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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2010	.	
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The Committee on Health and Human Services Appropriations
(Haridopolos) recommended the following:

Senate Amendment (with title amendment)

Between lines 1405 and 1406
insert:

Section 51. Subsection (5) of section 39.205, Florida
Statutes, is amended to read:

39.205 Penalties relating to reporting of child abuse,
abandonment, or neglect.—

(5) If the department or its authorized agent has
determined after its investigation that a report is false, the
department shall, with notification to the alleged perpetrator
identified as a victim of a false report ~~with the consent of the~~



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13 ~~alleged perpetrator~~, refer the report to the local law
14 enforcement agency having jurisdiction for an investigation to
15 determine whether sufficient evidence exists to refer the case
16 for prosecution for filing a false report as defined in s.
17 39.01. During the pendency of the investigation, the department
18 must notify the local law enforcement agency of, and the local
19 law enforcement agency must respond to, all subsequent reports
20 concerning children in that same family in accordance with s.
21 39.301. If the law enforcement agency believes that there are
22 indicators of abuse, abandonment, or neglect, it must
23 immediately notify the department, which must ensure the safety
24 of the children. If the law enforcement agency finds sufficient
25 evidence for prosecution for filing a false report, it must
26 refer the case to the appropriate state attorney for
27 prosecution.

28 Section 52. Section 39.206, Florida Statutes, is amended to
29 read:

30 39.206 Administrative fines for false report of abuse,
31 abandonment, or neglect of a child; civil damages; expungement
32 of false reports.-

33 (1) In addition to any other penalty authorized by this
34 section, chapter 120, or other law, the department may impose a
35 fine, not to exceed \$10,000 for each violation, upon a person
36 who knowingly and willfully makes a false report of abuse,
37 abandonment, or neglect of a child, or a person who counsels
38 another to make a false report.

39 (2) If the department alleges that a person has filed a
40 false report with the central abuse hotline, the department must
41 file a Notice of Intent which alleges the name, age, and address



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42 of the individual, the facts constituting the allegation that
43 the individual made a false report, and the administrative fine
44 the department proposes to impose on the person. Each time that
45 a false report is made constitutes a separate violation.

46 (3) The Notice of Intent to impose the administrative fine
47 must be served upon the person alleged to have filed the false
48 report and the person's legal counsel, if any. Such Notice of
49 Intent must be given by certified mail, return receipt
50 requested.

51 (4) Any person alleged to have filed the false report is
52 entitled to an administrative hearing, pursuant to chapter 120,
53 before the imposition of the fine becomes final. The person must
54 request an administrative hearing within 60 days after receipt
55 of the Notice of Intent by filing a request with the department.
56 Failure to request an administrative hearing within 60 days
57 after receipt of the Notice of Intent constitutes a waiver of
58 the right to a hearing, making the administrative fine final.

59 (5) At the administrative hearing, the department must
60 prove by a preponderance of the evidence that the person filed a
61 false report with the central abuse hotline. The administrative
62 hearing officer shall advise any person against whom a fine may
63 be imposed of that person's right to be represented by counsel
64 at the administrative hearing.

65 (6) In determining the amount of fine to be imposed, if
66 any, the following factors shall be considered:

67 (a) The gravity of the violation, including the probability
68 that serious physical or emotional harm to any person will
69 result or has resulted, the severity of the actual or potential
70 harm, and the nature of the false allegation.



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71 (b) Actions taken by the false reporter to retract the
72 false report as an element of mitigation, or, in contrast, to
73 encourage an investigation on the basis of false information.

74 (c) Any previous false reports filed by the same
75 individual.

76 (7) A decision by the department, following the
77 administrative hearing, to impose an administrative fine for
78 filing a false report constitutes final agency action within the
79 meaning of chapter 120. Notice of the imposition of the
80 administrative fine must be served upon the person and the
81 person's legal counsel, by certified mail, return receipt
82 requested, and must state that the person may seek judicial
83 review of the administrative fine pursuant to s. 120.68.

84 (8) All amounts collected under this section shall be
85 deposited into an appropriate trust fund of the department.

86 (9) A person who is determined to have filed a false report
87 of abuse, abandonment, or neglect is not entitled to
88 confidentiality. Subsequent to the conclusion of all
89 administrative or other judicial proceedings concerning the
90 filing of a false report, the name of the false reporter and the
91 nature of the false report shall be made public, pursuant to s.
92 119.01(1). Such information shall be admissible in any civil or
93 criminal proceeding.

94 (10) A person who knowingly and willfully makes a false
95 report of abuse, abandonment, or neglect of a child, or a person
96 who counsels another to make a false report may be civilly
97 liable for damages suffered, including reasonable attorney fees
98 and costs, as a result of the filing of the false report. If the
99 name of the person who filed the false report or counseled



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100 another to do so has not been disclosed under subsection (9),
101 the department as custodian of the records may be named as a
102 party in the suit until the dependency court determines in a
103 written order upon an in camera inspection of the records and
104 report that there is a reasonable basis for believing that the
105 report was false and that the identity of the reporter may be
106 disclosed for the purpose of proceeding with a lawsuit for civil
107 damages resulting from the filing of the false report. The
108 alleged perpetrator may submit witness affidavits to assist the
109 court in making this initial determination.

110 (11) Any person making a report who is acting in good faith
111 is immune from any liability under this section and shall
112 continue to be entitled to have the confidentiality of their
113 identity maintained.

114 (12) (a) A person against whom a false report of abuse,
115 abandonment, or neglect of a child has been filed may have the
116 false report and all other false information expunged from the
117 files of the Department of Children and Family Services and from
118 files of the court by petitioning a hearing officer of the
119 department to conduct an expunction proceeding. The petition
120 must be filed no later than 180 days after receiving notice that
121 the department or a court has determined that, pursuant to s.
122 39.205 or this section, another person made a false report
123 against the petitioner. Failure to petition the court within the
124 allotted time constitutes a waiver of the right to a hearing.

125 (c) At the expunction hearing, the petitioner must present
126 evidence that another person filed a false report with the
127 central abuse hotline of the department alleging that the
128 petitioner abused, abandoned, or neglected a child.



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129 (d) If the court finds that a person has filed a false
130 report against the petitioner, it shall order the clerk of court
131 to expunge the court file and order the department to destroy
132 all false records filed regarding the petitioner. Thereafter,
133 the person who was the subject of the false report of abuse,
134 abandonment, or neglect of a child and whose file is expunged
135 under this subsection may lawfully deny or fail to acknowledge
136 the information covered by the expunged record.

137
138 ===== T I T L E A M E N D M E N T =====

139 And the title is amended as follows:

140 Delete line 77

141 and insert:

142 may be appropriate candidates for removal; amending s.
143 39.205, F.S.; requiring that the Department of
144 Children and Family Services or its authorized agent
145 notify the alleged perpetrator identified as a victim
146 of a false report of child abuse, abandonment, or
147 neglect upon referral of its report to the local law
148 enforcement agency having jurisdiction for an
149 investigation to determine whether sufficient evidence
150 exists to refer the case for prosecution for filing
151 such a false report; amending s. 39.206, F.S.;

152 providing that a person against whom a false report of
153 abuse, abandonment, or neglect of a child has been
154 filed is entitled to have the false report and other
155 false information expunged from the files of the
156 Department of Children and Family Services and the
157 court; requiring that the person petition a hearing



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158 officer of the department to remove the files within a
159 specified period; providing that the petitioner waives
160 the right to a hearing if he or she fails to file the
161 petition within the allotted time; upon a finding that
162 the report was false, requiring that the court order
163 the clerk of court to expunge the court file and the
164 department to destroy all false records filed against
165 the petitioner; providing that the person who obtains
166 the expunction of a false report of abuse,
167 abandonment, or neglect of a child may lawfully deny
168 or fail to acknowledge the information covered by the
169 expunged record; providing