

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 238 Session of 2013

INTRODUCED BY MCGEEHAN, ROZZI, BISHOP, O'BRIEN, HAGGERTY, DAVIS, BROWNLEE, SCHLOSSBERG, SANTARSIERO, BARRAR, NEILSON, MAHONEY, P. DALEY, KINSEY, SWANGER, MURT, YOUNGBLOOD, BRIGGS, MCCARTER, WATERS AND ROEBUCK, JANUARY 24, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 24, 2013

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in limitation of time,
3 further providing for tolling limitations of civil actions;
4 and, in matters affecting government units, further providing
5 for exceptions to sovereign immunity and governmental
6 immunity.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 5533(b) of Title 42 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 5533. Infancy, insanity or imprisonment.

12 * * *

13 (b) Infancy.--

14 (1) (i) If an individual entitled to bring a civil
15 action is an unemancipated minor at the time the cause of
16 action accrues, the period of minority shall not be
17 deemed a portion of the time period within which the
18 action must be commenced. Such person shall have the same
19 time for commencing an action after attaining majority as

1 is allowed to others by the provisions of this
2 subchapter.

3 (ii) As used in this paragraph, the term "minor"
4 shall mean any individual who has not yet attained 18
5 years of age.

6 (2) (i) If an individual entitled to bring a civil
7 action arising from childhood sexual abuse is under 18
8 years of age at the time the cause of action accrues, the
9 individual shall have a period of [12] 32 years after
10 attaining 18 years of age in which to commence an action
11 for damages regardless of whether the individual files a
12 criminal complaint regarding the childhood sexual abuse.

13 (ii) For the purposes of this paragraph, the term
14 "childhood sexual abuse" shall include, but not be
15 limited to, the following sexual activities between a
16 minor and an adult, provided that the individual bringing
17 the civil action engaged in such activities as a result
18 of forcible compulsion or by threat of forcible
19 compulsion which would prevent resistance by a person of
20 reasonable resolution:

21 (A) sexual intercourse, which includes
22 penetration, however slight, of any body part or
23 object into the sex organ of another;

24 (B) deviate sexual intercourse, which includes
25 sexual intercourse per os or per anus; and

26 (C) indecent contact, which includes any
27 touching of the sexual or other intimate parts of the
28 person for the purpose of arousing or gratifying
29 sexual desire in either person.

30 (iii) For purposes of this paragraph, "forcible

compulsion" shall have the meaning given to it in 18
Pa.C.S. § 3101 (relating to definitions).

(3) Notwithstanding any other provision of law, a civil
action that would be permitted to be filed pursuant to
paragraph (2), but for the time limitation contained in
paragraph (2) to commence an action for damages or any other
statute of limitations, is revived, and such a civil action
may be commenced within two years of the effective date of
this paragraph. Nothing in this subsection shall be construed
to alter the applicable statute of limitations period of a
civil action arising from childhood sexual abuse that is not
time barred as of the effective date of this paragraph.

(4) If a person committing an act of childhood sexual
abuse against a minor was employed by an institution, agency,
firm, business, corporation or other public or private legal
entity that owed a duty of care to the victim, or the accused
and the minor were engaged in some activity over which the
entity had some degree of responsibility or control, damages
against the entity shall be awarded under paragraph (3) only
if there is a finding of gross negligence on the part of the
entity.

(5) If an individual or the individual's legal
representative has previously brought a civil action arising
from childhood sexual abuse and that suit has been dismissed
because it was filed beyond the statute of limitations that
applied at that time, the individual or the individual's
legal representative may petition the court to reopen the
action within the period provided in paragraph (3). The court
may grant the petition if it determines that any of the
following exist:

1 (i) The victim of the childhood abuse was under 30
2 years of age at the time the statute of limitations
3 expired.

4 (ii) The existence of newly discovered evidence
5 that, with reasonable diligence, could not have been
6 discovered before the prior statute of limitations
7 expired.

8 (iii) Fraud, inexcusable neglect, misrepresentation
9 or misconduct by an opposing party.

10 (iv) Any other extraordinary circumstances that the
11 court believes are in the interest of justice.

12 Section 2. Sections 8522(b) and 8542(b) of Title 42 are
13 amended by adding paragraphs to read:

14 § 8522. Exceptions to sovereign immunity.

15 * * *

16 (b) Acts which may impose liability.--The following acts by
17 a Commonwealth party may result in the imposition of liability
18 on the Commonwealth and the defense of sovereign immunity shall
19 not be raised to claims for damages caused by:

20 * * *

21 (10) Child sexual abuse.--Acts of child sexual abuse
22 which constitute gross negligence when committed by
23 individuals employed by a public institution, agency or other
24 legal entity for which actions are brought under section
25 5533(b) (relating to infancy, insanity or imprisonment).

26 § 8542. Exceptions to governmental immunity.

27 * * *

28 (b) Acts which may impose liability.--The following acts by
29 a local agency or any of its employees may result in the
30 imposition of liability on a local agency:

1 * * *

2 (9) Child sexual abuse.--Acts of child sexual abuse
3 which constitute gross negligence when committed by
4 individuals employed by a public institution, agency or other
5 legal entity for which actions are brought under section
6 5533(b) (relating to infancy, insanity or imprisonment).

7 * * *

8 Section 3. The addition of 42 Pa.C.S. §§ 8522(b)(10) and
9 8542(b)(9) shall apply to acts of child sexual abuse committed
10 on or after the effective date of this section.

11 Section 4. This act shall take effect in 60 days.