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HOUSE OF REPRESENTATIVES  
145th GENERAL ASSEMBLY

HOUSE BILL NO. 326

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:

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

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

7           (b) For a period of 2 years following enactment of this paragraph, a patient who has been a victim of  
8 sexual abuse by a healthcare provider which was unknown to and could not in the exercise of reasonable diligence have  
9 been discovered by the patient or a parent, guardian, and/or next friend of a patient, and as a consequence whose claim is  
10 barred by virtue of the expiration of the former civil statute of limitations, shall be permitted to file such claim in the  
11 Superior Court of this State. If the healthcare provider committing the act of sexual abuse against a patient was employed  
12 by an institution, agency, firm, business, corporation, or other public or private legal entity that owned a duty of care to the  
13 patient, or the healthcare provider was engaged in some activity over which the legal entity had some degree of  
14 responsibility or control, damages against the legal entity shall be awarded under this subsection only if there is a finding of  
15 gross negligence on the part of the legal entity.

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

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

#### SYNOPSIS

Consistent with Delaware's Child Victim's Act, this Act clarifies that civil actions based on sexual abuse of a patient by a healthcare provider may be filed at any time after the commission of the abuse. This Act also creates a 2-year "look-back" provision in cases of abuse which was unknown and could not reasonably have been discovered by the patient.