87R7326 MM-F

By:  Gates H.B. No. 1895

A BILL TO BE ENTITLED

AN ACT

relating to procedures in suits affecting the parent-child relationship involving the Department of Family and Protective Services and to reports of child abuse or neglect; creating a civil cause of action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 104, Family Code, is amended by adding Sections 104.009 and 104.010 to read as follows:

Sec. 104.009.  ADMISSIBILITY OF CERTAIN EVIDENCE. Except as otherwise provided by law, Article 38.23, Code of Criminal Procedure, applies to the admissibility of evidence in a suit filed by the Department of Family and Protective Services under Chapter 161 or 262 in the same manner as if the person responsible for a child's care, custody, or welfare was a defendant in a criminal prosecution.

Sec. 104.010.  DUTY TO DISCLOSE CERTAIN INFORMATION TO PARENT. (a) In a suit filed by the Department of Family and Protective Services under Chapter 161, 261, or 262 against a person responsible for a child's care, custody, or welfare, the department and the attorney for the state shall disclose to the person any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to disprove an allegation against the person as soon as practicable after obtaining the document, item, or information.

(b)  The Department of Family and Protective Services and the attorney for the state shall disclose a document, item, or information under this section in a manner consistent with any laws protecting the confidentiality of any person who made a report on which the suit is based.

SECTION 2.  Chapter 105, Family Code, is amended by adding Sections 105.010 and 105.011 to read as follows:

Sec. 105.010.  LIMITING PRIOR RESTRAINTS ON SPEECH. In a suit filed by the Department of Family and Protective Services under Chapter 161 or 262, the court may not render an order that limits the speech of any person unless:

(1)  a party to the suit files a motion with the court requesting the order;

(2)  notice of the hearing is served on the parties not later than 72 hours before the time specified for the hearing;

(3)  after the hearing, the court determines that:

(A)  failure to limit the speech will cause an imminent and irreparable harm to the judicial process and deprive the parties of a just resolution of their dispute; and

(B)  the judicial action requested represents the least restrictive means to prevent that harm; and

(4)  the order is reduced to writing and signed by the judge.

Sec. 105.011.  CERTAIN EVALUATIONS AND ASSESSMENTS PROHIBITED. In a suit filed by the Department of Family and Protective Services under Chapter 161 or 262, the court may not order a person responsible for a child's care, custody, or welfare to submit to a diagnostic assessment, educational assessment, neurological assessment, psychosocial assessment, psychiatric or psychological evaluation, or similar evaluation or assessment.

SECTION 3.  Section 106.002, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  In a suit filed by the Department of Family and Protective Services under Chapter 261 or 262, the court shall include reasonable attorney's fees and expenses in any judgment for the person responsible for a child's care, custody, or welfare.

SECTION 4.  Section 261.101(a), Family Code, is amended to read as follows:

(a)  An officer, employee, or agent of a governmental entity [~~A person~~] having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

SECTION 5.  Section 261.104, Family Code, is amended to read as follows:

Sec. 261.104.  CONTENTS OF REPORT. The person making a report shall:

(1)  identify, if known:

(A) [~~(1)~~]  the name and address of the child;

(B) [~~(2)~~]  the name and address of the person responsible for the care, custody, or welfare of the child; and

(C) [~~(3)~~]  any other pertinent information concerning the alleged or suspected abuse or neglect; and

(2)  provide the person's name, address, and telephone number.

SECTION 6.  The heading to Section 261.107, Family Code, is amended to read as follows:

Sec. 261.107.  FALSE REPORT; CRIMINAL PENALTY; CIVIL PENALTY; CIVIL ACTION.

SECTION 7.  Section 261.107, Family Code, is amended by amending Subsections (a) and (d) and adding Subsection (f) to read as follows:

(a)  A person commits an offense if [~~, with the intent to deceive,~~] the person knowingly makes a report as provided in this chapter that is false. An offense under this subsection is a state jail felony unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a felony of the third degree.

(d)  The court shall order a person who engages in conduct described by [~~is convicted of an offense under~~] Subsection (a) to pay any reasonable attorney's fees incurred by the person who was falsely accused of abuse or neglect in any proceeding relating to the false report, including an action under Subsection (f).

(f)  A person who engages in conduct described by Subsection (a) is liable to the person who was falsely accused of abuse or neglect for all damages, including actual, consequential, and exemplary damages, and any other relief to which the person who was falsely accused may be entitled at law or in equity. Nothing in this section prohibits a person who is falsely accused of abuse or neglect from bringing a civil action against a person who engages in conduct described by Subsection (a) seeking damages authorized by this subsection.

SECTION 8.  Section 261.201, Family Code, is amended by adding Subsection (m) to read as follows:

(m)  In a suit filed by the department under Chapter 161 or 262, if a court makes a finding under Rule 508(c)(2)(B), Texas Rules of Evidence, but the department elects not to disclose the identity of the person who made a report on which the suit is based, the court:

(1)  on a party's motion, shall dismiss the suit to which the person's testimony would relate; or

(2)  on its own motion, may dismiss the suit to which the person's testimony would relate.

SECTION 9.  Section 261.304, Family Code, is amended by adding Subsection (d) to read as follows:

(d)  At the time of the initial contact during an investigation of a person responsible for a child's care, custody, or welfare, the department shall disclose to the person if the report of abuse or neglect was made anonymously.

SECTION 10.  The changes in law made by this Act apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 11.  The changes in law made by this Act apply only to a report of suspected abuse or neglect made on or after the effective date of this Act. A report of suspected abuse or neglect made before that date is governed by the law in effect on the date the report was made, and that law is continued in effect for that purpose.

SECTION 12.  This Act takes effect September 1, 2021.