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Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

Amt. No. 1A (Doc. No. 3124c001.nbd.vr14)

May 1, 2014

**H. 3124**

Introduced by Reps. Bingham, Taylor, Long and M.S. McLeod

S. Printed 4/15/14--S.

Read the first time May 1, 2013.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑7‑315 SO AS TO PROHIBIT AN EMPLOYER FROM DISMISSING, DEMOTING, SUSPENDING, OR DISCIPLINING AN EMPLOYEE WHO REPORTS CHILD ABUSE OR NEGLECT, WHETHER REQUIRED OR PERMITTED TO REPORT; AND TO CREATE A CAUSE OF ACTION FOR REINSTATEMENT AND BACK PAY WHICH AN EMPLOYEE MAY BRING AGAINST AN EMPLOYER WHO VIOLATES THIS PROHIBITION.

Amend Title To Conform

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

SECTION 1. Subarticle 1, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63-7-315. (A) An employer must not dismiss, demote, suspend, or otherwise discipline or discriminate against an employee who is required or permitted to report child abuse or neglect pursuant to Section 63-7-310 based on the fact that the employee has made a report of child abuse and neglect.

(B) An employee who is adversely affected by conduct that is in violation of subsection (A) may bring a civil action for reinstatement and back pay. An action brought pursuant to this subsection may be commenced against an employer, including the State, a political subdivision of the State, and an office, department, independent agency, authority, institution, association, or other body in state government. An action brought pursuant to this subsection must be commenced within three years of the date the adverse personnel action occurred.

(C) In an action brought pursuant to subsection (B), the court may award reasonable attorney’s fees to the prevailing party; however, in order for the employer to receive reasonable attorney’s fees pursuant to this subsection, the court must make a finding pursuant to Section 63‑7‑2000 that: (1) the employee made a report of suspected child abuse or neglect maliciously or in bad faith; or (2) the employee is guilty of making a false report of suspected child abuse or neglect pursuant to Section 63‑7‑440.”

SECTION 2. Section 63‑7‑940(A) of the 1976 Code is amended to read:

“(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) (a) the director or his designee who may disclose information for the following purposes:

(i) to confirm, clarify, or correct information concerning a case that has been made public by the party in interest to the case; or

(ii) 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 subitem 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.

(b) The department must state that the case was unfounded when disclosing information pursuant to this item.”

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 the party in interest to the case. 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. The information shall be reviewed in a closed session and kept confidential, unless the information has been made public by the party in interest and is required for a response to a question asked by a Senator or a member of the House of Representatives in a public meeting, 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. 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. This act takes effect upon approval by the Governor.

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