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General Bill

Sponsors: Senators Young, Lourie, Shealy and L. Martin

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HISTORY OF LEGISLATIVE ACTIONS

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3/26/2014	Senate	Introduced and read first time
3/26/2014	Senate	Referred to Committee on Judiciary

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VERSIONS OF THIS BILL

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A BILL

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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 WHICH 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.

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

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

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“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

1 in unfounded cases must be strictly limited to the following
2 purposes and entities:

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

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

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

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

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

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

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

20 (8) the Department of Child Fatalities pursuant to Section
21 63-11-1960-; ~~and~~

22 (9) the director or his designee who may disclose
23 information for the following purposes:

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

27 (b) to respond to an inquiry from a committee or
28 subcommittee of the Senate or the House of Representatives or a
29 joint committee of the General Assembly, which is engaged in
30 oversight or investigating the activities of the department, provided
31 that such information is reviewed in closed session and kept
32 confidential. Notwithstanding the provisions of Chapter 4 of Title
33 30, meetings to review information disclosed pursuant to this item
34 may be held in closed session and any documents or other
35 materials provided or reviewed during the closed session are not
36 subject to public disclosure; or

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

42 A person may not bring an action for damages based on the
43 disclosure of information pursuant to this item except for damages

1 resulting from gross negligence or reckless or intentional
2 misconduct.

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

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

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

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19 “Section 63-7-1990. (A) All reports made and information
20 collected pursuant to this article maintained by the Department of
21 Social Services and the Central Registry of Child Abuse and
22 Neglect are confidential. A person who disseminates or permits the
23 dissemination of these records and the information contained in
24 these records except as authorized in this section, is guilty of a
25 misdemeanor and, upon conviction, must be fined not more than
26 one thousand five hundred dollars or imprisoned not more than one
27 year, or both.

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

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

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

34 (3) appropriate staff of the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (19) circuit solicitors and their agents investigating or
42 prosecuting known or suspected abuse or neglect of a child or any
43 other crime against a child, attempting to locate a missing child,

1 investigating or prosecuting the death of a child, or investigating or
2 prosecuting any other crime established in or associated with
3 activities authorized under this article;

4 (20) prospective adoptive or foster parents before placement;

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

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

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

21 (C) The department may limit the information disclosed to
22 individuals and entities named in subsection (B)(13), (14), (15),
23 (16), (17), (18), and (20) to that information necessary to
24 accomplish the purposes for which it is requested or for which it is
25 being disclosed. Nothing in this subsection gives to these entities
26 or persons the right to review or copy the complete case record.

27 (D) When a request for access to the record comes from an
28 individual identified in subsection (B)(5), (6), or (7) or that
29 person's attorney, the department shall review any reports from
30 medical care providers and mental health care providers to
31 determine whether the report contains information that does not
32 pertain to the case decision, to the treatment needs of the family as
33 a whole, or to the care of the child. If the department determines
34 that these conditions exist, before releasing the document, the
35 department shall provide a written notice identifying the report to
36 the requesting party and to the person whose treatment or
37 assessment was the subject of the report. The notice may be mailed
38 to the parties involved or to their attorneys or it may be delivered
39 in person. The notice shall state that the department will release the
40 report after ten days from the date notice was mailed to all parties
41 and that any party objecting to release may apply to the court of
42 competent jurisdiction for relief. When a medical or mental health
43 provider or agency furnishes copies of reports or records to the

1 department and designates in writing that those reports or records
2 are not to be further disclosed, the department must not disclose
3 those documents to persons identified in subsection (B)(5), (6), or
4 (7) or that person's attorney. The department shall identify to the
5 requesting party the records or reports withheld pursuant to this
6 subsection and shall advise the requesting party that he may
7 contact the medical or mental health provider or agency about
8 release of the records or reports.

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

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

26 ~~(G) The state director of the department or the director's~~
27 ~~designee may disclose to the media information contained in child~~
28 ~~protective services records if the disclosure is limited to discussion~~
29 ~~of the department's activities in handling the case including~~
30 ~~information placed in the public domain by other public officials, a~~
31 ~~criminal prosecution, the alleged perpetrator or the attorney for the~~
32 ~~alleged perpetrator, or other public judicial proceedings. For~~
33 ~~purposes of this subsection, information is considered "placed in~~
34 ~~the public domain" when it has been reported in the news media, is~~
35 ~~contained in public records of a criminal justice agency, is~~
36 ~~contained in public records of a court of law, or has been the~~
37 ~~subject of testimony in a public judicial proceeding. The director~~
38 ~~or his designee may disclose information in records required to be~~
39 ~~kept confidential by subsection (A) for the following purposes:~~

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

1 (b) to respond to an inquiry from a committee or
2 subcommittee of the Senate or the House of Representatives or a
3 joint committee of the General Assembly, which is engaged in
4 oversight or investigating the activities of the department, provided
5 that such information is reviewed in closed session and kept
6 confidential. Notwithstanding the provisions of Chapter 4 of Title
7 30, meetings to review information disclosed pursuant to this item
8 may be held in closed session and any documents or other
9 materials provided or reviewed during the closed session are not
10 subject to public disclosure; or

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

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

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

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

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

40 (1) The department must enter child abuse or neglect
41 investigation information in its regulatory record from the
42 beginning of the investigation and must add updated information
43 as it becomes available. Information in the regulatory records must

1 include at least the date of the report, the nature of the alleged
2 abuse or neglect, the outcome of the investigation, any corrective
3 action required, and the outcome of the corrective action plan.

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

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

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

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

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

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

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

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

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