S T A T E O F N E W Y O R K

S. 2121 A. 3025

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 21, 2015

IN SENATE -- Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

IN ASSEMBLY -- Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to false allegations of suspected child abuse and maltreatment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 422 of the social services law is amended by adding a new subdivision 15 to read as follows:

15. (A) IN ADDITION TO CRIMINAL PENALTIES AUTHORIZED BY ARTICLE TWO HUNDRED FORTY OF THE PENAL LAW, THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR LOCAL CHILD PROTECTIVE SERVICES ACTING THROUGH ITS COMMISSIONER, MAY SEEK A CIVIL PENALTY AGAINST ANY PERSON WHO BY WORD OR ACTION KNOWINGLY OR WILLFULLY MAKES A REPORT TO THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT OR MAKES A REPORT TO ANY PERSON REQUIRED TO REPORT SUSPECTED CHILD ABUSE OR MALTREATMENT PURSUANT TO SECTION FOUR HUNDRED THIRTEEN OF THIS TITLE KNOWING THAT THE PERSON IS REQUIRED TO REPORT SUCH CASE, OF AN ALLEGED OCCURRENCE OF CHILD ABUSE OR MALTREATMENT WHICH SAID PERSON KNEW DID NOT IN FACT OCCUR OR EXIST.

(B) THE MAXIMUM CIVIL PENALTY SHALL BE FIVE THOUSAND DOLLARS FOR THE FIRST OCCURRENCE AND TEN THOUSAND DOLLARS FOR EACH SUBSEQUENT OCCURRENCE. EACH FALSE REPORT CONSTITUTES A SEPARATE VIOLATION.

(C) IF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR LOCAL CHILD PROTECTIVE SERVICES ALLEGES THAT A PERSON HAS MADE A FALSE REPORT WITH THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT, THE OFFICE OR SERVICE MUST NOTIFY SUCH PERSON THAT A HEARING WILL BE HELD TO DETERMINE IF A VIOLATION OF PARAGRAPH (A) OF THIS SUBDIVISION HAS OCCURRED. THE PERSON SHALL BE GIVEN A FULL STATEMENT OF THE ALLEGATIONS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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AGAINST HIM OR HER, A NOTICE THAT A HEARING WILL BE HELD IN FRONT OF A NEUTRAL FACT FINDER WHO SHALL BE APPOINTED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR THE LOCAL CHILD PROTECTIVE SERVICES, THAT THEY HAVE A RIGHT TO BE REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE AND TO CROSS-EXAMINE ANY WITNESSES AGAINST THEM AND THE RIGHT TO APPEAL ANY DECISION THROUGH A FAIR HEARING. A FULL RECORD OF ANY PROCEEDING SHALL BE MADE. NOTICE OF SUCH ALLEGATIONS AND OF THE HEARING SHALL BE SERVED UPON ANY SUCH PERSON BY PERSONAL SERVICE, BY PROMINENTLY PLACING SUCH NOTICE UPON THE PERSON'S DOOR AND MAILING THE NOTICE BY FIRST CLASS MAIL, OR THROUGH CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE PERSON'S LAST KNOWN ADDRESS. THE OFFICE OR DISTRICT MUST ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT A VIOLATION OF PARAGRAPH (A) OF THIS SUBDIVISION OCCURRED.

(D) IN DETERMINING THE AMOUNT OF FINE TO BE IMPOSED, IF ANY, THE FOLLOWING FACTORS SHALL BE CONSIDERED:

(I) THE GRAVITY OF THE VIOLATION, INCLUDING THE PROBABILITY THAT SERIOUS PHYSICAL OR EMOTIONAL HARM TO ANY PERSON WILL RESULT OR HAS RESULTED, THE SEVERITY OF THE ACTUAL OR POTENTIAL HARM, AND THE NATURE OF THE FALSE ALLEGATION.

(II) ACTIONS TAKEN BY THE FALSE REPORTER TO RETRACT THE FALSE REPORT AS AN ELEMENT OF MITIGATION, OR, IN CONTRAST, TO ENCOURAGE AN INVESTIGATION ON THE BASIS OF FALSE INFORMATION.

(III) ANY PREVIOUS FALSE REPORTS FILED BY THE SAME INDIVIDUAL.

(E) A PERSON WHO IS DETERMINED TO HAVE FILED A FALSE REPORT OF ABUSE OR MALTREATMENT IS NOT ENTITLED TO CONFIDENTIALITY OTHERWISE REQUIRED FOR ALL INFORMATION CONTAINED IN THE CENTRAL REGISTER. SUBSEQUENT TO THE CONCLUSION OF ALL PROCEEDINGS WHERE IT IS DETERMINED THAT A FALSE REPORT WAS FILED, THE NAME OF THE FALSE REPORTER AND THE NATURE OF THE FALSE REPORT MAY BE MADE PUBLIC IN WHOLE OR IN PART. SUCH INFORMATION SHALL BE ADMISSIBLE IN ANY CIVIL OR CRIMINAL PROCEEDING.

(F) ANY PERSON MAKING A REPORT WHO IS ACTING IN GOOD FAITH IS IMMUNE FROM ANY LIABILITY UNDER THIS SECTION AND SHALL CONTINUE TO BE ENTITLED TO HAVE THE CONFIDENTIALITY OF THEIR IDENTITY MAINTAINED.

S 2. This act shall take effect immediately.