

1 **STATUTE OF LIMITATIONS REFORM AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ allows child sexual abuse victims to bring a civil action against an alleged
- 14 perpetrator even though the statute of limitations has run;
- 15 ▶ provides a window to age 53 for such actions; and
- 16 ▶ specifies limitations.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **78B-2-308**, as last amended by Laws of Utah 2015, Chapter 82

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

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

27 **78B-2-308. \hat{H} → Legislative findings -- $\leftarrow \hat{H}$ Civil actions for sexual abuse of a child --**

27a **Window for revival of time**



28 **barred claims.**

28a **Ĥ→ (1) The Legislature finds that:**

28b **(a) child sexual abuse is a crime that hurts the most vulnerable in our society and**
 28c **destroys lives;**

28d **(b) research over the last 30 years has shown that it takes decades for children and**
 28e **adults to pull their lives back together and find the strength to face what happened to them;**

28f **(c) often the abuse is compounded by the fact that the perpetrator is a member of the**
 28g **victim's family and when such abuse comes out, the victim is further stymied by the family's**
 28h **wish to avoid the "ugliness";**

28i **(d) even when the abuse is not committed by a family member, the perpetrator is rarely**
 28j **a stranger and, if in a position of authority, can bring pressure to bear on the victim to insure**
 28k **silence;**

28l **(e) in 1992, when the Legislature enacted the statute of limitations requiring victims to**
 28m **sue within four years of majority, society did not understand the long-lasting effects of abuse**
 28n **on the victim;**

28o **(f) the Legislature, as the policy-maker for the state, may take into consideration**
 28p **advances in medical science and understanding in revisiting policies and laws shown to be**
 28q **harmful rather than beneficial; and**

28r **(g) the Legislature has the authority to change old laws in the face of new information,**
 28s **and set new policies. ←Ĥ**

29 **Ĥ→ [(1)] (2) ←Ĥ** As used in this section:

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

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

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

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

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

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

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

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

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

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

52 ~~[(f)]~~ (h) " ~~H~~→ [H] Person [H] ~~[Victim]~~ ←~~H~~ " means an individual ~~H~~→ victim ←~~H~~ who
 52a was intentionally or negligently
 53 sexually abused. It does not include individuals whose claims are derived through another
 54 individual who was sexually abused.

55 ~~H~~→ ~~[(2)]~~ (3) ←~~H~~ (a) A person may file a civil action against a perpetrator for intentional
 55a or negligent
 56 sexual abuse suffered as a child at any time.

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

59 (i) within four years after the person attains the age of 18 years; or
60 (ii) if a person discovers sexual abuse only after attaining the age of 18 years, that
61 person may bring a civil action for such sexual abuse within four years after discovery of the
62 sexual abuse, whichever period expires later.

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

67 (4) The knowledge of a custodial parent or guardian may not be imputed to a person
68 under the age of 18 years.

69 (5) A civil action may be brought only against a living person who:

70 (a) intentionally perpetrated the sexual abuse;

71 (b) was criminally responsible for the sexual abuse in accordance with Section
72 76-2-202; or

73 (c) negligently permitted the sexual abuse to occur.

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

78 (7) A civil action may not be brought as provided in Subsection (6) for:

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

83 (b) any claim where a written settlement agreement was entered into between a
84 plaintiff and a defendant or perpetrator when the plaintiff was represented by an attorney who
85 was admitted to practice law in this state at the time of the settlement, and the plaintiff signed
86 the agreement.