

145TH GENERAL ASSEMBLY

**FISCAL NOTE
REVISED**

BILL:	HOUSE BILL NO. 326 AS AMENDED BY HOUSE AMENDMENT NO. 2, SENATE AMENDMENT NO. 1
SPONSOR:	Representative Schwartzkopf
DESCRIPTION:	AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTHCARE MEDICAL NEGLIGENCE INSURANCE AND LITIGATION.

ASSUMPTIONS:

1. Effective upon enactment.
2. The Act, in part, permits a victim of criminal child sexual abuse to sue a grossly negligent public legal entity licensed by the State to provide health care services that either employed the abuser and owed a duty of care to the patient; or had control over the activities of the abuser.
3. The Attorney General's Office advises that the determination of gross negligence differentiates these cases from typical sovereign immunity cases which are usually disposed upon motion. However, gross negligence is difficult to establish.
4. We are further advised by the Attorney General's Office that Senate Amendment Number 2 substantially limits the State's exposure during the 2 year look-back period. Damages may only be awarded against a public or private legal entity which employed a healthcare provider licensed by the State to provide healthcare services. As such, exposure is removed from regulatory bodies.
5. The Attorney General's Office will provide legal services required by any claims against the State to the extent deemed prudent. However, specific expertise and staffing constraints may require outside legal services that must be paid through self-insurance. The Insurance Coverage Office advises that the State's exposure is primarily with The Department of Health and Social Services and The Department of Children, Youth & Their Families. The liability of schools that employ nurses is not clear.
6. The cost to the State will depend on claims experience.

COST:

FY 2010	-0-
FY 2011	Indeterminable – assumed minimal.
FY 2012	Indeterminable – assumed minimal.