**A** **BILL**

TO AMEND SECTION 63‑7‑940, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO USE OF UNFOUNDED ABUSE OR NEGLECT CASE INFORMATION, SO AS TO ALLOW THE DIRECTOR OF THE DEPARTMENT OF SOCIAL SERVICES TO DISCLOSE INFORMATION ABOUT CASES MADE PUBLIC BY SOURCES OTHER THAN THE DEPARTMENT IN ORDER TO CONFIRM, CLARIFY, OR CORRECT INFORMATION, RESPOND TO REQUESTS BY COMMITTEES OF THE GENERAL ASSEMBLY UNDER CERTAIN CIRCUMSTANCES, AND COMPLY WITH CERTAIN FEDERAL LAW, TO REQUIRE THE DEPARTMENT TO STATE THAT THE DISCLOSED INFORMATION RELATES TO A CASE THAT IS UNFOUNDED, AND TO LIMIT THE RIGHT OF A PERSON TO FILE AN ACTION AGAINST THE DEPARTMENT RELATED TO DISCLOSURE OF INFORMATION ABOUT AN UNFOUNDED CASE; AND TO AMEND SECTION 63‑7‑1990, RELATING TO CONFIDENTIALITY AND RELEASE OF INFORMATION ABOUT CHILD ABUSE AND NEGLECT CASES, SO AS TO ALLOW THE DEPARTMENT TO DISCLOSE INFORMATION ABOUT CASES MADE PUBLIC BY SOURCES OTHER THAN THE DEPARTMENT IN ORDER TO CONFIRM, CLARIFY, OR CORRECT INFORMATION, RESPOND TO REQUESTS BY COMMITTEES OF THE GENERAL ASSEMBLY UNDER CERTAIN CIRCUMSTANCES, AND COMPLY WITH FEDERAL LAW, TO REQUIRE THE DEPARTMENT TO STATE WHETHER THE INFORMATION RELATES TO A CASE THAT IS INDICATED OR UNDER INVESTIGATION, TO PROHIBIT THE DEPARTMENT FROM DISCLOSING INFORMATION RELATED TO DEPARTMENT INVESTIGATIONS OF CERTAIN CASES THAT RESULTED IN A CHILD FATALITY OR NEAR FATALITY, AND TO LIMIT THE RIGHT OF A PERSON TO FILE AN ACTION AGAINST THE DEPARTMENT RELATED TO DISCLOSURE OF CASE INFORMATION.

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

SECTION 1. Section 63‑7‑940 of the 1976 Code is amended to read:

“Section 63‑7‑940. (A) Information concerning reports classified as unfounded contained in the statewide data system and records must be maintained for not less than five years after the finding. Information contained in unfounded cases is not subject to disclosure under the Freedom of Information Act as provided for in Chapter 4, Title 30. Access to and use of information contained in unfounded cases must be ~~strictly~~ limited strictly to the following purposes and entities:

(1) a prosecutor or law enforcement officer or agency, for purposes of investigation of a suspected false report pursuant to Section 63‑7‑440;

(2) the department or a law enforcement officer or agency, for the purpose investigating allegations of abuse or neglect;

(3) the department or a law enforcement officer or agency, when information is received that allows the reopening of a Category III unfounded report pursuant to Section 63‑7‑920(A);

(4) as evidence in a court proceeding, if admissible under the rules of evidence as determined by a judge of competent jurisdiction;

(5) a person who is the subject of a report in an action brought by a prosecutor or by the department, if otherwise subject to discovery under the applicable rules of procedure;

(6) the department, for program improvement, auditing, and statistical purposes;

(7) as authorized in Section 63‑7‑2000; ~~and~~

(8) the Department of Child Fatalities pursuant to Section 63‑11‑1960~~.~~; and

(9) the director, or his designee, who may disclose information to:

(a) confirm, clarify, or correct information concerning a case that has been made public by sources other than the department in official statements;

(b) respond to questions from a committee or subcommittee of the General Assembly that has been given oversight of the department according to the Rules of the House of Representatives or the Senate, provided that the information is reviewed in closed session and kept confidential; or

(c) comply with requirements of the federal Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq., for states to provide for the public disclosure of findings and information about a case of child abuse or neglect that results in a child fatality or near fatality.

(B) When disclosing information pursuant to subsection (A), the department shall state that the case was unfounded.

(C) Except as authorized in this section, ~~no~~ a person may not disseminate or permit dissemination of information maintained pursuant to subsection (A). A person who disseminates or permits dissemination in violation of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both. A person aggrieved by an unlawful dissemination in violation of this subsection may bring a civil action to recover damages incurred as a result of the unlawful act and to enjoin its dissemination or use.

(D) A person may not bring an action for damages based on the disclosure or nondisclosure of information pursuant to subsection (A)(9), except for civil damages resulting from gross negligence or reckless or intentional misconduct.”

SECTION 2. Section 63‑7‑1990(G), (H), (I), (J), (K), (L), and (M) of the 1976 Code is amended to read:

“(G) ~~The state director of the department or the director’s designee may disclose to the media information contained in child protective services records if the disclosure is limited to discussion of the department’s activities in handling the case including information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, or other public judicial proceedings. For purposes of this subsection, information is considered "placed in the public domain" when it has been reported in the news media, is contained in public records of a criminal justice agency, is contained in public records of a court of law, or has been the subject of testimony in a public judicial proceeding.~~

(1) The director, or his designee, may disclose information contained in records described in subsections (A) and (B) and records of cases undergoing investigation to:

(a) confirm, clarify, or correct information concerning a case that has been made public by sources other than the department in official statements;

(b) respond to questions from a committee or subcommittee of the General Assembly that has been given oversight of the department according to the Rules of the House of Representatives or the Senate, provided that the information is reviewed in closed session and kept confidential; or

(c) comply with requirements of the federal Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq., for states to provide for the public disclosure of findings or information about a case of child abuse or neglect that results in a child fatality or near fatality.

(2) When disclosing information pursuant to this subsection, the department shall state whether the case is indicated or under investigation.

(H) ~~The state director or the director’s designee is authorized to prepare and release reports of the results of the department’s investigations into the deaths of children in its custody or receiving child welfare services at the time of death.~~

~~(I)~~ The department is authorized to disclose information concerning an individual named in the Central Registry of Child Abuse and Neglect as a perpetrator when screening of an individual’s background is required by statute or regulation for employment, licensing, or any other purposes, or a request is made in writing by the person being screened. Nothing in this section prevents the department from using other information in department records when making decisions concerning licensing, employment, or placement, or performing other duties required by this act. The department also is authorized to consult any department records in providing information to persons conducting preplacement investigations of prospective adoptive parents in accordance with Section 63‑9‑520.

~~(J)~~(I) The department is authorized to maintain in its childcare regulatory records information about investigations of suspected child abuse or neglect occurring in childcare facilities as provided in this subsection.

(1) The department ~~must~~ shall enter child abuse or neglect investigation information in its regulatory record from the beginning of the investigation and ~~must~~ shall add updated information as it becomes available. Information in the regulatory records must include at least the date of the report, the nature of the alleged abuse or neglect, the outcome of the investigation, any corrective action required, and the outcome of the corrective action plan.

(2) The department’s regulatory records must not contain the identity of the reporter or of the victim child.

(3) The identity of the perpetrator must not appear in the record unless the family court has confirmed the department’s determination or a criminal prosecution has resulted in conviction of the perpetrator.

(4) Nothing in this subsection may be construed to limit the department’s authority to use information from investigations of suspected child abuse or neglect occurring in childcare facilities to pursue an action to enjoin operation of a facility as provided in Chapter 13.

(5) Record retention provisions applicable to the department’s child protective services case records are not applicable to information contained in regulatory records concerning investigations of suspected child abuse or neglect occurring in childcare facilities.

~~(K)~~(J) All reports made available to persons pursuant to this section must indicate whether or not an appeal is pending on the report pursuant to Subarticle 9.

~~(L)~~(K) The department may disclose to participants in a family group conference relevant information concerning the child or family or other relevant information to the extent that the department determines that the disclosure is necessary to accomplish the purpose of the family group conference. Participants in the family group conference must be instructed to maintain the confidentiality of information disclosed by the agency.

~~(M)~~(L) Nothing in this section may be construed to waive the confidential nature of the case record, to waive any statutory or common law privileges attaching to the department’s internal reports or to information in case records, to create a right to access under the Freedom of Information Act, or to require the department to search records or generate reports for purposes of the Freedom of Information Act.

(M) A person may not bring an action for damages based on the disclosure or nondisclosure of information pursuant to subsection (G), except for civil damages resulting from gross negligence or reckless or intentional misconduct.”

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

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