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## CIVIL PRACTICE Limitations of Actions: Provide for Limitation of Civil Actions for Childhood Sexual Abuse

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## CIVIL PRACTICE

### *Limitations of Actions: Provide for Limitation of Civil Actions for Childhood Sexual Abuse*

|                 |  |
|-----------------|--|
| CODE SECTION:   | O.C.G.A. § 9-3-33.1 (new)  |
| BILL NUMBER:    | HB 1968  |
| ACT NUMBER:     | 1311   |
| SUMMARY:        | The Act provides for a limitation period for bringing civil actions for childhood sexual abuse. In order to recover damages as a result of childhood sexual abuse, the plaintiff must commence the action against the abuser no later than five years after the plaintiff attains the age of majority. The Act also defines the term "childhood sexual abuse." Finally, the Act specifies that claims which would have been barred prior to the effective date of the Act are not revived. |
| EFFECTIVE DATE: | July 1, 1992   |

#### *History*

The history of HB 1968 is very similar to that of HB 240, a bill which amended the criminal limitation period for childhood sexual abuse and which, like HB 1968, was passed during the 1992 legislative session.<sup>1</sup> Until recently, victims of childhood sexual abuse were commonly barred from bringing suits against their abusers after becoming adults because of statutes of limitation.<sup>2</sup> Generally, the abuse complained of occurred years before the decision to bring suit.<sup>3</sup> In Georgia, the period allowed for bringing personal injury cases is two years.<sup>4</sup> This statute of limitations begins to run when the "right of action accrues."<sup>5</sup> The problem with applying this statute of limitations to childhood sexual abuse, according to those who advocate reform of child abuse laws, is that many victims repress the memory of the abuse until, for various reasons, they remember it when they become adults.<sup>6</sup>

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1. *See Legislative Review*, 9 GA. ST. U. L. REV. 231 (1992).
  2. Telephone Interview with Sen. Judy Moye, Senate District No. 34 (Apr. 14, 1992) [hereinafter Moye Interview].
  3. *Id.*
  4. O.C.G.A. § 9-3-33 (1981).
  5. *Id.*
  6. Telephone Interview with Rep. Mike Snow, House District No. 1 (Apr. 15, 1992) [hereinafter Snow Interview]; Telephone Interview with Barbara Stalzer, Registered

Also, they may not realize that the childhood abuse is the cause of the psychological injuries and illnesses they now suffer.<sup>7</sup> Therefore, advocates argue that the injury is not actually discovered until long after it occurs.<sup>8</sup> There is also often a problem of minor children attempting to bring suit against their abusers, especially when the abuser is a parent.<sup>9</sup> In such cases, the child may be too afraid of the abuser to bring the suit.<sup>10</sup>

One member of the General Assembly had a constituent who was eight or nine years old when she was abused, but had repressed the memory of that abuse until she sought therapy as an adult.<sup>11</sup> However, by the time she realized what had happened to her, the statute of limitations had passed on filing charges or suing her abuser.<sup>12</sup> Another woman told about being abused by her stepfather when she was ten or eleven years old.<sup>13</sup> She was too afraid to bring charges or report the abuse until she was over eighteen, but by then the statute of limitations had expired.<sup>14</sup>

These women are not alone. One victim of childhood sexual abuse, Patti Barton, turned her experiences into a one-woman crusade to convince state legislatures to change their statutes of limitation for bringing claims against childhood sexual abusers.<sup>15</sup> She was influential in the decisions made by fifteen states to change their statutes of limitation.<sup>16</sup>

However, there has also been opposition to this expansion of the time allowed to bring these actions. The opposition has come primarily from defense attorneys who cite unfairness to those who face these claims years after the alleged abuse occurred, and the uncertainty created by having such long statutes of limitation.<sup>17</sup>

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Agent for Georgia Council on Child Abuse [hereinafter Stalzer Interview].

7. Moye Interview, *supra* note 2; Snow Interview, *supra* note 6.

8. Snow Interview, *supra* note 6; Stalzer Interview, *supra* note 6.

9. Moye Interview, *supra* note 2; Snow Interview, *supra* note 6; Stalzer Interview, *supra* note 6.

10. Moye Interview, *supra* note 2; Snow Interview, *supra* note 6.

11. Snow Interview, *supra* note 6. Rep. Snow was one of the sponsors of HB 1968. He introduced the legislation because of the stories told to him by some of his constituents who were victims of child abuse. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Woman Who Helped Change Abuse Law Settles Incest Suit*, ATLANTA J. & CONST., Mar. 18, 1992, at A3.

16. *Id.* ("[She] encouraged lawmakers in 15 states to give child sexual-abuse victims more time to sue their attackers.")

17. Moye Interview, *supra* note 2 (Sen. Moye commented that it is the nature of defense counsel to oppose longer statutes of limitation); Snow Interview, *supra* note 6.

Because of these competing viewpoints, states have adopted several approaches in determining the appropriate statute of limitations to apply in cases of childhood sexual abuse. Some states have adopted a delayed discovery rule which provides that the statute does not begin running until the victim discovers or reasonably should have discovered that a psychological injury or illness was caused by childhood sexual abuse.<sup>18</sup> States differ with respect to how many years after the discovery of abuse the plaintiff has to bring an action.<sup>19</sup>

### *HB 1968*

The Act amends chapter 3 of title 9 by adding Code section 9-3-33.1.<sup>20</sup> The Act allows for a longer limitation period than in personal injury cases, but cuts off the ability to bring claims more than five years after the plaintiff reaches the age of majority.<sup>21</sup>

The Act defines the term "childhood sexual abuse" as one of several prohibited acts listed in this code section "committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of 18 years."<sup>22</sup> The list of prohibited acts includes rape, sodomy and aggravated sodomy, statutory rape, child molestation and aggravated child molestation, enticing a child for indecent purposes, pandering, pandering by compulsion, solicitation of sodomy, incest, sexual battery, aggravated sexual battery, or "any prior laws of this state of similar effect which were in effect at the time the act was committed."<sup>23</sup>

The primary purpose for adopting the Act was to provide some relief to those victims of childhood sexual abuse who, for a variety of possible reasons, cannot or do not bring a suit within the period allowed under the law before this Act.<sup>24</sup> Many victims were blocked by the old statute of limitations because they were unable to bring a claim while they were still minors, and waited until adulthood to attempt to bring a claim either because they had repressed the memory of the abuse or

18. See, e.g., CAL. [CIV. PROC.] CODE § 340.1 (West 1992); MO. ANN. STAT. § 537.046 (Vernon 1992); MONT. CODE ANN. § 27-2-216 (1991); S.D. CODIFIED LAWS ANN. § 26-10-25 (1991); VT. STAT. ANN. tit. 12, § 522 (1991); WASH. REV. CODE ANN. § 4.16.340 (West 1992).

19. See *supra* note 18. California, Missouri, Montana, South Dakota, and Washington require the action to be brought within three years after the date that the victim discovered or should have discovered that the injury was caused by the abuse. See *supra* note 18. Vermont allows the victim six years to bring the action. See *supra* note 18.

20. O.C.G.A. § 9-3-33.1 (Supp. 1992).

21. *Id.* The age of majority in Georgia is eighteen. *Id.* § 39-1-1 (1982).

22. *Id.* § 9-3-33.1(a) (Supp. 1992).

23. *Id.*

24. Moye Interview, *supra* note 2; Snow Interview, *supra* note 6.

because they were unaware that the abuse was the cause of their injuries.<sup>25</sup> The Act provides a statute of limitations which runs for a period of five years after the victim of childhood sexual abuse reaches the age of majority.<sup>26</sup>

This limitation period reflects a compromise between supporters of an expanded period of limitations for victims of childhood sexual abuse and those who opposed it.<sup>27</sup> In the original version of HB 1968, the plaintiff could bring a suit until eight years after reaching the age of majority or "within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the childhood sexual abuse, whichever occurs later."<sup>28</sup> In order to reach a compromise, both sides agreed that the victim of childhood sexual abuse should be able to bring a civil action against his or her abuser up to five years after the victim reaches the age of majority, and discarded the delayed discovery provision of three years after plaintiff discovered or should have discovered the injury.<sup>29</sup>

In the original version of the Act, any plaintiff who was twenty-six or older at the time of filing had to file a certificate of merit executed by his or her lawyer and a mental health practitioner.<sup>30</sup> This section was discarded in the final version since no plaintiff will now be able to bring suit once he or she has reached the age of twenty-six.<sup>31</sup>

The second section of the Act also provides that claims barred by the old statute of limitation, which applied until July 1, 1992, shall not be revived by this Act.<sup>32</sup> This section is also the result of a compromise between those who were in favor of improving the ability of victims of childhood sexual abuse to bring lawsuits as adults and those who opposed any such changes.<sup>33</sup> In the original version of HB 1968, this Act was to apply to "all actions filed on or after July 1, 1992."<sup>34</sup> This language seemed to indicate that claims previously barred by the statute of limitations would be revived on July 1, 1992. In order to reach a compromise on extending the statute of limitations, proponents

25. Moye Interview, *supra* note 2; Snow Interview, *supra* note 6.

26. O.C.G.A. § 9-3-33.1(b) (Supp. 1992).

27. Moye Interview, *supra* note 2; Snow Interview, *supra* note 6.

28. HB 1968, as introduced, 1992 Ga. Gen. Assem.

29. Snow Interview, *supra* note 6. The changes were made by the House Committee on Judiciary. HB 1968 (HCS), 1992 Ga. Gen. Assem. This committee substitute was then passed by the General Assembly. See Final Composite Status Sheet, Mar. 31, 1992; O.C.G.A. § 9-3-33.1 (Supp. 1992).

30. HB 1968, as introduced, 1992 Ga. Gen. Assem.

31. O.C.G.A. § 9-3-33.1(b) (Supp. 1992).

32. 1992 Ga. Laws 2473, 2474 (uncodified).

33. Snow Interview, *supra* note 6.

34. HB 1968, as introduced, 1992 Ga. Gen. Assem.

of this Act allowed the substituted language which specifically states that time-barred claims will not be revived.<sup>35</sup>

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35. Snow Interview, *supra* note 6.