

CHAPTER 384
FORMERLY
HOUSE BILL NO. 326
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTHCARE MEDICAL NEGLIGENCE INSURANCE AND LITIGATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6856, Title 18 of the Delaware Code by re-designating current numbered paragraph (3) as paragraph “(4)” and inserting a new paragraph “(3)” thereto as follows:

“(3) (a) Notwithstanding any provision to the contrary, a cause of action based on the sexual abuse of a child patient by a health care provider may be brought at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a child patient by a health care provider shall be based upon sexual acts which would constitute a criminal offense under the Delaware Code.

(b) For a period of 2 years following enactment of this paragraph, a child patient who has been a victim of sexual abuse by a health care provider which was discovered and reported to a person or legal entity specified in § 1731A of Title 24 of this Code or which was unknown to and could not in the exercise of reasonable diligence have been discovered by the child patient or a parent, guardian, and/or next friend of a child patient, and as a consequence whose claim is barred by virtue of the expiration of the former civil statute of limitations, shall be permitted to file such claim in the Superior Court of this State. If the health care provider committing the act of sexual abuse against a child patient was employed by an institution, agency, firm, business, corporation, or other public or private legal entity licensed by the State to provide health care services that owed a duty of care to the child patient, or the health care provider was engaged in some activity over which such legal entity had control, damages against such legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.

(c) A person against whom a suit is filed may recover attorney’s fees where the Court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the accused shall not be the sole basis for a determination that an accusation was false. The Court must make an independent finding of an improper motive to award attorneys’ fees under this section.

(d) Nothing contained in this section shall apply to conduct by a health care provider which is consistent with the recognized standard of care or the subject of a written consent.”

Section 2. If any provision of this act or the applications thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which may be given effect without the invalid provision or application, and, to that end, the provisions of this act are declared to be severable.

Approved July 13, 2010