

Suggested allocation: s.2: C.2A:14-2a; and ss.7 and 8:  
C.2A:14-2b and 2A:14-2c & Note to ss. 1 through 7 to 2018/167

Comments (**\*\*in bold\*\***), prepared by OLS Judiciary Section to:

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 477

STATE OF NEW JERSEY

Sponsored by Senators VITALE and SCUTARI, and  
Co-sponsored by Senators Weinburg, Cryan, Codey, Cunningham, Diegnan, Gill,  
Gopal, Greenstein, Lagana, O'Scanlon, Rice, Ruiz, B.Smith, Stack and Turner

AN ACT concerning certain civil actions, and amending and  
supplementing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the  
State of New Jersey:

**\*\*Section 1 amends the current law's general two-year  
statute of limitations for personal injury claims, to set up the  
exceptions for extended statute of limitations for sexual abuse  
lawsuits added by section 2 of the bill.\*\***

1. N.J.S.2A:14-2 is amended to read as follows:

2A:14-2. a. [Every] Except as otherwise provided by law, every  
action at law for an injury to the person caused by the wrongful act,  
neglect or default of any person within this State shall be  
commenced within two years next after the cause of any such action  
shall have accrued; except that an action by or on behalf of a minor  
that has accrued for medical malpractice for injuries sustained at  
birth shall be commenced prior to the minor's 13th birthday.

b. In the event that an action by or on behalf of a minor that has  
accrued for medical malpractice for injuries sustained at birth is not  
commenced by the minor's parent or guardian prior to the minor's  
12th birthday, the minor or a person 18 years of age or older

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

designated by the minor to act on the minor's behalf may commence such an action. For this purpose, the minor or designated person may petition the court for the appointment of a guardian ad litem to act on the minor's behalf.

(cf: P.L.2004, c.17, s.3)

**\*\*Section 2 creates the new extended statute of limitations periods for sexual abuse, which are dependent upon whether the victim was a minor under the age of 18 years or an adult. This section also provides guidance as to the retroactive application of potential new standards of liability for lawsuits brought within the new statute of limitations periods.\*\***

**\*\*Child victim – for abuse that occurred prior to, on or after the bill’s effective date, the lawsuit needs to be filed within 37 years after the child victim turns 18 (filed by the victim’s 55th birthday), or within seven years of discovering the injury if this seven-year end date occurs after the victim turns 55. Since the extended statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of 55 when the bill takes effect, or turns 55 sometime after the bill takes effect, and who is aware of the injury and its cause can file a suit based on this section; the “reasonable discovery” requirement only applies if the victim files suit after turning 55 years of age due to a delayed discovery of the injury and its cause, and this date of reasonable discovery may be challenged as being more than seven years prior to the filing of the suit, triggering the need for the discovery date to be judicially determined by a Lopez hearing in order to properly find whether the lawsuit was filed in time (within the seven-year period after discovery) – see accompanying OLS Background Report.\*\***

2. (New section) a. (1) Every action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) **against a minor under the age of 18 that occurred prior to, on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill)** shall be commenced within 37 years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever date is later.

**\*\*Child victim - the below bill text indicates retroactive application of the standard of liability set forth in the Charitable Immunity Act, N.J.S.A. 2A:53-7, as amended by the bill. This may create, for lawsuits filed under the new, extended**

P  
R  
O  
P  
O  
S  
E  
D

statute of limitations, additional retroactive liability for non-profit organizations concerning willful, wanton or grossly negligent acts resulting in abuse that occurred prior to August 8, 2006, which is the date the New Jersey Supreme Court decided the case of Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), and found for the first time that the Charitable Immunity Act does not bar lawsuits against organizations based on such aggravated forms of wrongful conduct; it only bars suits based on “simple” or “standard” negligent conduct. Id. at 96-97. Prior to this decision, the Supreme Court and lower courts found that the act did shield organizations from liability for gross negligence and even intentional conduct committed by its trustees, directors, officers, employees, agents, servants, or volunteers. See Schultz v. Roman Catholic Archdiocese, 95 N.J. 530, 535-536 (1984); Monaghan v. Holy Trinity Church, 275 N.J. Super. 594 (1994). The bill amendment to the Charitable Immunity Act, to be applied retroactively, is shown in section 5, updating N.J.S.A 2A:53A-7, subsection c., to recognize the current interpretation and scope of organizational liability based on Hardwicke.

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as they have always been liable for their own willful, wanton or grossly negligent acts, and this more-than-negligence liability standard remains the same following enactment (such persons were added to the Charitable Immunity Act by the enactment of P.L.1995, c.183, but only granted immunity for acts amounting to simple negligence).

The below bill text also indicates, for lawsuits filed under the new, extended statute of limitations, retroactive application of an exception to the Charitable Immunity Act, N.J.S.A. 2A:53A-7.4 et seq., making non-profit organizations (but not their trustees, directors, officers, employees, agents, servants, or volunteers) liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. See organizational liability provisions in N.J.S.A. 2A:53A-7.4. This liability for simple negligence, when first enacted by P.L.2005, c.264, and which took effect on January 5, 2006, applied prospectively only. See N.J.S.A. 2A:53A-7.5. However, as amended by this bill in section 6 (adding N.J.S.A. 2A:53A-7.5, subsection b.), organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child will be applied retroactively for abuse occurring prior to the bill’s effective date, which also means retroactively to acts of abuse occurring prior to the effective date of P.L.2005, c.264 (January 5, 2006).\*\*

(2) To the extent applicable, **any action for an injury that occurred prior to the effective date** of P.L. , c. (C. ) (pending before the Legislature as this bill) **shall be subject to** the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c. (C. ) (pending before the Legislature as this bill).

**\*\*Adult victim – for abuse committed against a person 18 years of age or older that occurred prior to, on or after the bill’s effective date, the lawsuit needs to be filed within seven years of discovering the injury. The “reasonable discovery” requirement applies to calculating this seven-year statute of limitations period, including retroactive application of the requirement for lawsuits filed concerning acts of abuse that occurred prior to the bill’s effective date. The date of reasonable discovery may be challenged as being more than seven years prior to the filing of any lawsuit, triggering the need for the discovery date to be judicially determined by a Lopez hearing in order to properly find whether the lawsuit was filed in time – see accompanying OLS Background Report.\*\***

b. (1) Every action at law for an injury resulting from the commission of sexual assault or any other crime of a sexual nature **against a person 18 years of age or older that occurred prior to, on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill)** shall be commenced **within seven years from the date of reasonable discovery** of the injury and its causal relationship to the act.

**\*\*Adult victim - the below bill text indicates retroactive application of the standard of liability set forth in the Charitable Immunity Act, N.J.S.A. 2A:53-7, as amended by the bill. If a long-delayed reasonable discovery of an adult’s past injury still allows a claim to be brought within the seven-year period, this may create additional retroactive liability for non-profit organizations concerning willful, wanton or grossly negligent acts resulting in abuse that occurred prior to August 8, 2006, which is the date the New Jersey Supreme Court decided the case of Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), and found for the first time that the Charitable Immunity Act does not bar lawsuits against organizations based on such aggravated forms of wrongful conduct; it only bars suits based on “simple” or “standard” negligent conduct. Id. at 96-97. Prior to this decision, the Supreme Court and lower courts found that the act did shield organizations from liability for gross negligence and even intentional conduct committed by its trustees, directors, officers, employees, agents, servants, or volunteers. See Schultz v. Roman Catholic Archdiocese, 95 N.J.**

530, 535-536 (1984); Monaghan v. Holy Trinity Church, 275 N.J. Super. 594 (1994). The bill amendment to the Charitable Immunity Act, to be applied retroactively, is shown in section 5, updating N.J.S.A. 2A:53A-7, subsection c., to recognize the current interpretation and scope of organizational liability based on Hardwicke.

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as they have always been liable for their own willful, wanton or grossly negligent acts, and this more-than-negligence liability standard remains the same following enactment (such persons were added to the Charitable Immunity Act by the enactment of P.L.1995, c.183, but only granted immunity for acts amounting to simple negligence).

The below bill text also indicates retroactive application of an exception to the Charitable Immunity Act, N.J.S.A. 2A:53A-7.4 et seq., making non-profit organizations (but not their trustees, directors, officers, employees, agents, servants, or volunteers) liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. See organizational liability provisions in N.J.S.A. 2A:53A-7.4. This does not apply to lawsuits involving adult victims, and therefore does not create any retroactive liability for such lawsuits filed concerning past acts of abuse.\*\*

(2) To the extent applicable, any action for an injury that occurred prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c. (C. ) (pending before the Legislature as this bill).

Nothing in this section is intended to preclude the court from finding that the statute of limitations was tolled in an action because of the plaintiff's mental state, physical or mental disability, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.

Every action filed pursuant to this section must proceed based on an individual basis, and cannot proceed as a class action, due to the particular circumstances unique to each person's abuse. Also, privately negotiated settlements of claims on a class basis would be void and unenforceable.

c. (1) Every action at law for an injury that is commenced pursuant to this section shall **proceed on an individual basis, and not proceed on behalf of a class in a class action**, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor under the age of 18 or a person 18 years of age or older.

(2) **Any private, contractual arrangement** intending to settle claims for occurrences described in paragraph (1) of this subsection **on a class basis** is against public policy and **shall be void and unenforceable**.

**\*\*Section 3 – child victim - applies the new, extended statute of limitations period for child victims of abuse detailed in section 2 of the bill (suit must be filed by the 55th birthday, or within seven years of discovering the injury) to lawsuits brought by children, through a parent, guardian, or advocacy organization, or personally upon turning 18 years of age, for the following forms of intentional (willful) sexual exploitation, as emphasized by the below words or phrases appearing in *italics*, that target the child pornography industry:**

**-*permitting, enticing or coercing* a child to engage in a prohibited sexual act or in the simulation of such an act *if the person knows, has reason to know or intends* that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or performance;**

**-*photographing or filming* a child in a prohibited sexual act or in the simulation of such an act *or who uses any device to reproduce or reconstruct* the image of the child in a prohibited sexual act or in the simulation of such an act; or**

**-*knowingly* receiving, for the purpose of selling *or who knowingly* sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer any photograph, film, videotape or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act. See N.J.S.A. 2A:30B-3.**

**As any such cause of action involves intentional (willful) action on the part of the personal abuser or organizational entity under which the sexual exploitation occurs, it does not create any liability based on merely negligent acts resulting in abuse.\*\***

3. Section 6 of P.L.1992, c.7 (C.2A:30B-6) is amended to read as follows:

6. [Every] In any action [brought pursuant to this act] for injury based on P.L.1992, c.7 (C.2A:30B-1 et seq.), the cause of action shall [be commenced within two years after the child reaches the age of majority] accrue at the time of reasonable discovery of the injury and its causal relationship to the act. The action shall be subject to the statute of limitations set forth in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.1992, c.7, s.6)

**\*\*Section 4 – child victim - amends the Child Sexual Abuse Act, N.J.S.A. 2A:61B-1, to apply the new, extended statute of limitations period for child victims of abuse detailed in section 2 (suit must be filed by the 55th birthday, or within seven years of discovering the injury) to lawsuits filed against two specific categories of abusers: (1) the “active” abuser, being the person who inflicted the abuse; and (2) the “passive” abuser, being a “parent, resource family parent, guardian or other person standing in loco parentis” who “knowingly permits or acquiesces” to the abuse by an active abuser. See Hardwicke v. American Boychoir Sch., 188 N.J. at 86.**

Under the Child Sexual Abuse Act, the phrase a “person standing in loco parentis” may provide for organizational liability for passive abuse, because the use of “person,” per the definition set forth in N.J.S.A. 1:1-2, includes private and public corporations (e.g., a county or municipality) as well as individuals. See Hardwicke v. American Boychoir Sch., 188 N.J. at 91-93; J.H. v. Mercer County Youth Detention Ctr., 396 N.J. Super. 1, 10-12 (App. Div. 2007). However, under the act as currently written, this “in loco parentis” liability (meaning in place of a parent, Black’s Law Dictionary 787 (6th ed. 1990)) is limited, in that the organization’s setting in which the abuse knowingly occurred must also be deemed to be a “household.” On this point, courts have determined a private, full-time boarding school and a county’s full-time youth detention center to each be a “household” establishing liability, but determined that a public school is not a “household” based on the school’s more limited, temporary custody and control of children only during school hours. See American Boychoir Sch., 188 N.J. at 93-94 (discussing private boarding school); J.H. v. Mercer County Youth Detention Ctr., at 14-15 (discussing full-time detention center); D.M. v. River Dell Regional High Sch., 373 N.J. Super. 639, 649 (App. Div. 2004) (discussing public school). The “household” limitation is being deleted by the bill, so that “passive” abuser liability can apply to any person, or private or public entity who takes custody and control of children even on a limited, temporary basis, so long as this custody and control is

sufficient to establish the person or entity as being “in loco parentis.”

Both an “active” and “passive” abuser are subject to a knowing (willful) standard of liability, and therefore this section does not create any liability based on merely negligent acts resulting in abuse. Also of note, a cause of action under this section based on the expanded liability against a “passive” abuser, removing the “household” setting as a requirement for liability, is not listed in section 2 or section 7 concerning the retroactive application of certain newly created forms of liability to lawsuits brought under the new, extended statute of limitations or during the two-year window available for otherwise time barred claims (see comments for those sections), and therefore will only apply prospectively.\*\*

4. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to read as follows:

1. a. As used in this act:

(1) "**Sexual abuse**" means an act of sexual contact or sexual penetration **between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis [within the household] who knowingly permits or acquiesces** in sexual abuse by any other person **also commits sexual abuse**, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

(2) "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of sexually arousing or sexually gratifying the actor. Sexual contact of the adult with himself must be in view of the victim whom the adult knows to be present.

(3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction.

(4) "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

(5) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.

b. In any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be [brought within two years after reasonable discovery] subject to the statute of limitations set



forth in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. [Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 403 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.] (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

d. (1) Evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of a jury except as provided in this subsection. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

(2) In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(3) Evidence of the victim's previous sexual conduct shall not be considered relevant unless it is material to proving that the source of semen, pregnancy or disease is a person other than the defendant. For the purposes of this subsection, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangement and life style.

e. (1) The court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a victim on closed circuit television at the trial, out of the view of the jury, defendant,

P

R

O

P

O

S

E

D

or spectators upon making findings as provided in paragraph (2) of this subsection.

(2) An order under this section may be made only if the court finds that the victim is 16 years of age or younger and that there is a substantial likelihood that the victim would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the victim will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

(3) A motion seeking closed circuit testimony under paragraph (1) of this subsection may be filed by:

- (a) The victim or the victim's attorney, parent or legal guardian;
- (b) The defendant or the defendant's counsel; or
- (c) The trial judge on the judge's own motion.

(4) The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

(5) If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

f. (1) The name, address, and identity of a victim or a defendant shall not appear on the complaint or any other public record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their place initials or a fictitious name shall appear.

(2) Any report, statement, photograph, court document, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public.

(3) The information described in this subsection shall remain confidential and unavailable to the public unless the victim consents to the disclosure or if the court, after a hearing, determines that good cause exists for the disclosure. The hearing shall be held after notice has been made to the victim and to the defendant and the defendant's counsel.

(4) Nothing contained herein shall prohibit the court from imposing further restrictions with regard to the disclosure of the name, address, and identity of the victim when it deems it necessary to prevent trauma or stigma to the victim.

g. In accordance with R.5:3-2 of the Rules Governing the Courts of the State of New Jersey, the court may, on its own or a party's motion, direct that any proceeding or portion of a proceeding involving a victim sixteen years of age or younger be conducted in camera.

P

R

O

P

O

S

E

D

h. A plaintiff who prevails in a civil action pursuant to this act shall be awarded damages in the amount of \$10,000, plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages shall consist of compensatory and punitive damages and costs of suit, including reasonable attorney's fees. Compensatory damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.  
(cf: P.L.2004, c.130, s.10)

**\*\*Section 5 – child and adult victims - amends the Charitable Immunity Act, N.J.S.A. 2A:53A-7, to add language to subsection c. of this section, indicating that non-profit organizations are expressly liable for willful, wanton or grossly negligent acts. This codifies what is already understood in case law since August 8, 2006 - that organizational charitable immunity only applies to protect organizations from lawsuits claiming injury based on merely negligent acts, not more aggravated forms of wrongful conduct, such as willful, wanton or grossly negligent acts. See Hardwicke v. American Boychoir Sch., 188 N.J. at 96-97 (2006). The added language may establish retroactive liability for lawsuits filed under the new, extended statute of limitations periods concerning abusive acts that occurred prior to August 8, 2006, as detailed in the comments provided for section 2 of the bill. \*\***

5. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to read as follows:

1. a. No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.

Nothing in this subsection shall be deemed to grant immunity to any health care provider, in the practice of his profession, who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes.

P  
R  
O  
P  
O  
S  
E  
D

b. No nonprofit corporation, society or association organized exclusively for hospital purposes or its trustees, directors, officers or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association; but nothing herein contained shall be deemed to exempt the agent, employee or servant individually from their liability for any such negligence.

c. **Nothing in this section shall be deemed to grant immunity to:** (1) **any nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes, or its trustee, director, officer, employee, agent, servant or volunteer, causing damage by a **willful, wanton or grossly negligent act** of commission or omission, including sexual assault [and] , any other [crimes] crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); (2) any trustee, director, officer, employee, agent, servant or volunteer causing damage as the result of the negligent operation of a motor vehicle; or (3) an independent contractor of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes.**  
(cf: P.L.1959, c.90, s.1)

**\*\*Section 6 – child victim - amends an existing exception to the Charitable Immunity Act, N.J.S.A. 2A:53A-7, making nonprofit organizations (but not their trustees, directors, officers, employees, agents, servants, or volunteers) liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. See organizational liability provisions in N.J.S.A. 2A:53A-7.4. This liability for simple negligence, when first enacted by P.L.2005, c.264, and which took effect on January 5, 2006, applied prospectively only. See N.J.S.A. 2A:53A-7.5. However, as amended by the bill (by adding subsection b.), organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child will be applied retroactively for abuse occurring prior to the bill’s effective date, which also means retroactively to acts of abuse occurring prior to the effective**

P  
R  
O  
P  
O  
S  
E  
D

**date of P.L.2005, c.264 (January 5, 2006). Additionally, any such negligent hiring, supervision, or employee retention lawsuit will be subject, retroactively and prospectively, to the new, extended statute of limitations set forth in section 2 of the bill (suit must be filed by the 55th birthday, or within seven years of discovering the injury).\*\***

6. Section 2 of P.L.2005, c.264 (C.2A:53A-7.5) is amended to read as follows:

2. a. The provisions of this supplementary act, P.L.2005, c.264 (C.2A:53A-7.4 et seq.), shall apply prospectively and also shall be applicable to all civil actions for which the statute of limitations has not expired as of the effective date of this act, and subsequently, not expired as of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), including the [statutes of limitation] statute of limitations set forth in N.J.S.2A:14-2, section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), [section 1 of P.L.1992, c.109 (C.2A:61B-1)] or any other statute. These applicable actions include but are not limited to matters filed with a court that have not yet been dismissed or finally adjudicated as of the effective date of this act or P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Notwithstanding the provisions of subsection a. of this section, the provisions of P.L.2005, c.264 (C.2A:53A-7.4 et seq.) shall apply to all civil actions for an injury resulting from an act that occurred prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and these actions shall be subject to the statute of limitations set forth in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.2005, c.264, s.2)

**\*\*Section 7 – child and adult victims – creates a two-year window for lawsuits to be filed for acts of sexual abuse that occurred prior to the bill’s effective date which would otherwise be time barred, even after applying (retroactively) the new, extended statute of limitations period for child and adult victims of abuse detailed in section 2 (child victim - suit must be filed by the 55th birthday, or within seven years of discovering the injury; adult victim – suit must be filed within seven years of discovering the injury).\*\***

7. (New section) a. **Notwithstanding the statute of limitations provisions of N.J.S.2A:14-2, section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), or any other statute, an action at law for an injury resulting from the commission of sexual assault, any other**

crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1), **that occurred prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date.**

**\*\*Child and adult victims - potential retroactive liability involving lawsuits filed during the two-year window:**

**Child victim - the below bill text indicates retroactive application of the standard of liability set forth in the Charitable Immunity Act, N.J.S.A. 2A:53-7, as amended by the bill. This may create additional retroactive liability for non-profit organizations concerning willful, wanton or grossly negligent acts resulting in abuse that occurred prior to August 8, 2006, which is the date the New Jersey Supreme Court decided the case of Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), and found for the first time that the Charitable Immunity Act does not bar lawsuits against organizations based on such aggravated forms of wrongful conduct; it only bars suits based on “simple” or “standard” negligent conduct. Id. at 96-97. Prior to this decision, the Supreme Court and lower courts found that the act did shield organizations from liability for gross negligence and even intentional conduct committed by its trustees, directors, officers, employees, agents, servants, or volunteers. See Schultz v. Roman Catholic Archdiocese, 95 N.J. 530, 535-536 (1984); Monaghan v. Holy Trinity Church, 275 N.J. Super. 594 (1994). The bill amendment to the Charitable Immunity Act, to be applied retroactively, is shown in section 5, updating N.J.S.A 2A:53A-7, subsection c., to recognize the current interpretation and scope of organizational liability based on Hardwicke.**

**This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as they have always been liable for their own willful, wanton or grossly negligent acts, and this more-than-negligence liability standard remains the same following enactment (such persons were added to the Charitable Immunity Act by the enactment of P.L.1995, c.183, but only granted immunity for acts amounting to simple negligence).**

**The below bill text also indicates retroactive application of an exception to the Charitable Immunity Act, N.J.S.A. 2A:53A-7.4 et seq., making non-profit organizations (but not their trustees, directors, officers, employees, agents, servants, or volunteers) liable for acts of mere negligence in the hiring, supervision, or**

P  
R  
O  
P  
O  
S  
E  
D

retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. See organizational liability provisions in N.J.S.A. 2A:53A-7.4. This liability for simple negligence, when first enacted by P.L.2005, c.264, and which took effect on January 5, 2006, applied prospectively only. See N.J.S.A. 2A:53A-7.5. However, as amended by this bill in section 6 (adding N.J.S.A. 2A:53A-7.5, subsection b.), organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child will be applied retroactively for abuse occurring prior to the bill's effective date, which also means retroactively to acts of abuse occurring prior to the effective date of P.L.2005, c.264 (January 5, 2006).

Adult victim - the below bill text indicates retroactive application of the standard of liability set forth in the Charitable Immunity Act, N.J.S.A. 2A:53-7, as amended by the bill. This may create additional retroactive liability for non-profit organizations concerning willful, wanton or grossly negligent acts resulting in abuse that occurred prior to August 8, 2006, which is the date the New Jersey Supreme Court decided the case of Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), and found for the first time that the Charitable Immunity Act does not bar lawsuits against organizations based on such aggravated forms of wrongful conduct; it only bars suits based on "simple" or "standard" negligent conduct. Id. at 96-97. Prior to this decision, the Supreme Court and lower courts found that the act did shield organizations from liability for gross negligence and even intentional conduct committed by its trustees, directors, officers, employees, agents, servants, or volunteers. See Schultz v. Roman Catholic Archdiocese, 95 N.J. 530, 535-536 (1984); Monaghan v. Holy Trinity Church, 275 N.J. Super. 594 (1994). The bill amendment to the Charitable Immunity Act, to be applied retroactively, is shown in section 5, updating N.J.S.A 2A:53A-7, subsection c., to recognize the current interpretation and scope of organizational liability based on Hardwicke.

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as they have always been liable for their own willful, wanton or grossly negligent acts, and this more-than-negligence liability standard remains the same following enactment (such persons were added to the Charitable Immunity Act by the enactment of P.L.1995, c.183, but only granted immunity for acts amounting to simple negligence).

The below bill text also indicates retroactive application of an exception to the Charitable Immunity Act, N.J.S.A. 2A:53A-7.4 et seq., making non-profit organizations (but not their trustees,

P  
R  
O  
P  
O  
S  
E  
D

directors, officers, employees, agents, servants, or volunteers) liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. **See organizational liability provisions in N.J.S.A. 2A:53A-7.4. This does not apply to lawsuits involving adult victims, and therefore does not create any retroactive liability for such lawsuits filed during the two-year window concerning past acts of abuse.\*\***

b. To the extent applicable, **any action brought during the two-year period** pursuant to subsection a. of this section shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c. (C. ) (pending before the Legislature as this bill).

**Every action filed during the two-year window must proceed based on an individual basis, and cannot proceed as a class action, due to the particular circumstances unique to each person's abuse. Also, privately negotiated settlements of claims on a class basis would be void and unenforceable.**

c. (1) Every action at law for an injury that is commenced pursuant to this section shall **proceed on an individual basis, and not proceed on behalf of a class in a class action**, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor under the age of 18 or a person 18 years of age or older.

(2) **Any private, contractual arrangement** intending to settle claims for occurrences described in paragraph (1) of this subsection **on a class basis** is against public policy and **shall be void and unenforceable**.

8. (New section) The provisions of this amendatory and supplementary act, P.L. , c. (C. ) (pending before the Legislature as this bill), shall take effect on December 1, 2019. These provisions shall be inapplicable to any civil action governed solely by the statute of limitations of another jurisdiction.

---

Extends statute of limitations in civil actions for sexual abuse claims; expands categories of potential defendants in civil actions; creates two-year window for parties to bring previously time barred actions based on sexual abuse.