~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 31, 2010

**S. 1184**

Introduced by Senators Malloy, McConnell, Ford and Pinckney

S. Printed 3/31/10--S.

Read the first time February 17, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1184) to amend Section 63‑7‑430 of the Code of Laws of South Carolina, 1976, relating to the making of false reports of abuse and neglect, so as to provide, etc., respectfully

**REPORT:**

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

PAUL G. CAMPBELL, JR. 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 Judicial Department *and the Department of Social Services* indicate that enactment of this bill will have no impact on the General Fund of the State, or on federal and/or other funds.

**SPECIAL NOTES:**

*The italicized portion of this impact indicates the items that have been revised. For this impact, the revised constitutes information that was not available in the original impact.*

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 63‑7‑430 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MAKING OF FALSE REPORTS OF ABUSE AND NEGLECT, SO AS TO PROVIDE THAT ON A SECOND OR SUBSEQUENT FALSE REPORT MADE WITH BAD FAITH, IF A CIVIL LAWSUIT IS FILED, THE COURT MAY AWARD APPROPRIATE RELIEF AS PERMITTED BY STATE LAW AND THE SOUTH CAROLINA RULES OF COURT; AND TO AMEND CHAPTER 7 OF TITLE 63 OF THE 1976 CODE, SO AS TO ADD SECTION 63‑7‑435, TO PROVIDE THAT IF THE DEPARTMENT DETERMINES THAT AN ALLEGATION OF ABUSE AND NEGLECT IS UNFOUNDED, THE PERSON WRONGFULLY ALLEGED TO HAVE PERPETRATED THE ABUSE OR NEGLECT MAY PETITION THE COURT TO RELEASE THE IDENTITY OF THE MAKER OF THE WRONGFUL COMPLAINT, TO PROVIDE THAT NO PETITION MAY BE FILED AGAINST ANYONE WHO IS REQUIRED TO REPORT ABUSE AND NEGLECT PURSUANT TO SECTION 63‑7‑310, AND TO PROVIDE THAT THE COURT SHALL ORDER THE RELEASE OF THE NAME OF THE MAKER OF THE WRONGFUL ALLEGATION, IF THE REPORT WAS MADE MALICIOUSLY OR IN BAD FAITH.

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

SECTION 1. Section 63‑7‑430 of the 1976 Code is amended to read:

“Section 63‑7‑430. (A) If the family court determines pursuant to Section 63‑7‑2000 that a person has made a report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 63‑7‑440, the department may bring a civil action to recover the costs of the department’s investigation and proceedings associated with the investigation, including attorney’s fees. The department also is entitled to recover costs and attorney’s fees incurred in the civil action authorized by this section. The decision of whether to bring a civil action pursuant to this section is in the sole discretion of the department.

(B) If the family court determines pursuant to Section 63‑7‑2000 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 63‑7‑440, a person who was subject of the false report has a civil cause of action against the person who made the false report and is entitled to recover from the person who made the false report such relief as may be appropriate, including:

(1) actual damages;

(2) punitive damages; and

(3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

(C) If a civil lawsuit is filed pursuant to subsections (A) or (B), and the court finds that this is a second or subsequent:

(1) report of suspected child abuse or neglect made maliciously or in bad faith pursuant to Section 63‑7‑2000; or

(2) adjudication of guilt for making a false report pursuant to Section 63‑7‑440;

then the court must grant appropriate relief as permitted by state law and the South Carolina Rules of Court.”

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

“Section 63‑7‑435. (A) If the department determines that an allegation of child abuse or neglect was unfounded, the person who was falsely alleged to be the perpetrator of abuse or neglect may petition the court to release the identity of the person making the report. However, such a petition may be heard only if the person who made the report was not required to report pursuant to Section 63‑7‑310.

(B) If the petition can be heard in accordance with subsection (A) of this section, the court shall order the department to release the name of the person who made the report, if the court finds that the report was made maliciously or in bad faith. The court may find malice or bad faith if it finds that:

(1) there was no basis in fact for the person making the report to believe that the child’s physical or mental health or welfare was or may have been adversely affected by abuse or neglect;

(2) the impetus for making the report was other than a belief that the child’s physical or mental health or welfare was or may have been adversely affected by abuse or neglect; or

(3) the impetus for making the report was to gain an advantage in a judicial proceeding.”

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

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