

SENATE SUBSTITUTE TO HB 605:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Sections 9-3-33.1 and Chapter 15 of Title 17 of the Official Code of Georgia
 2 Annotated, relating to actions for childhood sexual abuse and victim compensation,
 3 respectively, so as to extend the statute of limitations for actions for childhood sexual abuse
 4 under certain circumstances; to clarify existing law; to revise and provide for definitions; to
 5 provide for retroactive claims for childhood sexual abuse under certain circumstances; to
 6 provide for defenses to civil actions; to allow compensation from the Georgia Crime Victims
 7 Compensation Board under certain circumstances; to provide for a short title; to provide for
 8 related matters; to repeal conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 This Act shall be known and may be cited as the "Hidden Predator Act of 2018."

12 **SECTION 2.**

13 Code Section 9-3-33.1 of the Official Code of Georgia Annotated, relating to actions for
 14 childhood sexual abuse, is amended by revising subparagraph (b)(2)(B) and adding a new
 15 paragraph to subsection (b), by revising subsection (c), and by adding subsection (d) as
 16 follows:

17 "(B) When a plaintiff's civil action is filed after the plaintiff attains the age of 23 years
 18 but within ~~two years from the date that the plaintiff knew or had reason to know of such~~
 19 ~~abuse and that such abuse resulted in injury to the plaintiff~~ the time period described
 20 in division (b)(2)(A)(ii) of this Code section, the court shall determine from admissible
 21 evidence in a pretrial finding ~~when~~ the date upon which the discovery of the alleged
 22 childhood sexual abuse occurred and whether the civil action was timely filed under
 23 this Code section. The pretrial finding required under this subparagraph shall be made
 24 within six months of the filing of the civil action.

25 (3) Notwithstanding Code Section 9-3-33, a plaintiff who is between the age of 23 and
 26 30 years may bring a civil action for recovery of damages suffered as a result of
 27 childhood sexual abuse committed on or after July 1, 2018.

28 (c)(1) As used in this subsection, the term:

29 (A) 'Entity' means an institution, agency, firm, business, corporation, or other public
 30 or private legal ~~entity~~ organization.

31 (B) 'Person' means the individual alleged to have committed the act of childhood
 32 sexual abuse.

33 (2) If a civil action for recovery of damages suffered as a result of childhood sexual
 34 abuse is commenced pursuant to division (b)(2)(A)(i) of this Code section and if the
 35 person was a volunteer or employee of an entity that owed a duty of care to the plaintiff,
 36 or the person and the plaintiff were engaged in some activity over which such entity had
 37 control, damages against such entity shall be awarded under this Code section only if by
 38 a preponderance of the evidence there is a finding of negligence on the part of such
 39 entity.

40 (3) If a civil action for recovery of damages suffered as a result of childhood sexual
 41 abuse is commenced pursuant to division (b)(2)(A)(ii) or paragraph (3) of subsection (b)
 42 of this Code section and if the person was a volunteer or employee of an entity that owed
 43 a duty of care to the plaintiff, or the person and the plaintiff were engaged in some
 44 activity over which such entity had control, damages against such entity shall be awarded
 45 under this Code section only if by a preponderance of the evidence there is a finding that
 46 there was of gross negligence on the part of such entity, that the entity knew or should
 47 have known of the alleged conduct giving rise to the civil action, and that such entity
 48 failed to take remedial action.

49 (d) Reserved."

50 SECTION 3.

51 Said Code section is further amended by adding a new subsection to read as follows:

52 "(e)(1) As used in this subsection, the term:

53 (A) 'Entity' means an institution, agency, firm, business, corporation, or other public
 54 or private legal organization.

55 (B) 'Person' means the individual alleged to have committed the act of childhood
 56 sexual abuse.

57 (C) 'Responsibility for the care' means:

58 (i) The person was a volunteer or employee of an entity that owed a duty of care to
 59 the plaintiff; or

60 (ii) The person and the plaintiff were engaged in some activity over which an entity
61 had control.

62 (2) Plaintiffs who were time barred from filing a civil action for recovery of damages
63 suffered as a result of childhood sexual abuse due to the expiration of the statute of
64 limitations in effect on June 30, 2018, shall be allowed to file such actions, which had
65 lapsed or technically expired under the law in effect on June 30, 2018. Such actions shall
66 be permitted to be filed before the date he or she attains the age of 31 years and against:

67 (A) A person who had a responsibility for the care of the plaintiff. For a plaintiff filing
68 under this paragraph, damages against such person may be awarded only if the plaintiff
69 proves by a preponderance of the evidence that such person acted negligently; and

70 (B) An entity when such entity had a responsibility for the care of the plaintiff, such
71 entity knew or should have known of the alleged conduct giving rise to the civil action,
72 and such entity's actions involved intentionally harboring, assisting, concealing, or
73 withholding information about the person. This subparagraph shall only apply when
74 such actions of harboring, assisting, concealing, or withholding information about the
75 person occurred within 12 years of the date of the filing of the civil action.

76 (3) For occurrences of childhood sexual abuse committed on and after July 1, 2018,
77 notwithstanding Code Section 9-3-33, and in addition to the extended periods of
78 limitations provided by this Code section, when an entity had a responsibility for the care
79 of the plaintiff, any civil action for recovery of damages suffered as a result of childhood
80 sexual abuse shall be commenced within one year from the date the plaintiff discovered
81 evidence that such entity knew its actions involved intentionally harboring, assisting,
82 concealing, or withholding information about the person. This paragraph shall only apply
83 when such actions of harboring, assisting, concealing, or withholding information about
84 the person occurred within 12 years of the date of the filing of the civil action.

85 (4) For purposes of subparagraph (B) of paragraph (2) and paragraph (3) of this
86 subsection:

87 (A) Intentionally harboring, assisting, concealing, or withholding information about
88 the person by an entity shall include at least two of the following:

89 (i) Intentionally failing to timely report suspected child abuse in accordance with
90 Code Section 19-7-5 or to the parent or guardian of the plaintiff;

91 (ii) Intentionally harboring, attempting to harbor, or assisting another individual or
92 entity in harboring such person;

93 (iii) Intentionally allowing such person to continue working in a paid or volunteer
94 position within such entity;

95 (iv) Intentionally assisting the person in being transferred, moved, or referred to
96 another place of employment; or

97 (v) Intentionally concealing, attempting to conceal, or assisting another individual or
98 entity in concealing or attempting to conceal such person's alleged conduct; and

99 (B) A plaintiff may recover damages against an entity only if he or she proves by clear
100 and convincing evidence the elements required by subparagraph (B) of paragraph (2)
101 or paragraph (3) of this subsection, as applicable, and at least two of the actions set
102 forth in subparagraph (A) of this paragraph, and such actions were a proximate cause
103 of the plaintiff's childhood sexual abuse.

104 (5)(A) In any action for damages filed pursuant to this subsection, the plaintiff shall be
105 required to file with the complaint an affidavit of an expert competent to testify setting
106 forth specifically the factual basis and opinions relied upon to conclude that the plaintiff
107 was subjected to childhood sexual abuse that resulted in harm to the plaintiff. Such
108 affidavit shall be filed under seal and may be amended.

109 (B) The contemporaneous affidavit filing requirement pursuant to subparagraph (A)
110 of this paragraph shall not apply to any case in which the period of limitations will
111 expire or there is a good faith basis to believe it will expire on any claim stated in the
112 complaint within ten days of the date of filing the complaint and, because of time
113 constraints, the plaintiff has alleged that an affidavit of an expert could not be prepared.
114 In such cases, if the attorney for the plaintiff files with the complaint an affidavit in
115 which the attorney swears or affirms that his or her law firm was not retained by the
116 plaintiff more than 90 days prior to the expiration of the period of limitations on the
117 plaintiff's claim or claims, the plaintiff shall have 45 days after the filing of the
118 complaint to supplement the pleadings with the expert's affidavit. The trial court shall
119 not extend such time for any reason without the consent of all parties. If either affidavit
120 is not filed within the periods specified in this paragraph, or it is determined that the law
121 firm of the attorney who filed the affidavit permitted in lieu of the contemporaneous
122 filing of an expert affidavit or any attorney who appears on the pleadings was retained
123 by the plaintiff more than 90 days prior to the expiration of the period of limitations,
124 the complaint shall be dismissed for failure to state a claim.

125 (C) This paragraph shall not be construed to extend any applicable period of
126 limitations, except that if the affidavits are filed within the periods specified in this
127 paragraph, the filing of the affidavit of an expert after the expiration of the period of
128 limitations shall be considered timely and shall provide no basis for a statute of
129 limitations defense.

130 (D) If a complaint is filed without the contemporaneous filing of an affidavit as
131 permitted by subparagraph (B) of this paragraph, the defendant shall not be required to
132 file an answer to the complaint until 30 days after the filing of the affidavit of an expert,
133 and no discovery shall take place until after the filing of the answer.

134 (E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to
 135 whom it pertains alleges, with specificity, by motion to dismiss filed on or before the
 136 close of discovery, that said affidavit is defective, the plaintiff's complaint shall be
 137 subject to dismissal for failure to state a claim, except that the plaintiff may cure the
 138 alleged defect by amendment pursuant to Code Section 9-11-15 within 30 days of
 139 service of the motion alleging that the affidavit is defective. The trial court may, in the
 140 exercise of its discretion, extend the time for filing said amendment or response to the
 141 motion, or both, as it shall determine justice requires.

142 (F) If a plaintiff fails to file an affidavit as required by this paragraph and the defendant
 143 raises the failure to file such an affidavit by motion to dismiss filed contemporaneously
 144 with its initial responsive pleading, such complaint shall not be subject to the renewal
 145 provisions of Code Section 9-2-61 after the expiration of the applicable period of
 146 limitation, unless a court determines that the plaintiff had the requisite affidavit within
 147 the time required by this Code section and the failure to file the affidavit was the result
 148 of a mistake.

149 (6) Notwithstanding the period of limitations set forth in this subsection, or the nature
 150 of the civil action or relief sought, the doctrine of equitable tolling under Article 5 of
 151 Chapter 3 of Title 9 or the doctrine of laches shall apply to cases at law or equity filed
 152 under this subsection."

153 **SECTION 4.**

154 Said Code section is further amended by adding two new subsections to read as follows:

155 "(f) For purposes of imposing liability on an entity under this Code section, when an entity
 156 is an unincorporated association, the individual members or owners of it shall not be
 157 personally liable for the actions of such association unless such individual's own actions
 158 constitute negligence by being a deviation from the standard of care that an ordinarily
 159 prudent person would exercise in a like position under similar circumstances.

160 (g) For any civil action filed pursuant to subsection (e) of this Code section, on and after
 161 July 1, 2018, an entity shall be deemed not to have intentionally harbored, assisted,
 162 concealed, or withheld information about the individual alleged to have committed the act
 163 of childhood sexual abuse if it timely complied with the mandatory reporting requirements
 164 in accordance with Code Section 19-7-5 or timely reported to the parent or guardian of the
 165 plaintiff."

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SECTION 5.

Chapter 15 of Title 17 of the Official Code of Georgia Annotated, relating to victim compensation, is amended by revising paragraph (1) of subsection (b) of Code Section 17-15-5, relating to filing of claims, verification, and contents, as follows:

"(b)(1) A claim shall be filed by a victim not later than three years after the occurrence of the crime upon which such claim is based or not later than three years after the death of the victim; provided, however, that if such victim was a minor at the time of the commission of the crime, he or she shall have until three years after his or her eighteenth birthday to file such claim; and provided, further, that upon good cause shown, which shall be presumed when the victim has filed a civil action under Code Section 9-3-33.1, the board may extend the time for filing a claim."

SECTION 6.

Said chapter is further amended in paragraph (1) of subsection (a) of Code Section 17-15-7, relating to persons eligible for awards, by deleting "or" at the end of subparagraph (D), by replacing the period with "; or" at the end of subparagraph (E), and by adding a new subparagraph to read as follows:

"(F) Has filed a civil action under Code Section 9-3-33.1 and suffers a serious mental or emotional trauma as a result of being a victim of childhood sexual abuse, as such term is defined in Code Section 9-3-33.1;"

SECTION 7.

Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section 17-15-8, relating to required findings, amount of award, rejection of claim, reductions, exemption from garnishment and execution, exemption from treatment as ordinary income, effective date for awards, psychological counseling for relatives of deceased, and memorials for victims of DUI homicide, as follows:

"(3) Police records, records of an investigating agency, or records created pursuant to a mandatory reporting requirement show that the crime was promptly reported to the proper authorities. In no case may an award be made where the police records, records of an investigating agency, or records created pursuant to a mandatory reporting requirement show that such report was made more than 72 hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified and provided, further, that good cause shall be presumed if the person is eligible for awards pursuant to this chapter corresponding to subparagraph (a)(1)(D) or (a)(1)(F) of Code Section 17-15-7; and"

