

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

535N0545

## HOUSE BILL NO. 1152

Introduced by: Representatives Cutler, Buckingham, Burg, Dennert, Gillespie, Miles, Peters,  
and Rave and Senators Gray, Abdallah, Albers, Dempster, Maher, and Olson  
(Ed)

1 FOR AN ACT ENTITLED, An Act to revise the procedures for due process regarding the  
2 central registry for abuse and neglect.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-8A-11 be amended to read as follows:

5 26-8A-11. Within thirty days after ~~notice of a substantiated investigation by the Department~~  
6 ~~of Social Services, a subject of a report of abuse or neglect may request the department to~~  
7 ~~amend, expunge identifying information from, or remove the record of the report from the~~  
8 ~~register. The request shall be in writing and directed to the person designated by the department~~  
9 ~~in the notice. If the department refuses to do so or does not act within thirty days after receipt~~  
10 ~~of the written request, the subject may request an administrative hearing within thirty days to~~  
11 ~~determine whether the record of the report should be amended, expunged, or removed on the~~  
12 ~~grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.~~  
13 ~~However, if there has been a court finding of child abuse or neglect, the report's accuracy is~~  
14 ~~conclusively presumed and the subject has no right to an administrative hearing on the ground~~  
15 ~~of inaccuracy. The hearing shall be held within a reasonable time after the subject's request and~~



1 ~~at a reasonable place and hour. The appropriate local office of the Department of Social Services~~  
2 ~~shall be given notice of the hearing. In the hearing, the burden of proving the accuracy and~~  
3 ~~consistency of the record is on the department. The hearing examiner may order the amendment,~~  
4 ~~expunction, or removal of the record to make it accurate and consistent with this chapter.~~  
5 ~~However, under no circumstances, may the hearing examiner order or may the department carry~~  
6 ~~out any amendment, expunction, or removal of any portion of the record that proves, affirms,~~  
7 ~~corroborates, or supports the innocence of the subject of the report without the express written~~  
8 ~~authority of the subject. The decision the Department of Social Services notifies any person that~~  
9 he or she will be placed on the central registry for child abuse and neglect based upon a  
10 substantiated investigation, the person may request an administrative hearing. The  
11 administrative hearing is limited to determining whether the record should be amended or  
12 removed on the grounds that it is inaccurate. The request shall be made in writing and directed  
13 to the person designated by the department in the notice. However, if there has been a court  
14 finding of child abuse or neglect, the record's accuracy is conclusively presumed and the person  
15 has no right to an administrative hearing. In the hearing, the burden of proving the accuracy of  
16 the record is on the department. The hearing examiner may order the amendment or removal of  
17 the record. The decision of the hearing examiner shall be made in writing within ninety days  
18 after the date of receipt of the request for a hearing and shall state the reasons upon which it is  
19 based. Decisions of the department under this section are administrative decisions subject to  
20 judicial review under chapter 1-26. In any case where there has been no substantiated report of  
21 child abuse and neglect, the department may not maintain a record or other information of  
22 unsubstantiated child abuse and neglect for longer than three years if there has been no further  
23 report within that three-year period.