

HB0279S01 compared with HB0279

~~deleted text~~ shows text that was in HB0279 but was deleted in HB0279S01.

inserted text shows text that was not in HB0279 but was inserted into HB0279S01.

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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 age 53 for such actions; and
- ▶ specifies limitations.

Money Appropriated in this Bill:

None

Other Special Clauses:

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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. Civil actions for sexual abuse of a child -- Window for revival of time barred claims.

(1) As used in this section:

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

(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

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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) (a) A person may file a civil action against a perpetrator for intentional or negligent sexual abuse suffered as a child at any time.

(b) A person 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 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 the sexual abuse, whichever period expires later.

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

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

(a) intentionally perpetrated the sexual abuse;

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

(c) negligently permitted the sexual abuse to occur.

(6) A civil action against a person listed in Subsection (5) for ~~f~~intentional or negligent 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), whichever is longer.

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

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finality on the merits; and

(b) any claim where a written settlement agreement was entered into between a plaintiff 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~~ when the plaintiff was not represented by an attorney ~~{ who was }~~ admitted to practice law in this state at the time of the settlement ~~}, and the plaintiff signed the agreement.~~

Legislative Review Note

Office of Legislative Research and General Counsel ~~},~~ was the result of fraud, duress, or unconscionability.