



New Jersey Schools Insurance Group
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Board of Trustees Meeting of May 15, 2019 Executive Director's Report

Dear Trustees:

The Senate has passed S477, as did the Assembly, and it awaits the Governor's signature before May 13th.

The bill, in our view, does three main things:

1. Greatly expands the statute of limitations for bringing suits for allegations of sexual assault and molestation;
2. Erodes some of the charitable immunity defenses available to charities and non-profits and;
3. Eliminates public entity immunities under Title 59 and imposes strict liability for allegations of sexual abuse and molestation.
(see the highlighted section of the attached bill)

We believe the third item is particularly ill-advised and may have been included in the legislation in error. We expect the bill to be signed into law. We also expect a significant increase in costs to members for any insurance that may still be available to cover these claims should this become law. We should expect that reinsurers will, at a minimum, exclude coverage for these types of allegations. At worst, they will cease writing E&O coverage for New Jersey public entities.

NJSIG has started working on a solution that will preserve the NJSIG program and also be useful to members. The matter will be a discussion item at the Trustee meeting next week.

Trustees will be asked to vote on the FY 2019-20 budget. The budget is carefully prepared with input from all NJSIG managers and key business partners. Reinsurance rates have been finalized, and the rating system prepared to begin releasing renewal and new business proposals. We expect to deliver pricing that is slightly more favorable

than forecast at the March annual broker's meeting. Actuaries have reviewed the proposed budget and have no objections to our projections. S477 financial implications have not been included in the budget because they are unknown. The financial consequences will likely be felt with next year's budgeting and pricing.

There are some notable additions to NJSIG staff. An open Commercial Underwriter position was filled with an experienced actuarial analyst. She has developed a useful pricing model that will guide underwriting decisions and assist NJSIG with loss forecasting and with targeting risk control efforts where most needed. A Senior Staff Accountant will be working on NJSIG Claims Department processes, procedures and internal controls under the Comptroller's direction. NJSIG is conducting a search for a Claims Examiner dedicated to member E&O claims. The E&O line of coverage continues to have the fastest rising cost in the NJSIG portfolio of coverages. Collectively, these new initiatives are in response to the contemporary needs of members.

NJSIG continues to have a financially successful year ending June 30th. Through February, claim expenses and operating expenses are materially below the budgeted amounts.

Respectfully Submitted

William M. Mayo, CPCU, ARM
Executive Director
New Jersey Schools Insurance Group

SENATE, No. 477
STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Senators Weinberg, Cryan, Codey, Cunningham, Diegnan, Gill, Gopal, Greenstein, Lagana, O'Scanlon, Rice, Ruiz, B.Smith, Stack and Turner

SYNOPSIS

Removes statute of limitations in certain civil actions for sexual abuse; expands categories of defendants liable in such actions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning certain civil actions alleging sexual abuse, amending various parts of the statutory law and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.2A:14-2 is amended to read as follows:

2A:14-2. a. **[Every]** Except as provided in subsections b. and c. of this section, every action at law for an injury to the person caused by the wrongful act, neglect or default of any person

within this State shall be commenced within two years next after the cause of any such action shall have accrued[; except that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday].

b. (1) An action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday.

(2) In the event that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth is not commenced by the minor's parent or guardian prior to the minor's 12th birthday, the minor or a person 18 years of age or older designated by the minor to act on the minor's behalf may commence such an action. For this purpose, the minor or designated person may petition the court for the appointment of a guardian ad litem to act on the minor's behalf.

c. An action brought pursuant to section 1 of P.L.1992, c.109 (C.2A:61B-1), paragraph (1) of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005, c.264 (C.2A:53A-7.4) may be commenced at any time.

(cf: P.L.2004, c.17, s.3)

2. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to read as follows:

1. a. No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.

Nothing in this subsection shall be deemed to grant immunity to any health care provider, in the practice of his profession, who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes.

b. No nonprofit corporation, society or association organized exclusively for hospital purposes or its trustees, directors, officers or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a

beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association; but nothing herein contained shall be deemed to exempt the agent, employee or servant individually from their liability for any such negligence.

c. Nothing in this section shall be deemed to grant immunity to: (1) (a) any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustee, director, officer, employee, agent, servant or volunteer causing damage by a willful, wanton or grossly negligent act of commission or omission, including sexual assault [and] , any other [crimes] crime of a sexual nature or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1);

(b) any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes causing damage by any negligent act resulting in the commission of sexual assault, any other crime of a sexual nature or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); or

(c) any trustee, director, officer, employee, agent, servant or volunteer of a nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes causing damage by any negligent act resulting in the commission of sexual assault, any other crime of a sexual nature or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) if the trustee, director, officer, employee, agent, servant or volunteer had a supervisory or oversight role over the person committing the act of sexual assault, other crime of a sexual nature or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1);

(2) any trustee, director, officer, employee, agent, servant or volunteer causing damage as the result of the negligent operation of a motor vehicle; or

(3) an independent contractor of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes.

(cf: P.L.1995, c.183, s.1)

3. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to read as follows:

1. a. As used in this act:

(1) "Sexual abuse" means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person [standing in loco parentis within the household] who knowingly permits or acquiesces

in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person [standing in loco parentis] was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

(2) "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of sexually arousing or sexually gratifying the actor. Sexual contact of the adult with himself must be in view of the victim whom the adult knows to be present.

(3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction.

(4) "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

(5) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.

b. In any civil action for damages for injury or illness based on sexual abuse, the [cause of] action [shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be brought within two years after reasonable discovery] may be commenced at any time.

c. [Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 403 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.] Deleted by amendment, P.L. , c. (pending before the Legislature as this bill)

d. (1) Evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of a jury except as provided in this subsection. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its

collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

(2) In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(3) Evidence of the victim's previous sexual conduct shall not be considered relevant unless it is material to proving that the source of semen, pregnancy or disease is a person other than the defendant. For the purposes of this subsection, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangement and life style.

e. (1) The court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a victim on closed circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in paragraph (2) of this subsection.

(2) An order under this section may be made only if the court finds that the victim is 16 years of age or younger and that there is a substantial likelihood that the victim would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the victim will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

(3) A motion seeking closed circuit testimony under paragraph (1) of this subsection may be filed by:

- (a) The victim or the victim's attorney, parent or legal guardian;
- (b) The defendant or the defendant's counsel; or
- (c) The trial judge on the judge's own motion.

(4) The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

(5) If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

f. (1) The name, address, and identity of a victim or a defendant shall not appear on the complaint or any other public record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their place initials or a fictitious name shall appear.

(2) Any report, statement, photograph, court document, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public.

(3) The information described in this subsection shall remain confidential and unavailable to the public unless the victim consents to the disclosure or if the court, after a hearing, determines that good cause exists for the disclosure. The hearing shall be held after notice has been made to the victim and to the defendant and the defendant's counsel.

(4) Nothing contained herein shall prohibit the court from imposing further restrictions with regard to the disclosure of the name, address, and identity of the victim when it deems it necessary to prevent trauma or stigma to the victim.

g. In accordance with R.5:3-2 of the Rules Governing the Courts of the State of New Jersey, the court may, on its own or a party's motion, direct that any proceeding or portion of a proceeding involving a victim sixteen years of age or younger be conducted in camera.

h. A plaintiff who prevails in a civil action pursuant to this act shall be awarded damages in the amount of \$10,000 plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages shall consist of compensatory and punitive damages and costs of suit, including reasonable attorney's fees. Compensatory damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.

(cf: P.L.2004, c.130, s.10)

4. (New section) Notwithstanding any other provision of law to the contrary, including but not limited to the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an action for damages brought under the provisions of section 1 of P.L.1992, c.109 (C.2A:61B-1), paragraph (1) of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005, c.264 (C.2A:53A-7.4).

5. (New section) The provisions of this amendatory and supplementary act, P.L. , c. (C.) (pending before the Legislature as this bill) shall be inapplicable to any civil action governed by the statute of limitations of another jurisdiction.

6. (New section) a. The provisions of this amendatory and supplementary act, P.L. , c. (C.) (pending before the Legislature as this bill), shall apply to any action filed on or

after the effective date, including but not limited to matters where the statute of limitations has expired and matters filed with a court that have not yet been dismissed with prejudice or finally adjudicated as of the effective date.

b. In addition, for a period of two years following the effective date, the provisions of this act shall also revive any action previously filed that was dismissed on grounds that the applicable statute of limitations had expired, but shall not revive any action previously dismissed on any other grounds or revive any action that has been finally adjudicated.

7. This act shall take effect immediately.

STATEMENT

This bill would eliminate the statute of limitations in civil actions for sexual abuse, expand the categories of defendants who are potentially liable in these actions, and codify the liability of public entities in these actions.

STATUTE OF LIMITATIONS: Currently, N.J.S.2A:14-2 provides that personal injury suits must be commenced within two years of accrual of the cause of action, except for certain medical malpractice actions on behalf of minors. Under the bill, this two-year statute of limitations would be eliminated for actions brought under P.L.1992, c.109, s.1 (C.2A:61B-1) (sexual abuse of a child); paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7) (willful, wanton or grossly negligent act of commission or omission, including sexual assault or other crime of a sexual nature, brought against a trustee, director, officer, employee, agent, servant or volunteer of a nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes); and P.L.2005, c.264, s.1 (C.2A:53A-7.4) (sexual offense committed against a minor due to the negligent hiring, supervision or retention of an employee, agent or servant of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes).

CHARITABLE IMMUNITY ACT: WILLFUL, WANTON, AND GROSSLY NEGLIGENT ACTS BY TRUSTEES, EMPLOYEES AND OTHER INDIVIDUALS. Under current law, P.L.1959, c.90, s.1 (C.2A:53A-7), part of the Charitable Immunity Act, the trustees, directors, officers, employees, agents, servants or volunteers of nonprofit corporations, societies or associations organized for religious, charitable, or educational purposes are liable for willful, wanton, or grossly negligent acts including sexual assault or other crimes of a sexual nature. The bill would expand this liability to include sexual abuse as defined in P.L.1992, c.109, s.1

(C.2A:61B-1). (See subparagraph (a) of paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

CHARITABLE IMMUNITY ACT: WILLFUL, WANTON, AND GROSSLY NEGLIGENT ACTS BY ORGANIZATIONS. The bill amends the Charitable Immunity Act to provide that the organizations would also be liable for any willful, wanton, or grossly negligent act resulting in the commission of various crimes of a sexual nature or sexual abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (See subparagraph (a) of paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY TRUSTEES, EMPLOYEES AND OTHER INDIVIDUALS. The bill would impose liability for individuals' negligence under certain circumstances. Under the bill, any trustee, director, officer, employee, agent, servant or volunteer of a nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes causing damage by any negligent act resulting in the commission of sexual assault, any other crime of a sexual nature or sexual abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1) would be liable if that person *had a supervisory or oversight role* over the person committing the act of sexual assault, other crime of a sexual nature or sexual abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (See subparagraph (c) of paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY ORGANIZATIONS. Under the bill, organizations would also be liable for any negligent act that results in the commission of sexual assault, the commission of any other crime of a sexual nature or sexual abuse. (See subparagraph (b) of paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

CHILD SEXUAL ABUSE ACT - LIABILITY FOR ACQUIESCENCE: The bill would expand the category of persons who are potentially liable in any civil action alleging the sexual abuse of a child brought pursuant to P.L.1992, c.109, s.1 (C.2A:61B-1). Under current law, in addition to the person who committed the sexual abuse, a parent, resource family parent (i.e., foster parent), guardian or other person *standing in loco parentis* within the household who knowingly permitted or acquiesced in the sexual abuse is also civilly liable for the abuse. The bill provides that *any person* who knowingly permitted or acquiesced in the sexual abuse would be civilly liable.

PUBLIC ENTITIES: The bill provides that, notwithstanding the provisions of the New Jersey Tort Claims Act, N.J.S.59:1-1 et seq., or any other law, public entities would be liable in actions for damages alleging the sexual abuse of a child brought pursuant to P.L.1992, c.109, s.1 (C.2A:61B-1), paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7) or P.L.2005, c.264, s.1 (C.2A:53A-7.4).

EFFECTIVE DATE: The bill would apply to any action filed on or after the effective date, including but not limited to matters where the statute of limitations has expired and matters filed with a court that have not yet been dismissed or finally adjudicated as of the effective date.

The bill would revive any action that was previously dismissed on grounds that the applicable statute of limitations had expired for a period of two years following the effective date.

The bill would not revive any action previously dismissed on grounds other than the statute of limitations or revive any action that has been finally adjudicated.