COMMITTEE REPORT

February 21, 2019

**H. 3370**

Introduced by Reps. Clary, Elliott, Bernstein, Kirby, Cobb‑Hunter, Crawford, Murphy, Kimmons and Chellis

S. Printed 2/21/19--H.

Read the first time January 8, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3370) to amend the Code of Laws of South Carolina, 1976, by adding Section 16‑3‑1656 so as to require nonprofit victim assistance organizations that serve victims of domestic, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

PETER M. MCCOY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑3‑1656 SO AS TO REQUIRE NONPROFIT VICTIM ASSISTANCE ORGANIZATIONS THAT SERVE VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT TO PROTECT THE CONFIDENTIALITY AND PRIVACY OF CLIENTS, WITH EXCEPTIONS; AND BY ADDING SECTION 19‑11‑110 SO AS TO PROHIBIT EMPLOYEES, AGENTS, AND VOLUNTEERS OF SUCH ORGANIZATIONS FROM TESTIFYING IN ACTIONS OR PROCEEDINGS ABOUT COMMUNICATIONS MADE BY A CLIENT OR RECORDS KEPT DURING THE COURSE OF PROVIDING SERVICES TO THE CLIENT, WITH EXCEPTIONS, AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 16, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑1656. (A) In order to ensure the safety of adult and child victims of sexual assault and domestic violence and their families, a nonprofit victim assistance organization whose mission is, at least in part, to end sexual assault or domestic violence and whose core services include counseling and other services to victims of sexual assault or domestic violence shall protect the confidentiality and privacy of persons receiving services.

(B) Except as provided in subsections (C), (D) and (E), a nonprofit victim assistance organization whose mission is, at least in part, to end sexual assault or domestic violence and whose core services include counseling and other services to victims of sexual assault or domestic violence, must not:

(1) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied, regardless of whether the information has been encoded, encrypted, hashed or otherwise protected; or

(2) disclose, reveal, or release individual client information without the informed, written, reasonably time‑limited consent of the person about whom information is sought; or in the case of an unemancipated minor, of the minor and the minor’s parent or legal guardian; or in the case of an incapacitated person, of the legally appointed guardian of the incapacitated person. However, consent for release may not be given by the abuser or alleged abuser of the minor or incapacitated person, or the abuser or alleged abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent’s or guardian’s consent, the minor or person with a guardian may release information without additional consent.

(C) If release of information described in subsection (B) is compelled by statutory mandate or court order, the organization providing services shall:

(1) make reasonable attempts to provide notice to persons affected by the disclosure of information; and

(2) take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(D) A nonprofit victim assistance organization providing services to victims of domestic violence and sexual assault may share:

(1) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements;

(2) court‑generated information and law enforcement‑generated information contained in secure, governmental registries for protection order or restraining order enforcement purposes; and

(3) law enforcement‑generated and prosecution‑generated information necessary for law enforcement and prosecution purposes.

(E) In no circumstance may a nonprofit victim assistance organization whose mission is, at least in part, to end sexual assault or domestic violence and whose core services include counseling and other services to victims of sexual assault or domestic violence require a person to provide a consent to release personally identifying information as a condition of eligibility for the services provided.

(F) Nothing in this section prohibits reporting by individuals who are mandated by Section 43‑35‑25 to report vulnerable adult abuse, neglect, or exploitation or by Section 63‑7‑310 to report child abuse or neglect.”

SECTION 2. Chapter 11, Title 19 of the 1976 Code is amended by adding:

“Section 19‑11‑110. (A) In any trial or inquiry in any suit, action, or proceeding in any court or before any person having, by law or consent of the parties, authority to examine witnesses or hear evidence, unless otherwise required by law, an advocate may not, without informed, written, and reasonably time‑limited consent of the victim:

(1) be examined as to any communication made to the advocate by a client;

(2) disclose personally identifying information; or

(3) divulge records kept during the course of providing shelter, counseling, or other services to the client.

(B) This privilege belongs to the client and may not be waived, except by express consent. The privilege continues even if the client is unreachable. Consent may not be implied because the client is a party to a divorce or custody proceeding. The privilege terminates upon the death of the client.

(C) For purposes of this section:

(1) ‘Advocate’ means an employee, agent, or volunteer of a nonprofit victim assistance organization whose mission is, at least in part, to end sexual assault or domestic violence and whose core services include shelter, counseling, and other services to victims of sexual assault or domestic violence.

(2) ‘Client’ means a person who consults a nonprofit victim assistance organization whose mission is, at least in part, to end sexual assault or domestic violence and whose core services include counseling and other services to victims of sexual assault or domestic violence for the purpose of obtaining, on behalf of that person or someone else, advice, counseling, or other services concerning mental, physical, emotional, or other injuries, whether or not the client seeks or receives services within the criminal justice system, and whether or not a civil or criminal action arises as a result of the allegations.”

SECTION 3. This act takes effect upon approval by the Governor.

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