

JAN 25 2012

A BILL FOR AN ACT

RELATING TO LIMITATION OF ACTIONS.

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

1 SECTION 1. The legislature finds that sexual offenses
2 committed against children are among our society's most heinous
3 and deeply disturbing crimes. As a minor, the victim may
4 neither fully understand the abuse that the individual is
5 subjected to nor possess the ability to profess it to someone.
6 The child may also wrongly feel culpable for the abuse,
7 especially if the child did not fight against it or tell anyone
8 else. Despite the complications described above and the
9 incredibly traumatic nature of the offense, under existing law
10 (section 657-1, Hawaii Revised Statutes) after reaching eighteen
11 years of age, a victim of sexual abuse has a maximum of six
12 years within which to take civil action against the offender.
13 If the victim is not prepared to take action within that period,
14 then the perpetrator of the felony, whom often leaves life-long
15 scars on multiple victims, is not required to pay civil
16 penalties, even if the perpetrator may have been sentenced to
17 criminal penalties. The legislature also finds that victims of
18 these offenses deserve their day in court and that this Act will



1 allow them to seek the justice that they have been denied due to
2 the expiration of an arbitrary time limit.

3 The legislature understands concerns that this Act makes an
4 employer, including the State, liable for the criminal actions
5 of its employees and that the lack of a statute of limitations
6 and the problems therein regarding the availability of evidence
7 may prevent true justice from being achieved. Yet, employers
8 are only considered liable if it is reasonably proven that gross
9 negligence occurred and not simply because the defendant was or
10 is an employee. Furthermore, the legislature finds that this
11 Act does not change the judiciary process regarding evidence;
12 the burden of proof still lies with the plaintiff and spurious
13 claims will be filtered out through the latter requirement as
14 well as through the certificate of merit that is required of
15 plaintiffs in this Act.

16 The purpose of this Act is to allow for the recovery of
17 damages through civil actions for sexual abuse committed against
18 a minor, to eliminate the statute of limitations for civil
19 actions brought by persons subjected to sexual offenses as a
20 minor, and to allow for a cause of action to be brought against
21 a legal entity under certain circumstances.



1 SECTION 2. 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 an
9 adult may be commenced against the natural person who committed
10 the act of sexual abuse at any time following the commission of
11 the act or acts that constituted the sexual abuse. A civil
12 cause of action for sexual abuse of a minor shall be based upon
13 sexual acts that constituted or would have constituted a
14 criminal offense under part V or VI of chapter 707.
15 Notwithstanding any law to the contrary, including chapter 662,
16 a claim may also be commenced at any time following the
17 commission of the act or acts that constituted the sexual abuse
18 under this subsection against a legal entity, including the
19 State, if the person committing the act of sexual abuse against
20 the minor was employed by an institution, agency, firm,
21 business, corporation, or other public or private legal entity
22 that owed a duty of care to the victim, or the accused and the



1 minor were engaged in an activity over which the legal entity
2 had some degree of responsibility or control. Damages against
3 the legal entity shall be awarded under this subsection only if
4 there is a finding of gross negligence on the part of the legal
5 entity. Nothing in this subsection shall be deemed to affect a
6 cause of action otherwise provided by statute for recovery of
7 damages for the sexual abuse of a minor if the liability is
8 based on simple negligence.

9 (b) For a period of two years following the effective date
10 of this Act, victims of child sexual abuse that occurred in this
11 State who have been barred from filing suit against their
12 abusers by virtue of the expiration of the former civil statute
13 of limitations shall be permitted to file those claims in the
14 circuit courts of this State against the natural person who
15 committed the act of sexual abuse. A claim may also be brought
16 under this subsection against a legal entity, including the
17 State, if the person committing the act of sexual abuse against
18 the minor was employed by an institution, agency, firm,
19 business, corporation, or other public or private legal entity
20 that owed a duty of care to the victim, or the accused and the
21 minor were engaged in an activity over which the legal entity
22 had some degree of responsibility or control. Damages against



1 the legal entity shall be awarded under this subsection only if
2 there is a finding of gross negligence on the part of the legal
3 entity.

4 (c) A person against whom a suit is filed may recover
5 attorney's fees if the court determines that a false accusation
6 was made with no basis in fact and with malicious intent. A
7 verdict in favor of the accused shall not be the sole basis for
8 a determination that an accusation was false. The court must
9 make an independent finding of an improper motive to award
10 attorney's fees under this section.

11 (d) In any civil action filed pursuant to subsection (a)
12 or (b), a certificate of merit shall be filed by the attorney
13 for each plaintiff at the time the action is commenced. The
14 certificate of merit shall contain a notarized statement by a
15 psychologist who is licensed pursuant to chapter 465, a marriage
16 and family therapist who is licensed pursuant to chapter 451J, a
17 mental health counselor who is licensed pursuant to chapter
18 453D, a clinical social worker who is licensed pursuant to
19 chapter 467E, or a registered nurse who is licensed pursuant to
20 chapter 457, and who is knowledgeable in the relevant facts and
21 issues involved in the particular action. The certificate of
22 merit shall state in reasonable detail the facts and opinions



1 that the licensed psychologist, marriage and family therapist,
 2 mental health counselor, clinical social worker, or registered
 3 nurse has relied on to conclude that there is a reasonable basis
 4 to believe that the plaintiff has been subject to one or more
 5 acts that would constitute an offense listed in subsection (a).
 6 The licensed psychologist, marriage and family therapist, mental
 7 health counselor, clinical social worker, or registered nurse
 8 providing the statement may not be a party to the litigation."

9 SECTION 3. In printing this Act, the revisor of statutes
 10 shall insert the effective date of this Act in the appropriate
 11 places in section 2 of this Act.

12 SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

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S.B. NO. 2961

Report Title:

Limitation of Actions; Sexual Abuse Against Minors

Description:

Eliminates the statute of limitations for civil actions brought by persons subjected to sexual abuse as a minor against the natural person who committed the act or acts constituting the sexual abuse and allows the plaintiff to seek recovery of damages therein. Authorizes suits against a legal entity in certain circumstances. 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 under certain circumstances. Requires a certificate of merit for all plaintiffs.

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

