**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59‑25‑425 SO AS TO REQUIRE PERSONS WHO HIRE SCHOOL DISTRICT EMPLOYEES TO REVIEW THE CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT AND TO AUTHORIZE THE DEPARTMENT OF SOCIAL SERVICES (DSS) TO CHARGE A FEE FOR THE REVIEW; BY ADDING SECTION 63‑7‑1985 SO AS TO REQUIRE CERTAIN ENTITIES ENGAGED IN THE CARE OF CHILDREN TO REVIEW THE CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT BEFORE HIRING A POTENTIAL EMPLOYEE AND TO AUTHORIZE DSS TO CHARGE A FEE FOR THE REVIEW; TO AMEND SECTION 63‑7‑940, RELATING TO THE USE OF UNFOUNDED CASE INFORMATION CONCERNING REPORTS AND INVESTIGATIONS OF CHILD ABUSE AND NEGLECT, SO AS TO PROVIDE THAT INFORMATION CONCERNING REPORTS OF CHILD ABUSE AND NEGLECT CLASSIFIED AS UNFOUNDED MUST BE MAINTAINED BY DSS FOR TEN YEARS AND TO INCLUDE THE STATE LAW ENFORCEMENT DIVISION IN THE LIST OF AGENCIES WITH RESTRICTED ACCESS TO THE INFORMATION; TO AMEND SECTION 63‑7‑980, RELATING TO COOPERATION BETWEEN DSS AND LAW ENFORCEMENT, SO AS TO REQUIRE COOPERATION BETWEEN DSS AND LAW ENFORCEMENT WHETHER OR NOT A REPORT OF SUSPECTED CHILD ABUSE OR NEGLECT APPEARS TO INDICATE A VIOLATION OF CRIMINAL LAW AND TO REQUIRE THE AGENCIES TO ESTABLISH PROCEDURES FOR COLLABORATION; TO AMEND SECTION 63‑7‑1930, RELATING TO THE PETITION FOR PLACEMENT ON THE CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT, SO AS TO DELETE THE REQUIREMENT THAT THE DEPARTMENT MUST SEEK AN ORDER TO PLACE A PERSON ON THE CENTRAL REGISTRY WHEN A PREPONDERANCE OF THE EVIDENCE SUGGESTS THE PERSON COMMITTED SEXUAL ABUSE; TO AMEND SECTION 63‑7‑1950, RELATING TO UPDATING OF THE CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT, SO AS TO DELETE THE REQUIREMENT THAT DSS REMOVE REPORTS OF UNFOUNDED REPORTS FROM THE CENTRAL REGISTRY; TO AMEND SECTION 63‑7‑1990, RELATING TO THE CONFIDENTIALITY AND RELEASE OF RECORDS AND INFORMATION RELATING TO THE CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT, SO AS TO ALLOW JUVENILE ARBITRATORS ACCESS TO THIS INFORMATION; TO AMEND SECTION 63‑7‑1440, RELATING TO JUDICIAL REVIEW OF CASES OF INDICATED CHILD ABUSE AND NEGLECT, SO AS TO CHANGE THE STANDARD OF REVIEW OF THE FAMILY COURT TO A TRIAL DE NOVO; AND TO REPEAL SECTION 63‑5‑70 RELATING TO UNLAWFUL CONDUCT TOWARDS A CHILD.

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

SECTION 1. Article 5, Chapter 25, Title 59 of the 1976 Code is amended by adding:

“Section 59‑25‑425. (A) Notwithstanding another provision of law, persons charged with hiring school district employees shall review the Central Registry of Child Abuse and Neglect before hiring a potential employee pursuant to Section 63‑7‑1985.

(B) The Department of Social Services is authorized to charge a fee for reviewing the Central Registry of Child Abuse and Neglect in accordance with a fee schedule established in the annual appropriations act.”

SECTION 2. Subarticle 13, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑1985. (A) Persons, agencies, or entities who are engaged in the care, supervision, or treatment of children shall obtain the results of a review of the Central Registry of Child Abuse and Neglect before hiring a potential employee. Neither this subsection nor subsection (B) alters the obligations of persons, agencies, or entities when a check for history of child abuse or neglect or a check of the Central Registry of Child Abuse and Neglect is a condition for employment, volunteer services, or issuance of a license or other permit to operate.

(B) An employer who is required to check the Central Registry of Child Abuse and Neglect shall comply with all provisions of this section.

(C) The department is authorized to charge a fee for reviewing the Central Registry of Child Abuse and Neglect in accordance with a fee schedule established in the annual appropriations act.”

SECTION 3. Section 63‑7‑940(A) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“(A) Information concerning reports classified as unfounded contained in the statewide data system and records must be maintained by the department for not less than ~~five~~ten years after the finding. Information contained in unfounded cases is not subject to disclosure ~~under~~pursuant to 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 to the following purposes and entities:

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

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

(3) the department, SLED, 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~~pursuant to 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~~pursuant to 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.”

SECTION 4. Section 63‑7‑980 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑7‑980. (A) The department must cooperate with law enforcement agencies within the area it serves and establish procedures necessary to facilitate the referral of child protection cases to the department.

(B)~~(1)~~ ~~Where~~When the:

(1) ~~facts indicating~~department receives a report of suspected child abuse or neglect,~~also appear~~ whether or not the information related by the reporter appears to indicate a violation of criminal law, the department must notify the appropriate law enforcement agency of ~~those facts~~that information within twenty‑four hours of ~~the department’s finding~~receiving the report for the purposes of ~~police~~law enforcement’s investigation. The law enforcement agency must file a formal incident report at the time it is notified by the department~~of the finding.~~;

(2) ~~When the intake~~report is of alleged sexual abuse, the department must notify the appropriate law enforcement agency within twenty‑four hours of receipt of the report ~~to determine if a joint investigation is necessary~~, and a collaborative investigation must begin. The law enforcement agency must file a formal incident report at the time it is notified of the alleged sexual abuse.

(C) The law enforcement agency must provide to the department certain information including, but not limited to, copies of incident reports generated in ~~any case~~all cases reported to law enforcement by the department and in ~~any case~~all cases in which the officer responsible for the case knows the department is involved with the family or the child. The law enforcement officer must make reasonable efforts to advise the department of significant developments in the case, such as disposition in summary court, referral of a juvenile to the Department of Juvenile Justice, arrest or detention, trial date, and disposition of charges.

(D) The department must include in its records copies of incident reports provided ~~under~~pursuant to this section and must record the disposition of charges. The department and law enforcement agencies shall include in protocols established pursuant to Section 63‑7‑760, procedures for notifying agencies of reports, sharing of information, and collaboration during investigation.”

SECTION 5. Section 63‑7‑1930 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑7‑1930. ~~(A)~~ At any time following receipt of a report, the department may petition the family court for an order directing that the person named as perpetrator be entered in the Central Registry of Child Abuse and Neglect. The petition must have attached a written case summary stating facts sufficient to establish by a preponderance of evidence that the person named as perpetrator abused or neglected the child and that the nature and circumstances of the abuse indicate that the person named as perpetrator ~~would present~~presents a significant risk of committing physical or sexual abuse or wilful or reckless neglect if placed in a position or setting outside of the person’s home that involves care of or substantial contact with children. The department must serve a copy of the petition and summary on the person named as perpetrator. The petition must include a statement that the judge must rule based on the facts stated in the petition unless the clerk of court or the clerk’s designee receives a written request for a hearing from the person named as perpetrator within five days after service of the petition. The name, address, and telephone number of the clerk of court or the clerk’s designee must be stated in the petition. If the person named as perpetrator requests a hearing, the court must schedule a hearing on the merits of the allegations in the petition and summary to be held no later than five working days following the request.

~~(B)~~ ~~The department must seek an order placing a person in the Central Registry pursuant to subsection (A) in all cases in which the department concludes that there is a preponderance of evidence that the person committed sexual abuse.~~”

SECTION 6. Section 63‑7‑1950 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑7‑1950. In cases ~~where~~when a person has been placed in the Central Registry of Child Abuse and Neglect, the outcome of ~~any~~all further proceedings must be entered immediately by the department into the Central Registry of Child Abuse and Neglect. If it is determined that a report is unfounded, the department must immediately purge information identifying that person as a perpetrator from the registry~~and from department records~~ as provided in Sections 63‑7‑1920 and 63‑7‑1960.”

SECTION 7. Section 63‑7‑1990(B)(10) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“(10) family courts and juvenile arbitrators conducting proceedings pursuant to this article;”

SECTION 8. Section 63‑7‑1440 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑7‑1440. An appellant seeking judicial review shall file a petition in the family court within thirty days after the final decision of the department. The appellant shall serve a copy of the petition upon the department. The family court shall conduct a ~~judicial review in accordance with the standards of review provided for in Section 1‑23‑380~~trial de novo.~~The court may enter judgment upon the pleadings and a certified transcript of the record which must include the evidence upon which the findings and decisions appealed are based.~~ The judgment must include a determination of whether the decision of the department that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed.~~The appellant is not entitled to a trial de novo in the family court.~~”

SECTION 9. Section 63‑5‑70 of the 1976 Code is repealed.

SECTION 10. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 11. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 12. This act takes effect on January 1, 2010.

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