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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 277

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIABILITY FOR SEXUAL ABUSE OF A CHILD BY AN ADULT EMPLOYEE OF A SCHOOL, ORGANIZATION, OR BUSINESS.

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

1 Section 1. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3928. Liability for sexual abuse of child by adult employee of a school, organization, or business.

4 (a) A school, organization, or business that provides goods or services specifically targeted to or primarily used by
5 children is vicariously responsible for the sexual abuse of a child by an adult employed by, or an agent of, the school,
6 organization, or business when any of the following apply:

7 (1) The employee or agent was acting in the ordinary course of business during the time frame within which
8 the abuse was committed, regardless of the employee's or agent's motivation.

9 (2) The school, organization, or business intended the conduct or consequences.

10 (3) The school, organization, or business was negligent, grossly negligent, or reckless.

11 (4) The conduct violated a non-delegable duty of the school, organization, or business.

12 (5) The employee or agent purported to act or speak on behalf of the school, organization, or business and
13 there was a reliance on apparent authority, or the employee or agent was aided in accomplishing the sexual abuse by
14 the existence of the employment or agency relationship.

15 (b) The privileges and immunities from liability under §§ 4001 and 4003 of this title do not apply to schools in
16 civil suits for damages based on sexual abuse of a child by a school employee.

17 (c) A civil cause of action for sexual abuse of a child under this section must be based on sexual acts that would
18 constitute a criminal offense under the Delaware Code.

19 Section 2. This Act takes effect 90 days after its enactment into law.

SYNOPSIS

This Act codifies the principle set forth in *Doe v. Bicking*, 2020 Del. Super. LEXIS 43, *32, 2020 WL 374677 (Del. Super. Jan. 22, 2020) that recognizes that in cases of childhood sexual abuse by an employee of a school, organization, or business that serves or cares for children, the perpetrator often has authority and power over the child victim, which can be enabled by the perpetrator's position in that institution. If a child is abused while the perpetrator is doing the perpetrator's job, the employer should be responsible.

This Act also changes the standard of culpability from "gross negligence" to "negligence" for public schools in civil claims based on childhood sexual abuse. Children who are sexually abused by private employer employees (e.g. daycare providers, private schools, etc.) have more protection than children abused by their teachers and coaches at public schools. There should be one standard of care that holds schools and businesses equally accountable when their recklessness, inattention, or failure to act causes a student to be sexually abused.

This Act seeks to avoid future instances of the result in *Bates v. Caesar Rodney Sch. Dist.*, No. 13, 2021, 2021 Del. LEXIS 315 (Del. Oct. 6, 2021), a case which held that when a student is abused at school by a teacher, the school has no legal responsibility.

This Act takes effect 90 days after its enactment into law.