
A BILL FOR AN ACT

RELATING TO CIVIL REMEDIES.

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

1 SECTION 1. Act 68, Session Laws of Hawaii 2012, enacted on
2 April 24, 2012, implemented several positive changes for the
3 minor aged victims of sexual abuse. The Act extended the time
4 frame during which victims may commence civil actions against
5 abusers. Further, at any time before April 25, 2014, a victim
6 may pursue a claim against an abuser for actions committed many
7 years ago, even if the time frame imposed by an applicable
8 statute of limitations expired prior to April 24, 2012.

9 Moreover, under certain circumstances, victims may pursue a
10 claim against a grossly negligent private entity if the entity
11 had the opportunity to prevent or stop the abuse and failed to
12 do so.

13 When legislators discussed the merits of the Act before its
14 enactment, however, several members of the house of
15 representatives expressed concern that the bill expressly
16 exempted the State and counties from the retroactive extensions
17 of the statutes of limitations.



1 A more extensive review of the Hawaii Revised Statutes
2 reveals that current law, while well-intentioned, grants the
3 State too much immunity from such actions. Further, both the
4 State and counties have too much protection through current time
5 limitations on civil actions. The laws have the unintended
6 effect of creating different classes of minor aged victims of
7 sexual abuse: one class has more opportunities to pursue
8 justice, while the other is deprived of such opportunities.

9 The purpose of this Act is to increase the equity between
10 governmental and nongovernmental entities regarding their
11 liability in situations in which they fail to prevent the sexual
12 abuse of children. This change in the law will have the effect
13 of ensuring that the voices of all persons who suffered sexual
14 abuse as minors will be equally heard.

15 SECTION 2. Section 657-1.8, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**[+]§657-1.8[+]** **Civil action arising from sexual offenses;**
18 **application; certificate of merit.** (a) Notwithstanding any law
19 to the contrary, no action for recovery of damages based on
20 physical, psychological, or other injury or condition suffered
21 by a minor arising from the sexual abuse of the minor by any



1 person shall be commenced against the person who committed the
2 act of sexual abuse more than:

3 (1) Eight years after the eighteenth birthday of the minor
4 or the person who committed the act of sexual abuse
5 attains the age of majority, whichever occurs later;
6 or

7 (2) Three years after the date the minor discovers or
8 reasonably should have discovered that psychological
9 injury or illness occurring after the age of minor's
10 eighteenth birthday was caused by the sexual abuse,
11 whichever comes later.

12 A civil cause of action for the sexual abuse of a minor
13 shall be based upon sexual acts that constituted or would have
14 constituted a criminal offense under part V or VI of chapter
15 707.

16 (b) ~~[For a period of two years after [April 24, 2012],]~~
17 Before April 25, 2014, a victim of child sexual abuse that
18 occurred in this State who had been barred from filing a claim
19 against the victim's abuser due to the expiration of the
20 applicable civil statute of limitations that was in effect
21 ~~[prior to [April 24, 2012],]~~ before April 24, 2012, may file a

1 claim in a circuit court of this State against the person who
2 committed the act of sexual abuse.

3 A claim may also be brought under this subsection against a
4 legal entity, except the State or its political subdivisions,
5 if:

6 (1) The person who committed the act of sexual abuse
7 against the victim was employed by an institution,
8 agency, firm, business, corporation, or other public
9 or private legal entity that owed a duty of care to
10 the victim; or

11 (2) The person who committed the act of sexual abuse and
12 the victim were engaged in an activity over which the
13 legal entity had a degree of responsibility or
14 control.

15 Damages against the legal entity shall be awarded under
16 this subsection only if there is a finding of gross negligence
17 on the part of the legal entity.

18 (c) Before April 25, 2014, a victim of child sexual abuse
19 that occurred in this State who had been barred from filing a
20 claim against a governmental entity:

21 (1) Due to the fact that the governmental entity was the
22 State, and due to the effect of any laws that granted



1 the State immunity from such a claim before the
2 effective date of Act , Session Laws of Hawaii 2013;

3 or

4 (2) Due to the fact that the governmental entity was the
5 State or one of its political subdivisions, and due to
6 the expiration of any applicable civil statutes of
7 limitations that were in effect before the effective
8 date of Act , Session Laws of Hawaii 2013;

9 may file a claim in a circuit court of this State against the
10 governmental entity; provided that the governmental entity's
11 actions or lack of action made it at least as liable as a legal
12 entity would be in a situation described in paragraph (1) or (2)
13 of subsection (b). Damages against the governmental entity
14 shall be awarded under this subsection only if there is a
15 finding of gross negligence on the part of the governmental
16 entity.

17 [~~(e)~~] (d) A defendant against whom a civil action is
18 commenced may recover attorney's fees if the court determines
19 that a false accusation was made with no basis in fact and with
20 malicious intent. A verdict in favor of the defendant shall not
21 be the sole basis for a determination that an accusation had no
22 basis in fact and was made with malicious intent. The court



1 shall make an independent finding of an improper motive prior to
2 awarding attorney's fees under this section.

3 ~~[(d)]~~ (e) In any civil action filed pursuant to subsection
4 (a), ~~[(e)]~~ (b), or (c), a certificate of merit shall be filed by
5 the attorney for the plaintiff, and shall be sealed and remain
6 confidential. The certificate of merit shall include a
7 notarized statement by a:

8 (1) Psychologist licensed pursuant to chapter 465;

9 (2) Marriage and family therapist licensed pursuant to
10 chapter 451J;

11 (3) Mental health counselor licensed pursuant to chapter
12 453D; or

13 (4) Clinical social worker licensed pursuant to chapter
14 467E;

15 who is knowledgeable in the relevant facts and issues involved
16 in the action, who is not a party to the action.

17 The notarized statement included in the certificate of
18 merit shall set forth in reasonable detail the facts and
19 opinions relied upon to conclude that there is a reasonable
20 basis to believe that the plaintiff was subject to one or more
21 acts that would result in an injury or condition specified in
22 subsection (a)."



1 SECTION 3. Section 657-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§657-13 **Infancy, insanity, imprisonment.** If any person
4 entitled to bring any action specified in this part [~~excepting~~
5 ~~actions against the sheriff, chief of police, or other~~
6 ~~officers~~] is, at the time the cause of action accrued, either:

7 (1) Within the age of eighteen years; or,

8 (2) Insane; or,

9 (3) Imprisoned on a criminal charge, or in execution under
10 the sentence of a criminal court for a term less than
11 the person's natural life;

12 such person shall be at liberty to bring such actions within the
13 respective times limited in this part, after the disability is
14 removed or at any time while the disability exists[-], provided
15 that this extension of time shall not apply to an action against
16 the sheriff, chief of police, or other officer unless the cause
17 of action is vicarious liability or any other type of secondary
18 liability for another individual's sexual assault or sexual
19 abuse of a minor."

20 SECTION 4. Section 662-2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§662-2 Waiver and liability of State.** (a) The State
2 hereby waives its immunity for liability for the torts of its
3 employees and shall be liable in the same manner and to the same
4 extent as a private individual under like circumstances, but
5 shall not be liable for interest prior to judgment or for
6 punitive damages.

7 (b) Notwithstanding subsection (a) or any other law to the
8 contrary, the State hereby waives its immunity for torts to the
9 extent that it shall be liable for damages, interest, and
10 attorney's fees and costs to the same extent that a
11 nongovernmental legal entity would have vicarious liability or
12 any other type of secondary liability for an individual's sexual
13 assault or sexual abuse of a minor."

14 SECTION 5. Section 662-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§662-4 Statute of limitations.** (a) A tort claim against
17 the State shall be forever barred unless action is begun within
18 two years after the claim accrues, except in cases described in
19 subsections (b) and (c).

20 (b) In the case of a medical tort claim, [~~when~~] the
21 limitation of action provisions set forth in section 657-7.3
22 shall apply.



1 (c) In the case of a claim against the State for vicarious
2 liability or any other type of secondary liability for an
3 individual's sexual assault or sexual abuse of the claimant
4 while the claimant was under the age of eighteen years at the
5 time the cause of action accrued, the claimant shall be at
6 liberty to bring such action no later than two years after the
7 latter of:

- 8 (1) The claimant's eighteen birthday; or
- 9 (2) The date the claimant discovers or reasonably should
10 have discovered that his or her psychological injury
11 or illness was caused by the sexual assault or sexual
12 abuse."

13 SECTION 6. Section 662-15, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§662-15 Exceptions.** This chapter shall not apply to:

- 16 (1) Any claim based upon an act or omission of an employee
17 of the State, exercising due care, in the execution of
18 a statute or regulation, whether or not such statute
19 or regulation is valid, or based upon the exercise or
20 performance or the failure to exercise or perform a
21 discretionary function or duty on the part of a state



- 1 officer or employee, whether or not the discretion
2 involved has been abused;
- 3 (2) Any claim arising in respect of the assessment or
4 collection of any tax, or the detention of any goods
5 or merchandise by law enforcement officers;
- 6 (3) Any claim for which a remedy is provided elsewhere in
7 the laws of the State;
- 8 (4) Any claim arising out of [~~assault, battery,~~] false
9 imprisonment, false arrest, malicious prosecution,
10 abuse of process, libel, slander, misrepresentation,
11 deceit, or interference with contract rights;
- 12 (5) Any claim arising out of the combatant activities of
13 the Hawaii national guard and Hawaii state defense
14 force during time of war, or during the times the
15 Hawaii national guard is engaged in federal service
16 pursuant to section 316, 502, 503, 504, 505, or 709 of
17 Title 32 of the United States Code;
- 18 (6) Any claim arising in a foreign country; [~~or~~]
- 19 (7) Any claim arising out of the acts or omissions of any
20 boating enforcement officer~~[-]~~; or
- 21 (8) Any claim arising out of assault or battery, except
22 that this restriction shall not be construed to



1 prohibit a claim against the State for vicarious
 2 liability or any other type of secondary liability for
 3 an individual's sexual assault or sexual abuse of a
 4 minor."

5 SECTION 7. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

7 SECTION 8. If any provision of this Act, or the
 8 application thereof to any person or circumstance, is held
 9 invalid, the invalidity does not affect other provisions or
 10 applications of the Act that can be given effect without the
 11 invalid provision or application, and to this end the provisions
 12 of this Act are severable.

13 SECTION 9. This Act shall take effect upon its approval.

14

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Report Title:

Limitations on Actions; Immunity; Sexual Abuse of Minors

Description:

Allows certain civil actions, interest, and damages against the State and counties in relation to sexual offenses against minors. Allows, before April 25, 2014, certain actions for which the statute of limitations may have lapsed for cases against the State and its political subdivisions.

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

