



SPONSOR: Rep. Longhurst & Sen. Lockman

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 336

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE STATUTE OF LIMITATIONS
FOR VICTIMS OF SEXUAL VIOLENCE.

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

Section 1. Amend Chapter 81, Title 10 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 8146 Civil suits for damages based upon sexual violence of an employee by a supervisor.

(a) As used in this section:

(1) "Employee" means an individual employed within the State by an employer.

(2) "Employer" means the State and any political subdivision or board, department, commission, or school
district thereof. It does not include the United States government.

(3) "Sexual violence" means any of the following acts without the consent of the employee:

a. An intentional touching of the anus, breast, buttocks or genitalia of another person even when covered
by clothing.

b. Causing or compelling a person to touch another person's anus, breast, buttocks, or genitalia, even
when covered by clothing, which touching, under the circumstances as viewed by a reasonable person, is intended
to be sexual in nature.

c. Oral contact with the genitalia of another person.

d. Any act of physical union of the genitalia or anus of a person with the mouth, anus, or genitalia of
another person. It occurs upon any penetration, however slight. Ejaculation is not required.

e. The placement of any object inside the anus or vagina of another person.

f. The placement of genitalia or any sexual device inside the mouth of another person.

g. Threatening to engage in conduct likely to result in the commission of a sex act against another person.

h. Suggesting, soliciting, requesting, commanding, importuning, or otherwise attempting to induce
another person to have sexual contact or sexual intercourse knowingly that such action is likely to cause
annoyance, offense, or alarm to the other person.

i. The exposure of a person's genitals to another person knowing such conduct is likely to cause affront or alarm to another person.

j. Compels or induces another person to engage in any sexual act including contact, penetration or intercourse by means of instilling in another person a fear that, if such sexual act is not performed, the person or another will do any of the following:

1. Cause physical injury to the person or a family member.

2. Cause damage to property.

3. Accuse the person or a family member of a crime or cause criminal charges to be instituted against the person or a family member.

4. Expose a secret or publicize an asserted fact, whether true or false, intending to subject another person to hatred, contempt, or ridicule.

5. Perform any other act which is calculated to harm another regarding the person's health, safety, business, career, financial condition, reputation, or person relationships.

k. Interfering with another person's work or actions by communicating sexually explicit remarks, letters or notes in person or by any electronic or digital means.

(4) "Supervisor" means an individual that is empowered by the employer to take an action to change the employment status of an employee or who directs an employee's daily work activities.

(5) "Without consent" means the supervisor compelled the employee to submit by any act of coercion, by force, by threat of death, physical injury or pain to the employee or a third person, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the employee resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the employee need resist only to the extent that it is reasonably necessary to make the employee's refusal to consent known to the supervisor.

(b) A cause of action based upon the sexual violence of an employee by a supervisor may be filed in the Superior Court of this State following the commission of the act or acts that constituted the sexual violence.

(c) For a period of 1 year following the effective date of this Act, an employee who was the victim of sexual violence by a supervisor while employed by an employer in this State, and who is barred from filing suit against the supervisor or employer by virtue of a former statute of limitations, shall be permitted to file those claims in the Superior Court by verified pleading that all of the following can be established:

(1) The employee was employed by employer at the time of the sexual violence by the supervisor.

(2) The sexual violence occurred in this State.

(3) The employee did not report the sexual violence or file an action or complaint against the supervisor or employer to the Equal Employment Opportunity Commission or the Delaware Department of Labor within the applicable statute of limitations because the employer or supervisor did any one of the following:

a. Took or threatened to take a materially adverse action against the employee for reporting or making other employees aware of the sexual violence by the supervisor.

b. Failed to conduct an investigation of the sexual violence when on notice of the sexual violence.

c. Subjected the employee to unwelcome sexual advances, requests for sexual favors, or physical conduct of a sexual nature.

d. Exposed or threatened to expose a secret or publicize an asserted fact, whether true or false, intending to subject the employee to hatred, contempt, ridicule, or disciplinary action by the employer.

(4) The sexual violence occurred no more than 25 years prior to the effective date of the Act.

(d) For any action against an employer, the cause of action may only proceed to trial against the employer if all of the following can be established:

(1) The employer engaged in a pattern or practice to dissuade or prevent an employee from reporting or filing an action or complaint of sexual violence by the supervisor.

(2) The pattern or practice is of such a nature and degree as to intimidate the employee and was intended to deny the employee of the full exercise of the employee's rights under Subchapter II of Title 19 or the Title VII of the Civil Rights Act of 1964.

(e) Notwithstanding any other provision to the contrary, the State Tort Claims Act and the County and Municipal Tort Claims Act are not available defenses to any claim filed under § 8146.

Section 2. This Act shall be known as the "Public Employee Sexual Violence Act".

Section 3. 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 shall be given effect without the invalid provision or application. The provisions of this Act are to be severable.

SYNOPSIS

This bill creates the Public Employee Sexual Violence Act which allows public employees who have suffered sexual violence in the workplace the ability to file an action against the perpetrator and the employer even if the applicable statute of limitations has run. This Act defines sexual violence and provides when a public employee who suffered sexual violence by a supervisor may file suit against an employer. This Act will allow a public employee who was a victim of sexual violence 1 year from the effective date to file claims in Superior Court.