

HB0279S02 compared with HB0279S01

~~deleted text~~ shows text that was in HB0279S01 but was deleted in HB0279S02.

inserted text shows text that was not in HB0279S01 but was inserted into HB0279S02.

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Representative Ken Ivory proposes the following substitute bill:

STATUTE OF LIMITATIONS REFORM AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides a window for the revival of civil claims against perpetrators of sexual abuse of a child.

Highlighted Provisions:

This bill:

- ▶ allows child sexual abuse victims to bring a civil action against an alleged perpetrator even though the statute of limitations has run;
- ▶ provides a window ~~to~~of 35 years after attaining 18 years of age ~~53 for such actions~~to commence an action; and
- ▶ specifies limitations.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-2-308, as last amended by Laws of Utah 2015, Chapter 82

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78B-2-308 is amended to read:

78B-2-308. **Legislative findings -- Civil actions for sexual abuse of a child --**

Window for revival of time barred claims.

(1) The Legislature finds that:

(a) child sexual abuse is a crime that hurts the most vulnerable in our society and destroys lives;

(b) research over the last 30 years has shown that it takes decades for children and adults to pull their lives back together and find the strength to face what happened to them;

(c) often the abuse is compounded by the fact that the perpetrator is a member of the victim's family and when such abuse comes out, the victim is further stymied by the family's wish to avoid public embarrassment;

(d) even when the abuse is not committed by a family member, the perpetrator is rarely a stranger and, if in a position of authority, often brings pressure to bear on the victim to insure silence;

(e) in 1992, when the Legislature enacted the statute of limitations requiring victims to sue within four years of majority, society did not understand the long-lasting effects of abuse on the victim and that it takes decades for the healing necessary for a victim to seek redress;

(f) the Legislature, as the policy-maker for the state, may take into consideration advances in medical science and understanding in revisiting policies and laws shown to be harmful to the citizens of this state rather than beneficial; and

(g) the Legislature has the authority to change old laws in the face of new information, and set new policies within the limits of due process, fairness, and justice.

~~(1)~~ (2) As used in this section:

(a) "Child" means a person under 18 years of age.

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(b) "Discovery" means when a person knows or reasonably should know that the injury or illness was caused by the intentional or negligent sexual abuse.

(c) "Injury or illness" means either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

(d) "Molestation" means ~~[touching]~~ that a person, with the intent to arouse or gratify the sexual desire of any person:

(i) touches the anus, buttocks, or genitalia of any child, or the breast of a female child ~~[younger than 14 years of age, or otherwise taking];~~

(ii) takes indecent liberties with a child~~[-];~~ or ~~[causing]~~

(iii) causes a child to take indecent liberties with the perpetrator or another~~[-with the intent to arouse or gratify the sexual desire of any]~~ person.

(e) "Negligently" means a failure to act to prevent the child sexual abuse from further occurring or to report the child sexual abuse to law enforcement when the adult who could act knows or reasonably should know of the child sexual abuse and is the victim's parent, stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister, uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any person cohabiting in the child's home.

~~[(g)]~~ (f) "Perpetrator" means an individual who has committed an act of sexual abuse.

~~[(h)]~~ (g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or molestation by an adult directed towards a child.

~~[(f)]~~ (h) "[Person] Victim" means an individual who was intentionally or negligently sexually abused. It does not include individuals whose claims are derived through another individual who was sexually abused.

~~[(2)]~~ 1(3) (a) A [person] victim may file a civil action against a perpetrator for intentional or negligent sexual abuse suffered as a child at any time.

(b) A [person] victim may file a civil action against a non-perpetrator for intentional or negligent sexual abuse suffered as a child:

(i) within four years after the person attains the age of 18 years; or

(ii) if a [person] victim discovers sexual abuse only after attaining the age of 18 years, that person may bring a civil action for such sexual abuse within four years after discovery of

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the sexual abuse, whichever period expires later.

~~[(3)]~~(4) The victim need not establish which act in a series of continuing sexual abuse incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse.

~~[(4)]~~(5) The knowledge of a custodial parent or guardian may not be imputed to a person under the age of 18 years.

~~[(5)]~~(6) A civil action may be brought only against a living person who:

(a) intentionally perpetrated the sexual abuse;

(b) ~~{was}~~would be criminally responsible for the sexual abuse in accordance with

Section 76-2-202; or

(c) negligently permitted the sexual abuse to occur.

~~[(6)]~~(7) A civil action against a person listed in Subsection (~~[(5)]~~(6)(a) or (b) for sexual abuse that was time barred as of July 1, 2016, may be brought within 35 years of the victim's 18th birthday, or within three years of the effective date of this Subsection (~~[(6)]~~(7), whichever is longer.

~~[(7)]~~(8) A civil action may not be brought as provided in Subsection (~~[(6)]~~(7) for:

(a) any claim that has been litigated to finality on the merits in a court of competent jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the expiration of the statute of limitations does not constitute a claim that has been litigated to finality on the merits; and

(b) any claim where a written settlement agreement was entered into between a ~~{plaintiff}~~victim and a defendant or perpetrator, unless the settlement agreement was the result of fraud, duress, or unconscionability. ~~{}~~ There is a rebuttable presumption that a settlement agreement signed by the ~~{plaintiff}~~victim when the ~~{plaintiff}~~victim was not represented by an attorney admitted to practice law in this state at the time of the settlement was the result of fraud, duress, or unconscionability.