

House Bill 109 (RULES COMMITTEE SUBSTITUTE)

By: Representatives Clark of the 147th, Oliver of the 82nd, Anulewicz of the 42nd, Cantrell of the 22nd, Mathis of the 144th, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide greater protections for individuals who have suffered from childhood sexual
2 abuse; to amend Code Section 9-3-33.1 of the Official Code of Georgia Annotated, relating
3 to actions for childhood sexual abuse, so as to extend the statute of limitations for actions for
4 childhood sexual abuse under certain circumstances; to clarify existing law; to revise and
5 provide for definitions; to provide for retroactive claims for childhood sexual abuse under
6 certain circumstances; to provide for a short title; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Child Victim Protection Act of 2021."

11 **SECTION 2.**

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

H. B. 109 (SUB)

16 "(2)(A) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages
 17 suffered as a result of childhood sexual abuse committed on or after July 1, 2015, shall
 18 be commenced:

- 19 (i) On or before the date the plaintiff attains the age of 23 years; or
 20 (ii) Within ~~two~~ four years from the date that the plaintiff knew or had reason to know
 21 of such abuse and that such abuse resulted in injury to the plaintiff as established by
 22 competent medical or psychological evidence.

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

31 (3) Notwithstanding Code Section 9-3-33, on or after July 1, 2021, a plaintiff who is
 32 between the age of 23 and 38 years may bring a civil action for recovery of damages
 33 suffered as a result of childhood sexual abuse.

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

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

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

39 (2) If a civil action for recovery of damages suffered as a result of childhood sexual
 40 abuse is commenced pursuant to division (b)(2)(A)(i) of this Code section and if the
 41 person was a volunteer or employee of an entity that owed a duty of care to the plaintiff,
 42 or the person and the plaintiff were engaged in some activity over which such entity had

43 control, damages against such entity shall be awarded under this Code section only if by
44 a preponderance of the evidence there is a finding of negligence on the part of such
45 entity.

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

55 (d)(1) As used in this subsection, the term:

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

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

60 (2) For a period of one year following July 1, 2021, plaintiffs of any age who were time
61 barred from filing a civil action for recovery of damages suffered as a result of childhood
62 sexual abuse due to the expiration of the statute of limitations in effect on June 30, 2021,
63 shall be allowed to file such actions, which had lapsed or technically expired under the
64 law in effect on June 30, 2021. Such actions shall be permitted to be filed against:

65 (A) A person alleged to have committed the act of childhood sexual abuse; or

66 (B) An entity that owed a duty of care to the plaintiff, and the entity knew:

67 (i) Of an act of childhood sexual abuse against the plaintiff by a volunteer or
68 employee and the entity intentionally allowed that abuse to continue; or

69 (ii) That a volunteer or employee of the entity who committed an act of childhood
70 sexual abuse against the plaintiff had committed a previous act of childhood sexual
71 abuse against another and the entity intentionally or fraudulently harbored, concealed,
72 or withheld information about the prior act, resulting in the plaintiff's injury.

73 (3) For purposes of subparagraph (B) of paragraph (2) of this subsection:

74 (A) An action against an entity shall not include actions or inactions occurring before
75 July 1, 1988;

76 (B) A plaintiff may recover damages against an entity only if the plaintiff proves by
77 clear and convincing evidence the elements required by subparagraph (B) of
78 paragraph (2) of this subsection; and

79 (C) When an entity is an unincorporated association, the individual members or owners
80 of it shall not be personally liable for the action of such association.

81 (4) For the purposes of this subsection, sovereign immunity and government immunity
82 are expressly waived to the extent of liability created by this subsection and any required
83 ante litem notices."

84 **SECTION 3.**

85 All laws and parts of laws in conflict with this Act are repealed.