

ACT No. 348

2017 Regular Session

HOUSE BILL NO. 486

BY REPRESENTATIVE JOHNSON

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AN ACT

To amend and reenact Children's Code Articles 611(A)(1)(b), 616(A) through (D), 616.1(A), R.S. 15:1110.2(A) through (C), R.S.46:51.2(A)(1)(b), (2), and (3), (E)(2), (F)(1), and (H), and 1414.1(A) through (C), and R.S. 49:992(D)(9), to enact Children's Code Articles 616(E), (H), and (I), 616.1(F), and 616.1.1, and to repeal R.S. 15:1110.2(D) and (E) and R.S. 46:51.2(A)(4) through (11) and (13) and (E)(1)(d) and 1414.1(D) and (E), relative to the state central registry maintained by the Department of Children and Family Services; to require a state repository; to provide for central registry information; to authorize a fee for registry searches; to provide the right to an appeal in certain situations; to provide for employment prohibitions; to provide for an exemption relative to the division of administrative law; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 611(A)(1)(b), 616(A) through (D), 616.1(A), are hereby amended and reenacted and Children's Code Articles 616(E), (H), and (I), 616.1(F), and 616.1.1 are hereby enacted to read as follows:

Art. 611. Immunity from civil or criminal liability

A. (1) No cause of action shall exist against any:

* * *

1 (b) Caseworker who in good faith conducts an investigation, makes an
2 investigative judgment or disposition, or releases or uses information contained in
3 the state repository or central registry for the purpose of protecting a child.

4 * * *

5 Art. 616. ~~Central State repository~~; central registry; screening court-appointed special
6 advocates volunteers; confidentiality

7 A. The department shall maintain a ~~central registry~~ state repository of all
8 reports of abuse and neglect. The purpose of this ~~central registry~~ state repository,
9 among other uses, is to provide information of past reports of child abuse or neglect
10 of children to assist in the proper evaluation of current reports of abuse or neglect
11 which may include a pattern of incidents.

12 B. Within the state repository, the department shall maintain a state central
13 registry of certain justified reports of abuse and neglect as set forth in rules
14 promulgated by the department. The name of an individual who was placed on the
15 state central registry as a perpetrator of abuse or neglect prior to the effective date
16 of Children's Code Article 616.1.1 shall not be released outside of the department
17 until that individual's administrative appeals are exhausted. After the effective date
18 of Children's Code Article 616.1.1, the name of an individual who is determined to
19 be a perpetrator of abuse or neglect shall not be placed on the state central registry
20 until that individual's administrative appeals are exhausted. All decisions rendered
21 by an administrative law judge are final, and the decisions shall exhaust the
22 individual's administrative remedy.

23 ~~B. C.~~ C. Except as provided in this Article or R.S. 46:56, all records of reports
24 of child abuse or neglect are confidential. The department shall promulgate rules
25 regarding the maintenance, deletion, and release of information in the state
26 repository and central registry, ~~determined by the types of dispositions made~~
27 ~~pursuant to Article 615.~~

28 ~~C. D.~~ D. Upon the written request of the court during its evaluation of an
29 individual applying to work as a court-appointed special advocate and with the
30 consent of the applicant, the department shall search the central registry and report

1 to the court any justified report of abuse or neglect alleging that the applicant is a
2 perpetrator.

3 ~~D.E.~~ When, after an investigation, the determination is made by the
4 department that the report does appear to be justified, any subsequent adjudication
5 by a court exercising juvenile jurisdiction which dismisses the child in need of care
6 petition involving this report shall be added to the central registry.

7 * * *

8 H. The department may charge a fee, that shall not exceed twenty-five
9 dollars, to conduct a search of the state central registry of justified abuse or neglect
10 reports to determine whether an individual's name is recorded therein. A search shall
11 be allowed only when specifically authorized.

12 I. The department shall promulgate, in accordance with the Administrative
13 Procedure Act, all rules and regulations necessary to carry out the provisions of this
14 Article.

15 Art. 616.1. Correction of central registry entries; procedure

16 A. When a report alleging abuse or neglect is recorded as justified by the
17 department in the state central registry but when no petition is or was subsequently
18 filed alleging that the child is in need of care, the individual who is the subject of the
19 finding may file a written motion seeking correction of that entry and all related
20 department records in the court exercising juvenile jurisdiction in the parish in which
21 the finding was made.

22 * * *

23 F. The provisions of this Article shall apply only to those reports determined
24 by the department to be justified prior to the effective date of Children's Code Article
25 616.1.1.

26 Art. 616.1.1. Appeal and review; correction of central registry entries; procedure

27 A. When a report alleging abuse or neglect is determined to be justified by
28 the department, the individual who is or was the subject of the determination may
29 make a formal written request to the division of administrative law for an

1 administrative appeal of the justified determination, in accordance with the
 2 procedures set forth in Title 67 of the Louisiana Administrative Code.

3 B. The department shall promulgate, in accordance with the Administrative
 4 Procedure Act, all rules and regulations necessary to implement the provisions of this
 5 Article.

6 Section 2. R.S. 15:1110.2(A) through (C) are hereby amended and reenacted to read
 7 as follows:

8 §1110.2. ~~Disclosure requirements; penalties~~ Employment prohibition; previous
 9 finding of abuse or neglect

10 A. Any owner, operator, current or prospective employee, or volunteer of a
 11 juvenile detention facility that is requesting licensure or is licensed by the
 12 Department of Children and Family Services ~~shall report annually and at any time~~
 13 ~~upon the request of the department, on the state central registry disclosure form~~
 14 ~~promulgated by the department, whether or not his name is currently recorded on the~~
 15 ~~state central registry for a justified finding of abuse or neglect and that he is the~~
 16 ~~named perpetrator.~~ is prohibited from being employed by the facility if that
 17 individual's name is recorded on the state central registry as a perpetrator for a
 18 justified finding of abuse or neglect of a child.

19 B. ~~All such completed state central registry disclosure forms shall be~~
 20 ~~maintained in accordance with the department licensing regulations. Any state~~
 21 ~~central registry disclosure form that is maintained in a juvenile detention facility~~
 22 ~~licensing file shall be confidential and subject to the confidentiality provision of R.S.~~
 23 ~~46:56(F) pertaining to the investigations of abuse and neglect. If the individual's~~
 24 ~~name is or was entered on the state central registry, that individual may make a~~
 25 ~~formal written request to the division of administrative law for an administrative~~
 26 ~~appeal of the justified determination, in accordance with Children's Code Article~~
 27 ~~616.1.1 and the procedures promulgated by the department.~~

28 C. Any owner, operator, current or prospective employee, or volunteer of a
 29 juvenile detention facility licensed by the department who knowingly falsifies the
 30 information on the state central registry disclosure form shall be fined not more than

1 ~~five hundred dollars, imprisoned for not more than six months, or both. The~~
2 department shall promulgate, in accordance with the Administrative Procedure Act,
3 all rules and regulations necessary to implement the provisions of this Section.

4 Section 3. R.S.46:51.2(A)(1)(b), (2), and (3), (E)(2), (F)(1), and (H) and 1414.1(A)
5 through (C) are hereby amended and reenacted to read as follows:

6 §51.2. Criminal history and central registry information

7 A. (1) No person shall be hired by the department whose duties include the
8 investigation of child abuse or neglect, supervisory or disciplinary authority over
9 children, direct care of a child, or performance of licensing surveys, until both the
10 following conditions are met:

11 * * *

12 (b) The department has conducted a search of the state central registry of
13 justified abuse or neglect, hereafter referred to as "central registry", reports and has
14 determined that the individual's name is not recorded therein, ~~or if an individual's~~
15 ~~name is recorded on the central registry, a risk evaluation panel has determined in~~
16 ~~writing that the individual does not pose a risk to children.~~ The search shall be
17 limited to those names recorded on the state central registry subsequent to ~~the~~
18 ~~effective date of the rules and regulations promulgated pursuant to Paragraph (3) of~~
19 ~~this Subsection.~~ January 1, 2010. If the individual's name is or was entered on the
20 state central registry that individual may make a formal written request to the
21 division of administrative law for an administrative appeal of the justified
22 determination, in accordance with Children's Code Article 616.1.1 and the
23 procedures promulgated by the department.

24 (2) Any employee of the department whose duties include the investigation
25 of child abuse or neglect, supervisory or disciplinary authority over children, direct
26 care of a child, or performance of licensing surveys and whose name is recorded on
27 the state central registry subsequent to ~~the effective date of the rules and regulations~~
28 ~~promulgated on the central registry reports pursuant to Paragraph (3) of this~~
29 ~~Subsection~~ January 1, 2010, shall be terminated by the department, ~~unless a risk~~
30 ~~evaluation panel has determined in writing that the individual does not pose a risk~~

1 ~~to children.~~ A permanent classified employee shall not be terminated until he has
2 exhausted his administrative appeal rights pursuant to Children's Code Article
3 616.1.1.

4 (3) The department shall promulgate rules and regulations, in accordance
5 with the Administrative Procedure Act, necessary to implement Paragraphs (1) and
6 (2) of the provisions of this Subsection. ~~The rules and regulations shall include but~~
7 ~~not be limited to establishing eligibility and other criteria for risk evaluation requests~~
8 ~~and establishing criteria for risk evaluation determinations. Any such determination~~
9 ~~by the risk evaluation panel shall be kept on file at all times by the department.~~

10 * * *

11 E.

12 * * *

13 (2) This information may be requested only about a person who has, or has
14 applied or volunteered for, a position in the organization which includes supervisory
15 or disciplinary authority over children, ~~or who lives in a registered family child day~~
16 ~~care home.~~

17 F. Any responsible officer or official, as the department may determine, of
18 the following organizations or the department may request the specified criminal
19 history information:

20 (1)(a) ~~A child-caring institution,~~ child-placing agency, maternity home,
21 ~~group home, or day care center~~ all or residential home as defined in R.S. 46:1403;
22 ~~and~~ or a juvenile detention facility.

23 ~~(b) A family child day care home registered under the Child Care~~
24 ~~Registration Law, R.S. 46:1441 et seq.~~

25 * * *

26 H.(1) The department shall execute a survey to assess the impact and cost
27 of conducting national criminal history records checks and all arrest records checks
28 on potential owners, operators, employees, and volunteers of ~~a child care or child~~
29 ~~residential facility~~ a child-placing agency, maternity home, residential home, or
30 juvenile detention facility licensed by the department and develop a statewide

1 implementation plan prior to requesting that funds be appropriated for conducting
 2 the searches. The department shall submit a report of the survey results, anticipated
 3 costs, and implementation plan to the legislature for their consideration in
 4 appropriation decisions. The department shall implement the plan to conduct national
 5 criminal history records checks on potential owners, operators, employees, or
 6 volunteers of ~~child care or child residential facility~~ a child-placing agency, maternity
 7 home, residential home, or juvenile detention facility licensed by the department
 8 only upon the appropriation of funds by the legislature for such purpose.

9 (2) Upon appropriation of funds by the legislature and implementation of the
 10 plan in accordance with Paragraph (1) of this Subsection, the Bureau of Criminal
 11 Identification and Information shall make available to the department, all criminal
 12 history record information as defined in R.S. 15:576 related to potential owners,
 13 operators, employees, or volunteers of ~~child care or child residential facility~~ a
 14 child-placing agency, maternity home, residential home, or juvenile detention facility
 15 licensed by the department.

16 (3) Upon appropriation of funds by the legislature and implementation of the
 17 plan in accordance with Paragraph (1) of this Subsection, the Bureau of Criminal
 18 Identification and Information shall facilitate national criminal history record checks
 19 of potential owners, operators, or employees, or volunteers of ~~child care or child~~
 20 ~~residential facility~~ a child-placing agency, maternity home, residential home, or
 21 juvenile detention facility licensed by the department by receiving and forwarding
 22 fingerprint cards to the Federal Bureau of Investigation. The department is
 23 authorized to receive and screen the results of the state and national criminal history
 24 record checks in order to assess the criminal history of a potential owner, operator,
 25 employee, or volunteer of ~~child care or child residential facility~~ a child-placing
 26 agency, maternity home, residential home, or juvenile detention facility licensed by
 27 the department. The department shall maintain the confidentiality of criminal history
 28 information received in accordance with applicable federal or state law.

29 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1414.1. ~~Disclosure requirements, penalties~~ State central registry

2 A. Any owner, operator, current or prospective employee, or volunteer of a
3 specialized provider requesting licensure or licensed by the Department of Children
4 and Family Services ~~shall report annually and at any time upon the request of the~~
5 ~~department on the state central registry disclosure form promulgated by the~~
6 ~~department whether or not his name is currently recorded on the state central registry~~
7 ~~for a justified finding of abuse or neglect and he is the named perpetrator~~ is
8 prohibited from being employed by the specialized provider if that individual's name
9 is recorded on the state central registry as a perpetrator for a justified finding of
10 abuse or neglect of a child.

11 B. ~~Any such current or prospective employee or volunteer of a specialized~~
12 ~~provider licensed by the department shall submit the state central registry disclosure~~
13 ~~form to the owner or operator of the specialized provider, who shall maintain the~~
14 ~~documents in accordance with current department licensing requirements. Any state~~
15 ~~central registry disclosure form that is maintained by a specialized provider licensing~~
16 ~~file shall be confidential and subject to the confidentiality provisions of R.S.~~
17 ~~46:56(F) pertaining to the investigations of abuse and neglect. If the individual's~~
18 name is or was entered on the state central registry, that individual may make a
19 formal written request to the division of administrative law for an administrative
20 appeal of the justified determination, in accordance with Children's Code Article
21 616.1.1 and the procedures promulgated by the department.

22 C. ~~Any owner, operator, current or prospective employee, or volunteer of a~~
23 ~~specialized provider licensed by the department who knowingly falsifies the~~
24 ~~information on the state central registry disclosure form shall be guilty of a~~
25 ~~misdemeanor offense and shall be fined not more than five hundred dollars, or~~
26 ~~imprisoned for not more than six months, or both. The department shall promulgate,~~
27 in accordance with the Administrative Procedure Act, all rules and regulations
28 necessary to implement the provisions of this Section.

1 Section 5. R.S. 49:992(D)(9) is hereby amended and reenacted to read as follows:

2 §992. Applicability; exemptions; attorney fees; court costs

3 * * *

4 D.

5 * * *

6 (9) Adjudications filed pursuant to R.S. 46:51.2, involving a risk evaluation
7 panel decision, with the Department of Children and Family Services shall be
8 exempt from the provisions of this Chapter.

9 * * *

10 Section 6. R.S. 15:1110.2(D) and (E) and R.S. 46:51.2(A)(4) through (11) and (13)
11 and (E)(1)(d) and 1414.1(D) and (E) are hereby repealed in their entirety.

12 Section 7. This Act shall become effective upon promulgation and publication by the
13 Department of Children and Family Services of the final rules to implement the provisions
14 of this Act.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____