

HOUSE No. 04329

Substituted by the House, on motion of Mr. Mariano of Quincy, for a Bill relative to comprehensive protection from childhood sexual abuse (House, No. 4326). July 25, 2012.

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve
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An Act relative to comprehensive protection from childhood sexual abuse.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 258 of the General Laws, as appearing in the 2010 Official
2 Edition is hereby amended by inserting after the word “section”, in line 7, the following words:-
3 “; provided, however, that a civil action against a public employer instituted pursuant to section
4 4C of chapter 260 shall not require presentment of such claim as defined in this section within 2
5 years after the date upon which the action arose but shall require presentment of such claim no
6 later than 9 months prior to filing such complaint in a court of law.

7 SECTION 2. Said section 4 of chapter 258, as so appearing, is hereby further amended by
8 inserting after the word “accrued”, in line 13, the following words:- “;provided, however, that a
9 civil action brought pursuant to section 4C of chapter 260 may be filed within 25 years of the
10 acts alleged to have caused an injury or condition or within three years after the date upon which
11 such cause of action accrued, whichever is later.”

12 SECTION 3. Section 3A of chapter 260 of the General Laws, as appearing in the 2010 Official
13 Edition, is hereby amended by inserting after the word “accrues” in line 3 the following:- “;
14 provided however, that claims filed pursuant to section 4C of chapter 260 may be filed within 25
15 years of the acts alleged to have caused an injury or condition or within three years after the date
16 upon which such cause of action accrued, whichever is later; provided further, that a civil action
17 against a public employer instituted pursuant to section 4C of chapter 260 shall not require
18 presentment of such claim as defined in this section within 2 years after the date upon which the
19 action arose but shall require presentment of such claim no later than 9 months prior to filing
20 such complaint in a court of law.”

21 SECTION 4. Section 4C of chapter 260 of the General Laws, as appearing in the in the 2010
22 Official Edition, is hereby amended by striking out, in line 2, the word “three” and inserting in
23 place thereof the following figure:- 25.

24 SECTION 5. (a) Notwithstanding section 4 of chapter 258, section 3A of chapter 260, section
25 4C of chapter 260 of the General Laws, or any other general or special law to the contrary, a civil
26 action filed pursuant to said section 4C except for sexual abuse as defined in section 23 of
27 chapter 265, that would otherwise be barred as of November 15, 2012, solely because the
28 applicable statute of limitations has or had expired, is revived, and a cause of action may be
29 commenced within 1 year of November 15, 2012. The provisions of this section shall apply to
30 any claim pending or commenced prior to November 15, 2012, including any claim dismissed
31 with prejudice solely because of the expiration of the applicable statute of limitations. Nothing in
32 this section shall be construed to alter the applicable statute of limitations period of an action that
33 is not time barred as of November 15, 2012; provided further, that nothing herein shall be
34 construed as superseding or limiting the effect of the discovery rule or any other common law,

35 statutory or constitutional authority or tolling provision and any such rules, laws, authorities and
36 provisions shall be fully enforceable apart from or in addition to the rights afforded in this
37 section.

38 (b) If the person alleged to have committed the act of sexual abuse against the victim was
39 employed by an institution, agency, firm, business, corporation, or other public or private legal
40 entity that owed a duty of care to the victim, or the alleged abuser and the minor were engaged in
41 some activity over which the entity had some degree of responsibility or control, damages
42 against the entity shall be awarded only if there is a finding of gross negligence on the part of the
43 entity; provided, that this subsection shall apply to any public entity notwithstanding section 4 of
44 chapter 258 of the general law or section 3A of chapter 260 of the general law.

45 (c) A certificate of merit shall be filed under oath with the court by the plaintiff that shall
46 include: (i) a declaration by the plaintiff that there is a reasonable and meritorious cause for the
47 filing of the action; and (ii) a notarized statement by a mental health professional licensed
48 pursuant to chapter 112 of the General Laws including, but not limited to, psychologists,
49 marriage and family therapists, mental health counselors, or clinical social workers which shall
50 set forth in reasonable detail the facts and opinions relied upon to conclude that there is a
51 reasonable basis to believe that the plaintiff was subject to one or more acts of sexual abuse as
52 defined in said section 4C that would cause emotional or psychological injury or condition.

53 (d) A defendant against whom a civil action is commenced pursuant to this section may recover
54 attorney's fees if the court determines that a false accusation was made with no basis in fact and
55 with malicious intent. A verdict in favor of the defendant shall not be the sole basis for a
56 determination that an accusation had no basis in fact and was made with malicious intent. The

57 court shall make an independent finding of an improper motive prior to awarding attorney's fees
58 under this section.

59 (e) This section shall not apply to any written, compromised settlement agreement which has
60 been entered into between a competent plaintiff and a defendant where the competent plaintiff
61 was represented by a licensed attorney at the time of the settlement, and the plaintiff signed the
62 agreement or a court of competent jurisdiction approved of such agreement if the plaintiff was
63 not competent at the time of the agreement.