

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO LIMITATION OF ACTIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 657, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4           "§657-     Civil action arising from sexual offenses;  
5 application; certificate of merit. (a) Notwithstanding any law  
6 to the contrary, an action for recovery of damages based on  
7 physical, psychological, or other injury or condition suffered  
8 by a minor arising from the sexual abuse of the minor by any  
9 person may be commenced against the person who committed the act  
10 of sexual abuse; provided that an action against a person who  
11 was a minor at the time the person committed the act of sexual  
12 abuse may be commenced when that person reaches the age of  
13 majority. The time for commencement of the action shall be  
14 within:

15           (1) Eight years of the date the plaintiff or the person  
16 who committed the act of sexual abuse attains the age  
17 of majority, whichever occurs later; or



1       (2) Three years of the date the plaintiff discovers or  
2       reasonably should have discovered that psychological  
3       injury or illness occurring after the age of majority  
4       was caused by the sexual abuse.

5       A civil cause of action for sexual abuse of a minor shall  
6       be based upon sexual acts that constituted or would have  
7       constituted a criminal offense under part V or VI of chapter  
8       707.

9       (b) For a period of two years following the effective date  
10      of this Act, a victim of child sexual abuse that occurred in  
11      this State who have been barred from filing a claim against the  
12      victim's abuser due to the expiration of the applicable civil  
13      statute of limitations that was in effect prior to the effective  
14      date of this Act may file a claim in the circuit courts of this  
15      State against the person who committed the act of sexual abuse.

16      A claim may also be brought under this subsection against a  
17      legal entity, except the State, if:

18      (1) The person committing the act of sexual abuse against  
19      the minor was employed by an institution, agency,  
20      firm, business, corporation, or other public or  
21      private legal entity that owed a duty of care to the  
22      victim; or



1           (2) The person who committed the act of sexual abuse and  
2           the minor were engaged in an activity over which the  
3           legal entity had a degree of responsibility or  
4           control.

5           Damages against the legal entity shall be awarded under  
6           this subsection only if there is a finding of gross negligence  
7           on the part of the legal entity.

8           (c) A defendant against whom a civil action is commenced  
9           may recover attorney's fees if the court determines that a false  
10          accusation was made with no basis in fact and with malicious  
11          intent. A verdict in favor of the defendant shall not be the  
12          sole basis for a determination that an accusation had no basis  
13          in fact and was made with malicious intent. The court shall  
14          make an independent finding of an improper motive prior to  
15          awarding attorney's fees under this section.

16          (d) In any civil action filed pursuant to subsection (a)  
17          or (b), a certificate of merit shall be filed by the attorney  
18          for the plaintiff. The certificate of merit shall include a  
19          notarized statement by a:

- 20           (1) Psychologist licensed pursuant to chapter 465;
- 21           (2) Marriage and family therapist licensed pursuant to
- 22           chapter 451J;



1        (3) Mental health counselor licensed pursuant to chapter  
2                    453D; or

3        (4) Clinical social worker licensed pursuant to chapter  
4                    467E;

5        who is knowledgeable in the relevant facts and issues involved  
6        in the action and who is not a party to the action.

7            The notarized statement included in the certificate of  
8        merit shall set forth in reasonable detail the facts and  
9        opinions relied upon to conclude that there is a reasonable  
10       basis to believe that the plaintiff was subject to one or more  
11       acts that would constitute an offense listed in subsection (a)."

12       SECTION 2. New statutory material is underscored.

13       SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

*[Signature]*

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# S.B. NO. 2588

**Report Title:**

Limitation of Actions; Sexual Offenses Against Minors

**Description:**

Extends the statute of limitations for civil actions brought by persons subjected to sexual offenses as a minor against the person who committed the act. Revives for a two-year period certain actions for which the statute of limitations had previously lapsed. Authorizes a court to award attorney's fees to a defendant when a accusation of sexual abuse was made with no basis in fact and with malicious intent.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

