RECALLED

May 26, 2011

**H. 4095**

Introduced by Reps. Pitts and Lucas

S. Printed 5/26/11--H.

Read the first time April 13, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑15‑45 SO AS TO PROVIDE THAT IF JOINT CUSTODY OF A CHILD IS AWARDED TO THE PARENTS, THERE IS A REBUTTABLE PRESUMPTION THAT BOTH PARENTS HAVE JOINT PHYSICAL CUSTODY OF THE CHILD; TO PROVIDE THAT THE PRESUMPTION MAY BE OVERCOME BY PRESENTING CLEAR AND CONVINCING EVIDENCE THAT JOINT PHYSICAL CUSTODY IS NOT IN THE BEST INTEREST OF THE CHILD; TO REQUIRE THE PARENTS TO SUBMIT A PARENTING PLAN TO THE COURT REFLECTING PARENTAL PREFERENCES AND AGREEMENT ON MATTERS OF SUBSTANCE; AND TO PROVIDE THAT PARENTS SHARE DECISION‑MAKING AUTHORITY AND RESPONSIBILITY FOR IMPORTANT DECISIONS AFFECTING THE CHILD’S WELFARE AND THAT WHEN AGREEMENT CANNOT BE REACHED THE PARENTS SHALL SUBMIT TO MEDIATION WITH A PRESELECTED MEDIATOR.

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

SECTION 1. Article 1, Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑45. (A) If joint legal custody of a child is awarded to the parents, there is a rebuttable presumption that both parents have joint physical custody of the child. Joint physical custody of the child is defined as equal time‑sharing. If a petition is filed challenging joint custody, the burden of overcoming the presumption rests on the parent challenging the presumption. The presumption may be overcome by demonstrating that joint physical custody would not be in the best interest of the child or by one parent waiving the presumption.

(B) Prior to a hearing on the petition, the court shall require the parents to prepare and submit a parenting plan to the court reflecting parental preferences and agreement on matters of substance concerning the child’s education, upbringing, religious training, and medical and dental care. The parents shall share decision‑making authority and responsibility for important decisions affecting the child’s welfare, and if parents are unable to agree, they shall submit to mediation with a preselected mediator.

(C) The court shall hold a hearing at which the parties may introduce evidence. The clear and convincing evidentiary standard must be used in determining if the presumption has been overcome and the court in its order shall issue findings of fact and conclusions of law.”

SECTION 2. This act takes effect upon approval by the Governor.

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