~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT AMENDED AND ADOPTED

March 8, 2018

**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, Henderson, Bedingfield, V.S. Moss, Wheeler, Ballentine, King, Henegan and West

S. Printed 3/8/18--S.

Read the first time February 7, 2017.

**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.

Amend Title To Conform

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

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

~~(e)~~(d) 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)~~(e) 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;

(f) all persons required to give consent to the adoption pursuant to Section 63-9-310 have specifically consented to the adoption by the nonresident; or

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

(2) A person who files a petition pursuant to subsections (A) and (B) shall not use public notoriety concerning a child or child’s family to support or to evidence his petition to adopt a child.

~~(2)~~(3) 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)‑(g) 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)‑(g) 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. Section 63-9-1110(5) of the 1976 Code, as last amended by Act 160 of 2010, is amended to read:

“(5) upon good cause shown, the court may waive the requirement, pursuant to Section ~~63-9-60(A)(2)~~ 63-9-60(B)(3), that the adoption proceeding must be finalized in this State.”

SECTION 4. Subarticle 3, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

“Section 63-9-370. (A) Consent or relinquishment for the purpose of adoption, pursuant to Section 63-9-310, for a minor child who is in the custody of the department by a removal action under Section 63-7-1660, is valid, binding, and enforceable. However, if a cause of action for the termination of parental rights affecting a minor child who is in the custody of the department by a removal action under Section 63-7-1660 was filed prior to the execution of a consent or relinquishment, then the consent or relinquishment and any further action on the petition for adoption, while valid, remains subject to the pendency of the termination of parental rights action and any order of the court pursuant thereto.

(B) Notwithstanding subsection (A), the department may move the court to make specific written findings that the consent or relinquishment has been freely, knowingly, and voluntarily given or that the consent or relinquishment is invalid on any of the following grounds:

(1) the adoptee lacks the mental capacity to give consent pursuant to Section 63-9-310(A)(1);

(2) the person lacks the mental capacity to give consent pursuant to Section 63-9-320(A)(2) as a result of:

(a) suffering from mental illness, impairment, or deficiency;

(b) being under the influence of alcohol or illegal drugs or abusing prescription medication; or

(c) being impaired by medical treatment; or

(3) the consent or relinquishment was not given voluntarily or was obtained through undue influence, duress, or coercion.

(C) The custody of a minor child who is in the custody of the department shall not be modified pursuant to a consent or relinquishment prior to a hearing being held in court, wherein the department is a party, for the purpose of determining whether the requirements of this section and Section 63-9-60 have been met with regard to standing of the petitioner and validity of any consent or relinquishment for the purpose of adoption.

(D) Notwithstanding any other provision in this section, the court must consider the best interests of the child in making any findings pursuant to this section.”

SECTION 5. This act takes effect upon approval by the Governor.

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