

From: Mottel, Haley <HaleyMottel@gov.sc.gov>

To: Patel, Swati <SwatiPatel@gov.sc.gov>

CC: Veldran, Katherine <KatherineVeldran@gov.sc.gov>

Date: 3/26/2014 7:00:45 PM

Subject: S.1163

Attachments: S.1163.DSS.docx

Proposal disclosure amendment.DSS.docx

Swati,

Katherine asked that I review the language in S. 1163 introduced today by Senators Young, Lourie, Shealy, and L. Martin and compare the language to the proposed language from DSS. I did see that there were some changes, additions, and two omissions in the language in Section 63-7-1990(G). I have provided the differences below with comments. Please let me know if you have any questions.

Katherine asked that I include Ken's comments regarding the introduced language when compared to the proposed language:

"It is Young's bill, with Lourie as a cosponsor. It is substantively the same. Non substantive changes were made to clean up the language."

S.1163 language:

For Section 63-7-940(9):

(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.

The highlighted language above reflects the differences from the proposed language. There seems to be a typo in which "who" is in the introductory language and should not have been included. The damages provision (referenced as (C) in the proposed language) was moved into (9) and reworded, removing "civil" and the provision that prohibited an action for damages for "nondisclosure". The introduced bill adds "notwithstanding" language regarding Title 30, to prevent public disclosure via FOIA of confidential information discussed in closed session.

For Section 63-7-1990(G):

(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.

The introductory language was reworded and omits “and records of cases undergoing investigation.” It also omits “and (B)”, from what I can tell, (B) lays out in list form the persons and parties that may be authorized to have access to records of indicated cases and does not “describe” (language from the proposed DSS language) or “require” confidentiality (language in the introduced version) of information that should be kept confidential, so it may have been removed for that reason. The DSS proposed language of “when disclosing information under this subsection, the department must state whether the case is indicated or under investigation” , was also omitted from the bill. Also the damages language was repeated and was reworded from what was proposed, again “civil” and “nondisclosure” were removed.

I hope this will be helpful with your comparison! I have also attached the bill and the DSS language.

Please let me know if I can help with anything else.

Thank you,
Haley

Haley Mottel
Legislative Liaison
Office of Governor Nikki R. Haley
Office: (803) 734-0082
Mobile: (803) 240-1512
HaleyMottel@gov.sc.gov