



SPONSOR: Rep. Price & Rep. Maier ;  
Rep. Carey

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO. 683

AN ACT TO AMEND TITLE 16 AND TITLE 10 OF THE DELAWARE CODE RELATING TO THE CENTRAL CHILD ABUSE REGISTRY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1       Section 1. Amend § 902(2), Title 16 of the Delaware Code, by deleting said subsection 2 in its entirety and  
2       by inserting in lieu thereof the following:

3       “(2) ‘Central registry’ shall mean a registry of information about persons the Division has substantiated as  
4       more likely than not to have committed child abuse or neglect. Substantiation may be made through civil or  
5       criminal judicial proceedings or through civil administrative decision or proceedings where the burden of  
6       proof is at a minimum a preponderance of the evidence.”

7       Section 2. Amend Title 16 of the Delaware Code by adding a new Section 902A between the current §§ 902  
8       and 903 to read as follows:

9       "§ 902A. Notice, Hearing, Procedure, Appeals of Entry onto Central Registry.

10       (a)   Initial entry on registry. For cases of abuse or neglect substantiated, if the Division determines  
11       preliminarily from the facts and circumstances that it is more likely than not that the individual  
12       accused should be substantiated for child abuse or neglect, the individual's name shall be placed on  
13       the central registry with a notation of 'pending substantiation'. If a request pursuant to 11 Del.C.  
14       § 8563(b) for a Child Abuse Registry Check is received while the case is pending an administrative  
15       hearing, the case shall be reported to such requester as ‘pending substantiation’. The Division shall be  
16       authorized to promulgate or issue regulations or policies to address entry onto the central registry.

17       (b)   Notice. Once the individual's name is placed on the registry as ‘pending substantiation’, such  
18       individual shall be notified in writing by certified mail return receipt requested at his or her last  
19       known address of the intent to place his or her name on the central registry with a finding of

20 'substantiated abuse' or 'substantiated neglect' and shall be offered the opportunity for an  
21 administrative hearing. Such notice shall issue within ten (10) days of entry into the registry of the  
22 person's name as 'pending substantiation'.

- 23 (c) Administrative proceedings shall be stayed if civil or criminal court proceedings regarding the same  
24 allegations of abuse or neglect are pending. If, upon conclusion of a criminal or delinquency  
25 proceeding involving the same allegations or facts, the accused is acquitted or the charges are  
26 dismissed and the Division intends to pursue substantiation through the administrative process, such  
27 acquittal or dismissal shall not automatically work as claim or issue preclusion against a civil finding  
28 of abuse or neglect, nor shall it prevent the taking of evidence in spite of any other law to the contrary.

29 (d) Administrative Appeals Hearing.

30 Only those individuals against whom a pending substantiation decision is made or an attorney acting  
31 on his or her behalf may request an administrative appeal hearing from the notice contained in  
32 subsection (b). Requests for an administrative appeal hearing must be in writing and received by the  
33 Division within twenty (20) calendar days of the date the notice was mailed. Within 20 days of the  
34 Division's receipt of a written request for an administrative appeal hearing, the hearing officer shall  
35 schedule the date and time of such hearing, which shall be held, unless postponed for good cause  
36 shown, within sixty (60) days of the date of the receipt of such request by the hearing officer. The  
37 individual shall be afforded an opportunity to appear with or without an attorney, to submit  
38 documentary evidence, and to present witnesses. The hearing officer shall have the authority to:

- 39 i) issue subpoenas for witnesses and other sources of evidence, either at the Division's request or at  
40 the request of the accused, except that the Division shall not be required to produce any  
41 document or record which it does not intend to rely upon at the hearing;  
42 ii) administer oaths to witnesses;  
43 iii) exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence;  
44 iv) limit proof, rebuttal and cross examination if they are unduly repetitive; and  
45 v) hold prehearing conferences for the settlement or simplification of issues by consent, for the  
46 disposal of procedural requests or disputes and to regulate and expedite the course of the  
47 hearing.

The burden of proof at the hearing shall be upon the Division, which shall be required to prove by a preponderance of the evidence that abuse or neglect has occurred. A record from which a verbatim transcript can be prepared shall be made of all hearings. Copies of the transcript shall be made at the request of and expense of any party to the action. The hearing officer's decision shall contain a brief summary of the evidence and findings of fact based upon the evidence and conclusions of law. Such hearings and decisions, transcripts and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act (Chapter 101 of Title 29) nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906(b)(1 8).

(e) Appeal to Family Court

The hearing officer shall render a written decision and order, and shall provide written notice of the decision to the individual and the Division. The decision of the hearing officer may be appealed only by the Division or by the individual against whom substantiation has been found or by an attorney acting on his or her behalf. Such appeal must be filed in writing with the Family Court of the State of Delaware within 30 days of the Hearing Officer's decision. Such appeal shall be on the record, and without a trial or hearing de novo. The scope of the Family Court's review on appeal of the Hearing Officer's decision in the absence of actual fraud shall be limited to whether there is substantial evidence to support the findings of fact, and to whether any error of law was made. Questions of conflict in testimony and witness credibility shall be finally resolved by the hearing officer, and not the Court.

(f) Removal of "Pending Substantiation" Status on Registry.

(1) Regardless of the date of substantiation of abuse or neglect, the following individuals shall have their status changed from 'pending substantiation' to 'substantiated for abuse or neglect' on the central registry:

- a. Individuals who have either failed to appear at or failed to timely request an administrative appeal hearing in response to the notice contained in subsection (b), or, for cases substantiated prior to enactment of this section, a similar notice.
- b. Individuals who, based on the same allegations or facts for which they are pending substantiation or substantiated, have:

- 77 (i). been convicted of or pleaded guilty to any criminal offense contained in Subchapters II  
78 or V of Chapter 5 of Title 11, regardless of whether such plea was taken nolo  
79 contendere or was subsequently discharged or dismissed under the First Offenders  
80 Program pursuant to 10 Del. C. § 1024; or,
- 81 (ii). been adjudicated delinquent as a juvenile of any offense which would constitute any of  
82 the offenses set forth in subparagraph a. of this paragraph if he or she had been charged  
83 as an adult; or
- 84 (iii). been convicted of, pleaded guilty to, or been adjudicated delinquent or pled to any  
85 offense specified in the laws of another state, the United States or any territory of the  
86 United States which is the same as or equivalent to any of the offenses set forth in  
87 subparagraphs (i). or (ii). of this paragraph; or
- 88 (iv). been substantiated for abuse or neglect at a civil court hearing at which the minimum  
89 standard of proof was preponderance of the evidence.

90 Notwithstanding any other law to the contrary, the decisions referred to above and of subparagraph c.  
91 below shall be final and binding as to a finding of abuse or neglect for the same incident and shall work as  
92 issue or claim preclusion on a pending civil administrative appeal hearing and be reported in response to  
93 Child Abuse Registry Check, regardless of subsequent dismissal or discharge under the First Offender's  
94 Program, and regardless of subsequent juvenile or adult expungement or pardon.

95 c. Individuals against whom substantiation for abuse or neglect has been made after an  
96 administrative hearing held pursuant to subsection (d) or similar administrative hearing or  
97 decision where the burden of proof was at a minimum the preponderance of the evidence that  
98 such individual committed an act or acts of abuse or neglect.

99 (2) Individuals against whom allegations of abuse or neglect cannot be substantiated after a civil or  
100 administrative proceeding or decision shall have their status on the registry changed to 'unsubstantiated' and  
101 responses to requests made pursuant to 11 Del.C. § 8563(b) shall indicate that there are no pending or  
102 substantiated reports of abuse or neglect for that incident.

103 (g) Requests for Subsequent Administrative Expungement of Substantiated Cases.

104 An individual whose name is entered in the central registry as substantiated may apply to the Division  
105 for an order of administrative expungement of such finding of substantiation. For the purposes this

chapter, such administrative expungement, if granted, shall mean only that the individual's name shall no longer be reported to employers pursuant to 11 Del.C. § 8563(b) in a Child Abuse Registry check as a substantiated case from the central registry. Notwithstanding the granting of a request for administrative expungement under this section, the individual's name and other case information shall remain on the central registry as substantiated for all other purposes, including, but not limited to, the Division's use of such information for historical, treatment and investigative purposes, child care licensing decisions, reporting pursuant to 31 Del. C. §309, reporting to law enforcement authorities, or any other purpose set forth in 16 Del. C. § 906(b). The Division shall be authorized to promulgate or issue regulations or policies to address expungement from the central registry. The Division shall decide written requests for administrative expungement within 60 days of written receipt of the same. Appeals from decisions on administrative expungement may be made only by the individual substantiated or by an attorney acting on his or her behalf and must be submitted in writing to the hearing officer within 30 calendar days of the Division's decision. After the hearing officer's decision on administrative expungement, either the Division or the individual against whom substantiation has been made or by an attorney acting on his or her behalf may within 30 days of the date of the hearing officer's decision file a written appeal to the Family Court."

Section 4. Amend § 902(l), Title 16 of the Delaware Code, by deleting the designation "§ 468(c)(1)" appearing therein and by substituting in lieu thereof the designation "§ 468".

Section 5. Amend § 925, Title 10 of the Delaware Code, by adding a new subsection (19) to read as follows:

"(19) Decide appeals from administrative hearings of substantiated cases of abuse or neglect made pursuant to 16 Del. C. § 902A(d), and to decide appeals made pursuant to 16 Del. C. § 902A(g) for orders of administrative expungement of substantiation for the purpose of no longer reporting an individual's name pursuant to 11 Del. C. § 8563(b)."

Section 6. If any provision of this Act, or any amendment thereto, or the application thereof to any person, thing or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the provisions of or application of this Act or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this section and such amendments are declared to be severable. This legislation shall become effective upon appropriation in the annual operating budget. This legislation shall not be

135 interpreted to create any rights or privileges with respect to individuals for whom abuse or neglect was substantiated  
136 prior to the effective date.

#### SYNOPSIS

The legislation ensures that individuals have the opportunity for either a judicial or an administrative hearing, with right to appeal, prior to having their name placed on the child abuse registry as substantiated for abuse. It also provides an opportunity for expungement of individuals whose names have been placed on the registry.