unfit to parent, without considering whether readily available services enable the person to parent adequately. The ~~blindness~~ disability of the petitioner only must 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~~ a person with a disability or upon speculation that the disability makes the person unfit to parent, without considering whether readily available services enable the person to parent.

Section 63-15-430. For purposes of this ~~act, the term “blind” or “blindness”means~~ article:

~~(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.~~

(1) ‘Child placing agency’ has the same meaning as provided in Section 6-9-30.

(2) ‘Public entity’ means the State or any political subdivision of the State, including, but not limited to, any department, agency, special purpose district, or other instrumentality of the state.

(3) ‘Disabled’ or ‘disability’ means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of an impairment, or being regarded as having an impairment that substantially limits one or more of the major life activities of an individual.

(4) ‘Readily available services’ means any services available and accessible to a person with a disability that help compensate for those aspects of the disability that affect the care for a child and that enables the person to fulfill parental responsibilities including, but not limited to, auxillary aids or services, learned behavioral or adaptive training, evaluations, and assistance with effective use of adaptive equipment and accommodations that enable a person with a disability to benefit from other services.”

SECTION 2. Section 63-7-1640(A) of the 1976 Code is amended to read:

“Section 63-7-1640. (A)(1) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child’s best interest, health, and safety must be the paramount concern.

(2) Reasonable efforts required pursuant to item (1) to preserve or reunify a family in which the parent or legal guardian has a disability shall include, but not be limited to, the following:

(a) access to or referrals to access readily available services, as defined in Section 63-15-430(4); and

(b) reasonable accommodations to provide equal and meaningful access to services that are made available to a parent or legal guardian who does not have a disability.”

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

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