

HOUSE No. 4329

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

In the Year Two Thousand Twelve

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
2 Official Edition is hereby amended by inserting after the word “section”, in line 7, the following
3 words:- “; provided, however, that a civil action against a public employer instituted pursuant to
4 section 4C of chapter 260 shall not require presentment of such claim as defined in this section
5 within 2 years after the date upon which the action arose but shall require presentment of such
6 claim no 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
8 by inserting after the word “accrued”, in line 13, the following words:- “;provided, however, that
9 a 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
13 Official Edition, is hereby amended by inserting after the word “accrues” in line 3 the

14 following:- “; provided however, that claims filed pursuant to section 4C of chapter 260 may be
15 filed within 25 years of the acts alleged to have caused an injury or condition or within three
16 years after the date upon which such cause of action accrued, whichever is later; provided
17 further, that a civil action against a public employer instituted pursuant to section 4C of chapter
18 260 shall not require presentment of such claim as defined in this section within 2 years after the
19 date upon which the action arose but shall require presentment of such claim no later than 9
20 months prior to filing 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
22 2010 Official Edition, is hereby amended by striking out, in line 2, the word “three” and
23 inserting in place thereof the following figure:- 25.

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

authorities and provisions shall be fully enforceable apart from or in addition to the rights afforded in this section.

(b) If the person alleged to have committed the act of sexual abuse against the victim 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 alleged abuser 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 only if there is a finding of gross negligence on the part of the entity; provided, that this subsection shall apply to any public entity notwithstanding section 4 of chapter 258 of the general law or section 3A of chapter 260 of the general law.

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

(d) A defendant against whom a civil action is commenced pursuant to this section may recover attorney's fees if the court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the defendant shall not be the sole basis for a 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
60 has been entered into between a competent plaintiff and a defendant where the competent
61 plaintiff was represented by a licensed attorney at the time of the settlement, and the plaintiff
62 signed the agreement or a court of competent jurisdiction approved of such agreement if the
63 plaintiff was not competent at the time of the agreement.