~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 9, 2014

**S. 1163**

Introduced by Senators Young, Lourie, Shealy and L. Martin

S. Printed 4/9/14--S. [SEC 4/14/14 4:58 PM]

Read the first time March 26, 2014.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1163) to amend Section 63‑7‑940 of the 1976 Code, relating to the use of unfounded abuse and neglect case information and Section 63‑7‑1990, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting therein the following:

/ SECTION 1. Section 63-7-940(A)(7) of the 1976 Code is amended to read:

“(7) as authorized in Section 63-7-2000; ~~and~~”

SECTION 2. Section 63-7-940(A) of the 1976 Code is amended by adding two appropriately numbered items at the end to read:

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

( ) to respond to an inquiry from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this item may be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure.

The department must state that the case was unfounded when disclosing information pursuant to this subsection.”

SECTION 3. Section 63-7-1990(G) 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.~~ The director or his designee may disclose information in records required to be kept confidential by subsection (A) to confirm, clarify, or correct information concerning a case that has been made public by sources other than the department in official statements. The director or his designee shall disclose information in records required to be kept confidential by subsection (A) to respond to an inquiry from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this item may be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure.”

SECTION 4. Section 63-7-1990(H) of the 1976 Code is amended to read:

“(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.~~(1) In cases of child abuse or neglect resulting in a child fatality or near fatality of a child, the department, upon request, shall make public a report containing the following information:

(a) the age of the child;

(b) the gender of the child;

(c) information describing all previous reports of child abuse or neglect investigations by the department or any third party contracted with the department relating to the child;

(d) all services provided by the department or any third party contracted with the department to the child regarding child abuse or neglect; and

(e) all actions taken by the department or any third party contracted with the department relating to the child regarding child abuse or neglect.

(2) For purposes of subsection (H), near fatality is defined as an act that, as certified by a physician, places the child in serious or critical condition.

(3) The director or his designee may choose not to make a public report pursuant to subsection (H) in the following circumstances:

(a) the report would endanger the child, the child's parent or guardian, or member of the child's family;

(b) the report would interfere in a criminal investigation; or

(c) the report would disclose the identity of a person who made a report of child abuse or neglect regarding the child.”

SECTION 5. Section 17-5-540 of the 1976 Code is amended to read:

“Section 17-5-540. The coroner or medical examiner, within twenty four hours or one working day, whichever occurs first, must notify the Department of Child Fatalities when a child dies in the county he serves~~:~~

~~(1)~~ ~~as a result of violence, when unattended by a physician, and in any suspicious or unusual manner; or~~

~~(2)~~ ~~when the death is unexpected and unexplained including, but not limited to, possible sudden infant death syndrome.~~

except ~~For the purposes of this section, a child is not considered to be "unattended by a physician"~~ when a physician has, before death, provided diagnosis and treatment ~~following a fatal~~ related to the child's fatal illness, injury, disease, or other infirmity.”

SECTION 6. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

CREIGHTON B. COLEMAN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Social Services

The department reports that this bill will have no fiscal impact on the General Fund of the State, nor on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 63‑7‑940 OF THE 1976 CODE, RELATING TO THE USE OF UNFOUNDED ABUSE AND NEGLECT CASE INFORMATION AND SECTION 63‑7‑1990, RELATING TO THE CONFIDENTIALITY AND RELEASE OF RECORDS AND INFORMATION CONCERNING THE CENTRAL CHILD ABUSE AND NEGLECT REGISTRY, TO PROVIDE THAT INFORMATION WHCH MUST OTHERWISE REMAIN CONFIDENTIAL MAY BE RELEASED BY THE DIRECTOR OR DESIGNEE TO CONFIRM, CLARIFY, OR CORRECT INFORMATION CONCERNING A CASE THAT HAS BEEN MADE PUBLIC BY SOURCES OTHER THAN THE DEPARTMENT, TO RESPOND TO AN INQUIRY FROM A COMMITTEE OR SUBCOMMITTEE OF THE SENATE OR THE HOUSE OF REPRESENTATIVES OR A JOINT COMMITTEE OF THE GENERAL ASSEMBLY, OR TO COMPLY WITH REQUIREMENTS OF THE FEDERAL CHILD ABUSE PREVENTION AND TREATMENT ACT AND TO LIMIT CIVIL LIABILITY RESULTING FROM THE DISCLOSURE.

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 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 for the following purposes:

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

(b) to respond to an inquiry from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4 of Title 30, meetings to review information disclosed pursuant to this item may be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure; or

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

A person may not bring an action for damages based on the disclosure of information pursuant to this item except for damages resulting from gross negligence or reckless or intentional misconduct.

The department must state that the case was unfounded when disclosing information pursuant to this subsection.

(B) Except as authorized in this section, no person may 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.”

SECTION 2. Section 63‑7‑1990 of the 1976 Code is amended to read:

“Section 63‑7‑1990. (A) All reports made and information collected pursuant to this article maintained by the Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential. A person who disseminates or permits the dissemination of these records and the information contained in these records except as authorized in this section, 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.

(B) The department is authorized to grant access to the records of indicated cases to the following persons, agencies, or entities:

(1) the ombudsman of the office of the Governor or the Governor’s designee;

(2) a person appointed as the child’s guardian ad litem, the attorney for the child’s guardian ad litem, or the child’s attorney;

(3) appropriate staff of the department;

(4) a law enforcement agency investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;

(5) a person who is named in a report or investigation pursuant to this article as having abused or neglected a child, that person’s attorney, and that person’s guardian ad litem;

(6) a child fourteen years of age or older who is named in a report as a victim of child abuse or neglect, except in regard to information that the department may determine to be detrimental to the emotional well‑being of the child;

(7) the parents or guardians of a child who is named in a report as a victim of child abuse or neglect;

(8) county medical examiners or coroners who are investigating the death of a child;

(9) the State Child Fatality Advisory Committee and the Department of Child Fatalities in accordance with the exercise of their purposes or duties pursuant to Article 19, Chapter 11;

(10) family courts conducting proceedings pursuant to this article;

(11) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order;

(12) a grand jury by subpoena upon its determination that access to the record is necessary in the conduct of its official business;

(13) authorities in other states conducting child abuse and neglect investigations or providing child welfare services;

(14) courts in other states conducting child abuse and neglect proceedings or child custody proceedings;

(15) the director or chief executive officer of a childcare facility, child placing agency, or child caring facility when the records concern the investigation of an incident of child abuse or neglect that allegedly was perpetrated by an employee or volunteer of the facility or agency against a child served by the facility or agency;

(16) a person or agency with authorization to care for, diagnose, supervise, or treat the child, the child’s family, or the person alleged to have abused or neglected the child;

(17) any person engaged in bona fide research with the written permission of the state director or the director’s designee, subject to limitations the state director may impose;

(18) multidisciplinary teams impaneled by the department or impaneled pursuant to statute;

(19) circuit solicitors and their agents investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;

(20) prospective adoptive or foster parents before placement;

(21) the Division for the Review of the Foster Care of Children, Office of the Governor, for purposes of certifying in accordance with Section 63‑11‑730 that no potential employee or no nominee to and no member of the state or a local foster care review board is a subject of an indicated report or affirmative determination;

(22) employees of the Division for the Review of the Foster Care of Children, Office of the Governor and members of local boards when carrying out their duties pursuant to Article 7 of Chapter 11; the department and the division shall limit by written agreement or regulation, or both, the documents and information to be furnished to the local boards;

(23) The Division of Guardian ad Litem, Office of the Governor, for purposes of certifying that no potential employee or volunteer is the subject of an indicated report or an affirmative determination.

(C) The department may limit the information disclosed to individuals and entities named in subsection (B)(13), (14), (15), (16), (17), (18), and (20) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this subsection gives to these entities or persons the right to review or copy the complete case record.

(D) When a request for access to the record comes from an individual identified in subsection (B)(5), (6), or (7) or that person’s attorney, the department shall review any reports from medical care providers and mental health care providers to determine whether the report contains information that does not pertain to the case decision, to the treatment needs of the family as a whole, or to the care of the child. If the department determines that these conditions exist, before releasing the document, the department shall provide a written notice identifying the report to the requesting party and to the person whose treatment or assessment was the subject of the report. The notice may be mailed to the parties involved or to their attorneys or it may be delivered in person. The notice shall state that the department will release the report after ten days from the date notice was mailed to all parties and that any party objecting to release may apply to the court of competent jurisdiction for relief. When a medical or mental health provider or agency furnishes copies of reports or records to the department and designates in writing that those reports or records are not to be further disclosed, the department must not disclose those documents to persons identified in subsection (B)(5), (6), or (7) or that person’s attorney. The department shall identify to the requesting party the records or reports withheld pursuant to this subsection and shall advise the requesting party that he may contact the medical or mental health provider or agency about release of the records or reports.

(E) A disclosure pursuant to this section shall protect the identity of the person who reported the suspected child abuse or neglect. The department also may protect the identity of any other person identified in the record if the department finds that disclosure of the information would be likely to endanger the life or safety of the person. Nothing in this subsection prohibits the department from subpoenaing the reporter or other persons to court for the purpose of testimony if the department determines the individual’s testimony is necessary to protect the child; the fact that the reporter made the report must not be disclosed.

(F) The department is authorized to summarize the outcome of an investigation to the person who reported the suspected child abuse or neglect if the person requests the information at the time the report is made. The department has the discretion to limit the information disclosed to the reporter based on whether the reporter has an ongoing professional or other relationship with the child or the family.

(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.~~ The director or his designee may disclose information in records required to be kept confidential by subsection (A) for the following purposes:

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

(b) to respond to an inquiry from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4 of Title 30, meetings to review information disclosed pursuant to this item may be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure; or

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

A person may not bring an action for damages based on the disclosure of information pursuant to this item except for damages resulting from gross negligence or reckless or intentional misconduct.

~~(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.~~

(H ~~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.

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

(1) The department must enter child abuse or neglect investigation information in its regulatory record from the beginning of the investigation and must 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.

(J ~~K~~) 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.

(K ~~L~~) 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.

(L ~~M~~) 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.”

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

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