

## LEGISLATIVE BILL 782

Approved by the Governor March 10, 2008

Introduced by Howard, 9; Adams, 24; Ashford, 20; Avery, 28; Burling, 33; Dierks, 40; Dubas, 34; Engel, 17; Erdman, 47; Flood, 19; Friend, 10; Gay, 14; Hansen, 42; Hudkins, 21; Janssen, 15; Johnson, 37; Karpisek, 32; Kopplin, 3; Kruse, 13; Langemeier, 23; Lathrop, 12; Loudon, 49; McDonald, 41; McGill, 26; Nantkes, 46; Nelson, 6; Pahls, 31; Pankonin, 2; Pedersen, 39; Pirsch, 4; Raikes, 25; Rogert, 16; Schimek, 27; Stuthman, 22; Wallman, 30; at the request of the Governor.

FOR AN ACT relating to children; to amend section 28-725, Revised Statutes Cumulative Supplement, 2006, and section 28-726, Revised Statutes Supplement, 2007; to provide and eliminate provisions relating to disclosure of child abuse and neglect information; to repeal the original sections; to outright repeal section 28-739, Revised Statutes Cumulative Supplement, 2006, and sections 28-734, 28-735, 28-736, 28-737, and 28-738, Revised Statutes Supplement, 2007; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) For purposes of this section:

(a) Chief executive officer means the chief executive officer of the Department of Health and Human Services;

(b) Child abuse or neglect has the same meaning as in section 28-710;

(c) Child fatality means the death of a child from suspected abuse, neglect, or maltreatment as determined by the county coroner or county attorney;

(d) Department means the Department of Health and Human Services;

(e) Director means the Director of Children and Family Services;

(f) Division means the Division of Children and Family Services of the Department of Health and Human Services; and

(g) Near fatality means a case in which an examining physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(2) Notwithstanding any other provision of state law, the chief executive officer or director may disclose information regarding child abuse or neglect and the investigation of and any services related to the child abuse and neglect if the chief executive officer or director determines that such disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, and any one of the following factors is present:

(a) The alleged perpetrator of the child abuse or neglect has been charged with committing a crime related to the report of child abuse or neglect maintained by the division;

(b) A judge, a law enforcement agency official, a county attorney, or another state or local investigative agency or official has publicly disclosed the provision of services related to or the investigation of the child abuse or neglect;

(c) An individual who is the parent, custodian, foster parent, provider, or guardian of the victim or a child victim over fourteen years of age has made a prior knowing, voluntary, public disclosure;

(d) The information relates to a child fatality or near fatality;

(e) The information is released to confirm, clarify, or correct information concerning an allegation or actual instance of child abuse or neglect which has been made public by sources outside the department; or

(f) A child who is in the custody of the department is missing from his or her placement, in which case the chief executive officer or director may release the name and physical description of the child.

(3) Information that may be disclosed includes, but is not limited to, child placement, whether in-home or out-of-home, terms of contact, hearing dates, the reason for removal from parents or placement, the number of placements and type, permanency objectives, court-ordered services or other services provided by the division, and status of the court process. The following information shall not be released by the chief executive officer or director absent a court order: Date of birth, social security number, protected health information, the name of the person who made the report of child abuse or neglect pursuant to section 28-711, and names of foster parents, unless the foster parent is the alleged perpetrator.

(4) The chief executive officer or director may release the results of criminal history record checks that have been completed by the division as authorized by law.

(5) For purposes of this section, the best interests of the child, the child's siblings, or other children in the household does not allow the disclosure of information that would impede a pending or current criminal investigation by a law enforcement agency.

(6) The division may adopt and promulgate rules and regulations to carry out this section.

Sec. 2. Section 28-725, Revised Statutes Cumulative Supplement, 2006, is amended to read:

28-725 All information of the department concerning reports of child abuse or neglect of noninstitutional children, including information in the tracking system of child protection cases maintained pursuant to section 28-715 or records in the central register of child protection cases maintained pursuant to section 28-718, and all information of the department generated as a result of such reports or records, shall be confidential and shall not be disclosed except as specifically authorized by the Child Protection Act and ~~sections 28-734 to 28-739~~ section 1 of this act or other applicable law. The subject of the report of child abuse or neglect may authorize any individual or organization to receive the following information from the central register of child protection cases maintained pursuant to section 28-718 which relates or pertains to him or her: (1) The date of the alleged child abuse or neglect; and (2) the classification of the case pursuant to section 28-720. Permitting, assisting, or encouraging the unauthorized release of any information contained in such reports or records shall be a Class V misdemeanor.

Sec. 3. Section 28-726, Revised Statutes Supplement, 2007, is amended to read:

28-726 Except as provided in this section, section and sections 28-722, and 28-734 to 28-739, section 1 of this act, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

- (1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;
- (3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;
- (4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;
- (5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;
- (6) The State Foster Care Review Board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the state board shall not include the name or identity of any person making a report of suspected child abuse or neglect;
- (7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;
- (8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect; and
- (9) For purposes of licensing providers of child care programs, the Department of Health and Human Services.

Sec. 4. Original section 28-725, Revised Statutes Cumulative Supplement, 2006, and section 28-726, Revised Statutes Supplement, 2007, are repealed.

Sec. 5. The following sections are outright repealed: Section 28-739, Revised Statutes Cumulative Supplement, 2006, and sections 28-734, 28-735, 28-736, 28-737, and 28-738, Revised Statutes Supplement, 2007.

Sec. 6. Since an emergency exists, this act takes effect when passed

and approved according to law.