S T A T E O F N E W Y O R K

8565

2015-2016 Regular Sessions

I N A S S E M B L Y

November 16, 2015

Introduced by M. of A. SKARTADOS -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to third party caretakers of children; to amend the domestic relations law and the family court act, in relation to custody determinations; and to amend the social services law, in relation to requirements for reporting child abuse to the state central register of child abuse and maltreatment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as "Mason's Law."

S 2. Legislative intent. The legislature hereby declares that it intends to ensure the safety of children in cases of child custody and requires that a third party caretaker of such children undergo criminal background checks, requires family court judges to consider a parent with a manageable disability when determining custody, and instructs child protective services to report allegations of abuse by a child's custodial parent when such abuse is alleged by the non-custodial parent.

S 3. The domestic relations law is amended by adding a new section 75-m to read as follows:

S 75-M. CRIMINAL BACKGROUND CHECKS FOR THIRD PARTY CARETAKERS. WHEN A CUSTODIAL PARENT OF A CHILD LEAVES THE CHILD ALONE WITH A THIRD PARTY CARETAKER, THE CUSTODIAL PARENT MUST:

(A) PERFORM A ONE TIME, COMMERCIALLY AVAILABLE, CRIMINAL BACKGROUND CHECK OF THE THIRD PARTY CARETAKER TO DETERMINE THE INDIVIDUAL'S CRIMINAL HISTORY IF THE CHILD WILL BE IN THE SOLE CARE OF THE THIRD PARTY CARETAKER FOR AT LEAST FOUR TIMES IN A SIX MONTH PERIOD;

(B) INFORM AND SECURE THE CONSENT OF THE NON-CUSTODIAL PARENT OR THE ASSIGNED CHILD PROTECTIVE SERVICES CASE WORKER BEFORE LEAVING THE CHILD IN THE CARE OF THE THIRD PARTY CARETAKER WHEN THE BACKGROUND CHECK VERIFIES THAT THE THIRD PARTY CARETAKER HAS A RECORD OF CHILD ABUSE,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD10057-01-5

SUBSTANCE/ALCOHOL ABUSE, VIOLENCE OR OTHER RELEVANT CONVICTIONS WITHIN THE LAST FIVE YEARS; AND

(C) MAKE A REASONABLE ATTEMPT TO GIVE THE NON-CUSTODIAL PARENT AN OPPORTUNITY TO ACCEPT THE TEMPORARY CARETAKING ROLE BEFORE SECURING A THIRD PARTY CARETAKER IF THE CHILD IS TO BE LEFT WITH A THIRD PARTY CARETAKER FOR MORE THAN THIRTY-SIX CONSECUTIVE HOURS. THE NON-CUSTODIAL PARENTS MUST BE ABLE TO PROVIDE CARE FOR AT LEAST THIRTY-SIX CONSECUTIVE HOURS AND HAVE BEEN PREVIOUSLY GRANTED UNSUPERVISED VISITATION RIGHTS BY THE COURT.

S 4. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-3) to read as follows:

(A-3) DISABILITY OF PARENT; EFFECT ON CHILD CUSTODY ORDERS. (1) IF A PARENT HAS A DISABILITY BUT CAN DEMONSTRATE THAT ACCOMMODATIONS CAN BE MADE TO ENSURE THAT THE DISABILITY WILL NOT AFFECT THE CHILD'S SAFETY, A JUDGE OR MAGISTRATE DETERMINING A JUDGMENT OR ORDER FOR CUSTODY SHALL NOT CONSIDER SUCH PARENT'S DISABILITY.

(2) "DISABILITY" MEANS PHYSICAL, MENTAL OR MEDICAL IMPAIRMENT RESULTING FROM ANATOMICAL, PHYSIOLOGICAL, GENETIC OR NEUROLOGICAL CONDITIONS WHICH PREVENTS THE EXERCISE OF A NORMAL BODILY FUNCTION OR IS DEMONSTRABLE BY MEDICALLY ACCEPTED CLINICAL OR LABORATORY DIAGNOSTIC TECHNIQUES.

S 5. Section 651 of the family court act is amended by adding a new subdivision (g) to read as follows:

(G) DISABILITY OF PARENT; EFFECT ON CHILD CUSTODY ORDERS. 1. IF A PARENT HAS A DISABILITY BUT CAN DEMONSTRATE THAT ACCOMMODATIONS CAN BE MADE TO ENSURE THAT THE DISABILITY WILL NOT AFFECT THE CHILD'S SAFETY, A JUDGE OR MAGISTRATE DETERMINING A JUDGMENT OR ORDER FOR CUSTODY SHALL NOT CONSIDER SUCH PARENT'S DISABILITY.

2. "DISABILITY" MEANS PHYSICAL, MENTAL OR MEDICAL IMPAIRMENT RESULTING FROM ANATOMICAL, PHYSIOLOGICAL, GENETIC OR NEUROLOGICAL CONDITIONS WHICH PREVENTS THE EXERCISE OF A NORMAL BODILY FUNCTION OR IS DEMONSTRABLE BY MEDICALLY ACCEPTED CLINICAL OR LABORATORY DIAGNOSTIC TECHNIQUES.

S 6. Section 424 of the social services law is amended by adding a new subdivision 5-c to read as follows:

5-C. SHALL CONTACT THE STATE CENTRAL REGISTER WHEN A NON-CUSTODIAL PARENT REPORTS PHYSICAL INJURY AS DESCRIBED IN SUBDIVISION (E) OF SECTION ONE THOUSAND TWELVE OF THE FAMILY COURT ACT OR SEXUAL ABUSE OF A CHILD WHILE UNDER THE CUSTODY OF THE CUSTODIAL PARENT, AND THERE IS PROBABLE CAUSE TO INVESTIGATE SUCH CLAIMS.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.