

**ACT 68**

S.B. NO. 2588

A Bill for an Act Relating to Limitation of Actions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§657- Civil action arising from sexual offenses; application; certificate of merit.** (a) Notwithstanding any law to the contrary, no action for recovery of damages based on physical, psychological, or other injury or condition suffered by a minor arising from the sexual abuse of the minor by any person shall be commenced against the person who committed the act of sexual abuse more than:

- (1) Eight years after the eighteenth birthday of the minor or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later; or
- (2) Three years after the date the minor discovers or reasonably should have discovered that psychological injury or illness occurring after the age of minor’s eighteenth birthday was caused by the sexual abuse,

whichever comes later.

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

(b) For a period of two years after the effective date of Act , Session Laws of Hawaii 2012, a victim of child sexual abuse that occurred in this State who had been barred from filing a claim against the victim’s abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to the effective date of Act , Session Laws of Hawaii 2012, may file a claim in a circuit court of this State against the person who committed the act of sexual abuse.

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

- (1) The person who committed the act of sexual abuse against the victim was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim; or
- (2) The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity had a degree of responsibility or control.

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

(c) A defendant against whom a civil action is commenced may recover attorney’s fees if the court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the defendant shall not be the sole basis for a determination that an accusation had no basis in fact and was made with malicious intent. The court shall make an independent finding of an improper motive prior to awarding attorney’s fees under this section.

(d) In any civil action filed pursuant to subsection (a) or (b), a certificate of merit shall be filed by the attorney for the plaintiff, and shall be sealed and remain confidential. The certificate of merit shall include a notarized statement by a:

- (1) Psychologist licensed pursuant to chapter 465;
- (2) Marriage and family therapist licensed pursuant to chapter 451J;
- (3) Mental health counselor licensed pursuant to chapter 453D; or
- (4) Clinical social worker licensed pursuant to chapter 467E;

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

The notarized statement included in the certificate of merit shall set forth in reasonable detail the facts and opinions relied upon to conclude that there is a

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reasonable basis to believe that the plaintiff was subject to one or more acts that would result in an injury or condition specified in (a).”

**SECTION 2.** New statutory material is underscored.<sup>1</sup>

**SECTION 3.** This Act shall take effect upon its approval.

(Approved April 24, 2012.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.