

AMENDMENTS TO SENATE BILL NO. 261

Sponsor: REPRESENTATIVE SCHEMEL

Printer's No. 631

1 Amend Bill, page 1, lines 1 through 8, by striking out all of
2 said lines and inserting

3 Amending Title 44 (Law and Justice) of the Pennsylvania
4 Consolidated Statutes, establishing the Truth and Restoration
5 Commission and the Truth and Restoration Fund and providing
6 for duties, participation, immunity and barred claims.

7 Amend Bill, page 1, lines 11 through 20; pages 2 through 8,
8 lines 1 through 30; by striking out all of said lines on said
9 pages and inserting

10 Section 1. Title 44 of the Pennsylvania Consolidated
11 Statutes is amended by adding a part to read:

12 PART V

13 JUSTICE

14 Chapter

15 101. Truth and Restoration

16 CHAPTER 101

17 TRUTH AND RESTORATION

18 Subchapter

19 A. Preliminary Provisions

20 B. Administration

21 C. Program

22 D. Miscellaneous Provisions

23 SUBCHAPTER A

24 PRELIMINARY PROVISIONS

25 Sec.

26 10101. Scope of chapter.

27 10102. Definitions.

28 § 10101. Scope of chapter.

29 This chapter relates to truth and restoration.

30 § 10102. Definitions.

31 The following words and phrases when used in this chapter

32 shall have the meanings given to them in this section unless the
33 context clearly indicates otherwise:

34 "Barred claim." A civil action arising from child sexual
35 abuse which is statutorily barred prior to the effective date of

1 this section.

2 "Child sexual abuse." The term shall have the same meaning
3 as "sexual abuse or exploitation" in 23 Pa.C.S. § 6303 (relating
4 to definitions).

5 "Commission." The Truth and Restoration Commission
6 established under section 10111(a) (relating to Truth and
7 Restoration Commission).

8 "Fund." The Truth and Restoration Fund established under
9 section 10115(a) (relating to Truth and Restoration Fund).

10 "Institution." As follows:

11 (1) Any of the following:

12 (i) A corporation, partnership, limited liability
13 company, business trust or other association.

14 (ii) A government entity.

15 (iii) An estate, trust or foundation.

16 (2) The term does not include a natural person.

17 "Participating institution." An institution which is
18 identified by the commission under section 10121(a)(2) (relating
19 to participating institutions).

20 "Victim." An individual:

21 (1) with a credible accusation of child sexual abuse;

22 (2) whose abusers were concealed by a participating
23 institution; and

24 (3) who may not bring a barred claim.

25 SUBCHAPTER B
26 ADMINISTRATION

27 Sec.

28 10111. Truth and Restoration Commission.

29 10112. Operation.

30 10113. Functions.

31 10114. Administrative Agency Law.

32 10115. Truth and Restoration Fund.

33 § 10111. Truth and Restoration Commission.

34 (a) Establishment.--The Truth and Restoration Commission is
35 established as an independent commission.

36 (b) Composition.--The commission shall consist of the
37 following members:

38 (1) Three members appointed by the Governor.

39 (2) Two members appointed by the Senate.

40 (3) Two members appointed by the House of

41 Representatives.

42 (c) Terms.--A commissioner shall serve a five-year term and
43 may serve for an additional consecutive five-year term at the
44 discretion of the appointing authority.

45 (d) Professions.--Membership of the commission shall include
46 at least one individual from each of the following professions:

47 (1) A licensed attorney.

48 (2) A certified public accountant.

49 (3) A licensed psychologist.

50 (e) Geographic diversity.--Each appointing authority may
51 consider the geographic diversity of the Commonwealth when

1 making appointments so as to compose a commission representative
2 of rural and urban areas as well as various regions of this
3 Commonwealth.

4 (f) Compensation.--A commissioner shall be uncompensated but
5 shall receive reimbursement for actual expenses and mileage.

6 (g) Vacancy.--If a vacancy on the commission occurs at the
7 end of a member's term, a member's resignation or the death of a
8 member, the appointing authority which appointed the departing
9 member shall appoint a new member to fill the vacancy.

10 § 10112. Operation.

11 (a) Meetings.--The commission shall be subject to 65 Pa.C.S.
12 Ch. 7 (relating to open meetings), except that 65 Pa.C.S. §
13 707(b) and (c) (relating to exceptions to open meetings) shall
14 not apply. The commission may hold an executive session under 65
15 Pa.C.S. § 708(a)(5) (relating to executive sessions) for
16 sensitive material.

17 (b) Quorum.--A quorum shall consist of four members.

18 (c) Staff.--The commission shall hire or contract for a
19 staff of investigators, attorneys, support staff and an
20 executive director as reasonably necessary to conduct the
21 efficient work of the commission.

22 (d) Chairperson.--The members shall annually select a
23 chairperson from among the members of the commission, who shall
24 chair meetings of the commission, establish the commission's
25 meeting agenda and ensure the efficient work of the commission.

26 § 10113. Functions.

27 (a) Primary objective.--The primary objective of the
28 commission shall be to reveal the:

29 (1) extent of child sexual abuse involving barred claims
30 which has occurred within each participating institution and
31 the degree to which the child sexual abuse involving barred
32 claims has been concealed within the participating
33 institution; and

34 (2) participating institution's compliance with current
35 laws relating to the protection of minors within the
36 participating institution.

37 (b) Secondary objective.--The secondary objective of the
38 commission shall be to establish a procedure by which a victim
39 shall be equitably compensated by the fund.

40 (c) Report.--

41 (1) The commission shall annually release a public
42 report listing each participating institution and the names
43 of identified alleged offenders, including child sexual
44 offenders and individuals who intentionally enabled the
45 concealment or reassignment of a child sexual offender, and
46 the specific offenses committed. Reports of credible abuse
47 may be released to the public if the victim authorizes the
48 release.

49 (2) The commission shall verify and acknowledge changes
50 in the operations within a participating institution which
51 are designed to comply with current laws and ensure the

1 safety of children. The commission may include its own
2 commentary as to the effectiveness of the changes.

3 (3) On or before January 31 of each year, the commission
4 shall report to the General Assembly on the commission's work
5 from the previous year and the commission's anticipated work
6 in the following year. The commission shall answer questions
7 from the General Assembly concerning the work of the
8 commission as necessary for the General Assembly to evaluate
9 the budget needs of the commission.

10 (d) Notice.--The commission shall transmit notice of
11 completion of the transfer under section 10115(g) (relating to
12 Truth and Restoration Fund) to the Legislative Reference Bureau
13 for publication in the Pennsylvania Bulletin.

14 (e) Implementation and administration.--The commission shall
15 implement and administer Subchapter C (relating to program).
16 This subsection includes rulemaking authority.

17 (f) Requirements prohibited.--The commission may not:

18 (1) require a participating institution to do anything
19 except as provided under this chapter, such as demanding a
20 change in a participating institution's structure or beliefs;
21 or

22 (2) issue a recommendation to do anything prohibited
23 under paragraph (1).

24 (g) Contribution.--The commission shall create formulas
25 under section 10115(d) and (e) to determine the contribution
26 from each participating institution to the fund and the amount
27 of compensation to victims from the fund.

28 § 10114. Administrative Agency Law.

29 The commission shall be subject to 2 Pa.C.S. Chs. 5 Subch. A
30 (relating to practice and procedure of Commonwealth agencies)
31 and 7 Subch. A (relating to judicial review of Commonwealth
32 agency action).

33 § 10115. Truth and Restoration Fund.

34 (a) Establishment.--The Truth and Restoration Fund is
35 established in the State Treasury.

36 (b) Sources.--Sources of the fund shall be:

37 (1) For the first year, equal contributions transferred
38 from the budgets of the General Assembly, judiciary and
39 Attorney General. Amounts transferred under this paragraph
40 are for the purposes of administration only and may not be
41 used to compensate victims under section 10123 (relating to
42 compensation of victims).

43 (2) Beginning in the second year and each year
44 thereafter, appropriations, not to exceed 10% of the amount
45 of the money in the fund, until the fund has adequate money
46 to fund the work of the commission. Amounts appropriated
47 under this paragraph are for the purposes of administration
48 only and may not be used to compensate victims under section
49 10123.

50 (3) Contributions under this subchapter.

51 (4) Return on money in the fund.

1 (c) Purpose.--Money in the fund shall be used for:
2 (1) compensating victims; and
3 (2) administration as provided under subsection (b)(1)
4 and (2).
5 (d) Formula for contribution from each participating
6 institution.--
7 (1) The commission shall create a formula which shall be
8 used to determine the contribution required from each
9 participating institution.
10 (2) The formula shall do all of the following:
11 (i) Be uniformly applied.
12 (ii) Take into consideration the extent of the abuse
13 which the participating institution concealed, the
14 duration of the concealment and the nature of the
15 instances of abuse.
16 (iii) Take into consideration the financial
17 condition of the participating institution.
18 (3) The formula should do all of the following:
19 (i) Account for the degree to which a participating
20 institution is related to the abuse and concealment, such
21 as the case of a merged entity if the surviving entity
22 represents more than just the entity where the abuse
23 occurred.
24 (ii) Be designed primarily as a means of
25 compensation for victims, except that the formula shall
26 also serve a lesser punitive function. Notwithstanding
27 the punitive function, the formula should not be designed
28 so as to force a participating institution into
29 bankruptcy or to unduly impede a participating
30 institution's religious, educational or charitable
31 endeavors.
32 (e) Formula for amount of compensation to victims.--
33 (1) The commission shall create a formula which shall be
34 used to determine the amount of compensation paid to each
35 victim.
36 (2) The formula shall consider the nature and extent of
37 the abuse suffered, as confirmed by the commission, any prior
38 award or settlement which the victim may have already
39 received on the same claim, the total number of victims
40 claiming compensation and the balance of the available money
41 within the fund.
42 (3) When calculating the compensation payments to
43 victims, the commission should anticipate the near depletion
44 of the fund.
45 (f) Expenses.--Expenses for the operation of the commission
46 shall be paid from the fund.
47 (g) Balance.--Any balance remaining in the fund after all
48 compensation payments are made and expenses of the commission
49 are finalized shall be transferred to the Department of Human
50 Services to fund child protective services under 23 Pa.C.S. Ch.
51 63 (relating to child protective services).

1 (h) Waste.--The commission should prevent the waste of the
2 fund by mismanagement and excessive expenses.

3 SUBCHAPTER C

4 PROGRAM

5 Sec.

6 10121. Participating institutions.

7 10122. Investigations.

8 10123. Compensation of victims.

9 10124. Barred claims.

10 10125. Immunity.

11 § 10121. Participating institutions.

12 (a) Participation.--

13 (1) An institution which reasonably believes that the
14 institution has employed, managed, directed, certified or
15 aided an individual which may have committed an act of child
16 sexual abuse may participate in the work of the commission.

17 (2) To become a participating institution, the governing
18 body of the institution must send a written notice to the
19 commission so that the commission receives the notice before
20 January 1, 2020. Upon receipt of the written notice, the
21 commission shall submit a notice identifying the institution
22 as a participating institution to the Legislative Reference
23 Bureau for publication in the Pennsylvania Bulletin.

24 (b) Continuation.--

25 (1) To continue to be considered a participating
26 institution, a participating institution must comply with
27 each reasonable request, subpoena and other demand for
28 information or other participation as reasonably required by
29 the commission.

30 (2) If a participating institution does not comply under
31 paragraph (1), the commission shall give the participating
32 institution written notice detailing the noncompliance.

33 (3) If noncompliance is not remedied within three months
34 of receipt of the notice under paragraph (2), the commission
35 may eliminate the institution as a participating institution.
36 The commission shall submit a notice eliminating the
37 institution as a participating institution to the Legislative
38 Reference Bureau for publication in the Pennsylvania
39 Bulletin. The commission may not engage in punitive or
40 disciplinary conduct other than the elimination of the
41 institution as a participating institution or, for
42 participating institutions, the assessment of a contribution
43 to the fund.

44 (c) Appeal.--A participating institution may appeal each
45 decision or demand of the commission to Commonwealth Court,
46 which shall be the final arbiter of the matter.

47 (d) Withdrawal.--After December 31, 2019, a participating
48 institution may not withdraw from participation without the
49 written approval of the commission. If a participating
50 institution has withdrawn, the institution may participate once
51 again at any time prior to January 1, 2020.

1 (e) Contributions.--Contributions to the fund shall be
2 mandatory for participation. The commission may enforce payment
3 as a judgment lien against the participating institution. The
4 commission shall allow a participating institution to make
5 contributions over a five-year period, with interest at the
6 legal rate. The commission may adjust a contribution amount
7 based on reasonable factors, such as a significant and
8 unanticipated decline in the financial resources of a
9 participating institution.

10 § 10122. Investigations.

11 (a) Degree of culpability.--The commission shall evaluate
12 the degree of culpability for each participating institution for
13 concealing child sexual abuse. The commission shall consider the
14 extent of the abuse, the number and nature of the positions of
15 individuals within the participating institution who knew of the
16 abuse and the length of time over which the abuse and
17 concealment occurred.

18 (b) Testimony.--

19 (1) The commission shall, under oath, hear the testimony
20 of victims, representatives and staff from a participating
21 institution, accused individuals and other individuals who
22 may have evidence pertinent to the work of the commission.

23 (2) The commission may compel testimony and other
24 evidence through subpoena and may administer an oath to an
25 individual who offers the evidence. Commission staff may
26 follow leads and solicit unsworn testimony as necessary to
27 aid the commission in the commission's investigation and
28 analysis.

29 (c) Jurisdiction.--The commission may petition Commonwealth
30 Court to enforce a subpoena or oath under this chapter.

31 (d) Reporting of crime.--The commission or commission staff
32 shall report to law enforcement any information obtained through
33 the commission's work which may be evidence of a reportable
34 crime.

35 (e) Authority.--The commission may not obtain a search
36 warrant. Commission staff may inspect files and other evidence
37 in the possession of a participating institution with the
38 cooperation of the participating institution.

39 (f) Favoritism.--The commission shall critically evaluate
40 accusations and defenses so that no party is favored.

41 § 10123. Compensation of victims.

42 The following shall apply:

43 (1) The commission shall receive requests for
44 compensation from victims and shall make reasonable efforts
45 to contact possible victims who may be identified through the
46 work of the commission.

47 (2) To qualify for compensation, a victim must request
48 compensation through the commission and be alive at the time
49 that compensation payments are paid from the fund.

50 (3) A request for compensation must be made to the
51 commission no later than December 31, 2023.

1 (4) Payments for compensation shall be made after the
2 expiration of the five-year contribution period under section
3 10121(e) (relating to participating institutions).

4 (5) To receive a payment, a victim must sign a release
5 of all claims arising out of the incident for which the
6 victim receives compensation.

7 § 10124. Barred claims.

8 (a) Change.--A participating institution shall not be
9 subject to a barred claim as a result of a statutory change
10 relating to child sexual abuse, including a civil time period
11 which may be created by a constitutional amendment or otherwise.

12 (b) Tolling.--A tolling of a statute of limitations or a
13 statute of repose based on a legal theory shall not apply to a
14 barred claim against a participating institution.

15 (c) Applicability.--A statute of limitations or a statute of
16 repose for a barred claim in effect on the effective date of
17 this section shall continue to apply to participating
18 institutions.

19 § 10125. Immunity.

20 (a) Sovereign immunity.--An institution as defined in
21 paragraph (1)(ii) of the definition of "institution" in section
22 10102 (relating to definitions) is entitled to sovereign
23 immunity under 42 Pa.C.S. Ch. 85 Subchs. B (relating to actions
24 against Commonwealth parties) and C (relating to actions against
25 local parties).

26 (b) Participating institutions.--Each individual and
27 participating institution providing evidence, truthful to the
28 best knowledge of the testifier, to the commission shall be
29 immune from the civil claim of a party who may claim to be
30 harmed by the testimony.

31 (c) Commission.--The commission, members of the commission
32 and commission staff shall be immune from the civil claim of a
33 party who may claim to be harmed if the commission, members of
34 the commission and commission staff are acting in good faith and
35 within the mandate of the commission.

36 SUBCHAPTER D

37 MISCELLANEOUS PROVISIONS

38 Sec.

39 10131. Expiration.

40 § 10131. Expiration.

41 This chapter shall expire on the date of the publication of
42 the notice under section 10113(d) (relating to functions).

43 Section 2. This act shall take effect immediately.