

1 **STATUTE OF LIMITATIONS REFORM AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: J. Stuart Adams

6 Cosponsors: Susan Duckworth

7 Rebecca Chavez-Houck Angela Romero

8

9 **LONG TITLE**

10 **General Description:**

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

13 **Highlighted Provisions:**

14 This bill:

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

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **78B-2-308**, as last amended by Laws of Utah 2015, Chapter 82

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

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

30 **78B-2-308. Legislative findings -- Civil actions for sexual abuse of a child --**
31 **Window for revival of time barred claims.**

32 (1) The Legislature finds that:

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

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

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

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

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

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

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

51 [(+)] (2) As used in this section:

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

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

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

57 illness.

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

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

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

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

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

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

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

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

77 ~~[(2)]~~ (3) (a) A ~~[person]~~ victim may file a civil action against a perpetrator for
78 intentional or negligent sexual abuse suffered as a child at any time.

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

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

82 (ii) if a ~~[person]~~ victim discovers sexual abuse only after attaining the age of 18 years,
83 that person may bring a civil action for such sexual abuse within four years after discovery of
84 the sexual abuse, whichever period expires later.

85 ~~[(3)]~~ (4) The victim need not establish which act in a series of continuing sexual abuse
86 incidents caused the injury complained of, but may compute the date of discovery from the date
87 of discovery of the last act by the same perpetrator which is part of a common scheme or plan
88 of sexual abuse.

89 ~~[(4)]~~ (5) The knowledge of a custodial parent or guardian may not be imputed to a
90 person under the age of 18 years.

91 ~~[(5)]~~ (6) A civil action may be brought only against a living person who:

92 (a) intentionally perpetrated the sexual abuse;

93 (b) would be criminally responsible for the sexual abuse in accordance with Section
94 [76-2-202](#); or

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

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

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

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

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