

By: Representative Hines

To: Judiciary B

HOUSE BILL NO. 1361

1 AN ACT TO ALLOW THE FILING OF ACTIONS OF CHILDHOOD SEXUAL  
2 ABUSE CASES THAT MAY HAVE BEEN TIME BARRED; TO PROVIDE PROCEDURES  
3 FOR SUCH CASES; TO AMEND SECTION 99-1-5, MISSISSIPPI CODE OF 1972,  
4 IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
5 PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** (1) In an action for recovery of damages  
8 suffered as a result of childhood sexual abuse, the time for  
9 commencement of the action shall be within eight (8) years of the  
10 date the plaintiff attains the age of majority or within three(3)  
11 years of the date the plaintiff discovers or reasonably should  
12 have discovered that psychological injury or illness occurring  
13 after the age of majority was caused by the sexual abuse,  
14 whichever period expires later, for any of the following actions:

15 (a) An action against any person for committing an act  
16 of childhood sexual abuse.

17 (b) An action for liability against any person or  
18 entity who owed a duty or care to the plaintiff, where a wrongful  
19 or negligent act by that person or entity was a legal cause of the  
20 childhood sexual abuse which resulted in the injury to the  
21 plaintiff.

22 (c) An action for liability against any person or  
23 entity where an intentional act by that person or entity was a  
24 legal cause of the childhood sexual abuse which resulted in the  
25 injury to the plaintiff.

26 (2) (a) No action described in paragraph (b) or (c) of  
27 Section (1) may be commenced on or after the plaintiff's  
28 twenty-sixth birthday.

29           (b) This subsection does not apply if the person or  
30 entity knew or had reason to know, or was otherwise on notice, of  
31 any unlawful sexual conduct by an employee, volunteer,  
32 representative, or agent, and failed to take reasonable steps, and  
33 to implement reasonable safeguards, to avoid acts of unlawful  
34 sexual conduct in the future by that person, including, but not  
35 limited to, preventing or avoiding placement of that person in a  
36 function or environment in which contact with children is an  
37 inherent part of that function or environment. For purposes of  
38 this subdivision, providing or requiring counseling is not  
39 sufficient, in and of itself, to constitute a reasonable step or  
40 reasonable safeguard.

41           (3) Notwithstanding any other provision of law, any claim  
42 for damages described in paragraph (b) or (c) of Subsection (1)  
43 that is permitted to be filed pursuant to paragraph (b) of  
44 Subsection (2) that would otherwise be barred as of July 1, 2004,  
45 solely because the applicable statute of limitations has or had  
46 expired, is revived, and, in that case, a cause of action may be  
47 commenced within one (1) year of July 1, 2004. Nothing in this  
48 subsection shall be construed to alter the applicable statute of  
49 limitations period of an action that is not time barred as July 1,  
50 2004.

51           (4) Subsection (3) does not apply to either of the  
52 following:

53           (a) Any claim that has been litigated to finality on  
54 the merits in any court of competent jurisdiction prior to July 1,  
55 2004. Termination of a prior action on the basis of the statute  
56 of limitations does not constitute a claim that has been litigated  
57 to finality on the merits.

58           (b) Any written, compromised settlement agreement which  
59 has been entered into between a plaintiff and a defendant where  
60 the plaintiff was represented by an attorney who was admitted to

61 practice law in this state at the time of the settlement, and the  
62 plaintiff signed the agreement.

63 (5) "Childhood sexual abuse" as used in this section  
64 includes any act committed against the plaintiff that occurred  
65 when the plaintiff was under the age of eighteen (18) years and  
66 that would have been proscribed by Sections 97-5-39, 97-5-23,  
67 97-3-95(1)(c) or (d) or 97-5-33; or any prior laws of this state  
68 of similar effect at the time the act was committed. "Childhood  
69 sexual abuse" also includes rape. Nothing in this subsection  
70 limits the availability of causes of action permitted under  
71 subsection (1), including causes of action against persons or  
72 entities other than the alleged perpetrator of the abuse.

73 (6) Nothing in this section shall be construed to alter the  
74 otherwise applicable burden of proof that a plaintiff has in a  
75 civil action subject to this section.

76 (7) Every plaintiff twenty-six (26) years of age or older at  
77 the time the action is filed shall file certificates of merit as  
78 specified in subsection (8).

79 (8) Certificates of merit shall be executed by the attorney  
80 for the plaintiff and by a licensed mental health practitioner  
81 selected by the plaintiff declaring, respectively, as follows,  
82 setting forth the facts which support the declaration:

83 (a) That the attorney has reviewed the facts of the  
84 case, that the attorney has consulted with at least one (1) mental  
85 health practitioner who is licensed to practice and practices in  
86 this state and who the attorney reasonably believes is  
87 knowledgeable of the relevant facts and issues involved in the  
88 particular action, and that the attorney has concluded on the  
89 basis of that review and consultation that there is reasonable and  
90 meritorious cause for the filing of the action. The person  
91 consulted may not be a party to the litigation.

92 (b) That the mental health practitioner consulted is  
93 licensed to practice and practices in this state and is not a

94 party to the action, that the practitioner is not treating and has  
95 not treated the plaintiff, and that the practitioner and  
96 interviewed the plaintiff and is knowledgeable of the relevant  
97 facts and issues involved in the particular action, and has  
98 concluded, on the basis of his or her knowledge of the facts and  
99 issues, that in his or her professional opinion there is a  
100 reasonable basis to believe that the plaintiff had been subject to  
101 childhood sexual abuse.

102 (c) That the attorney was unable to obtain the  
103 consultation required by paragraph (a) because a statute of  
104 limitations would impair the action and the certificates required  
105 by paragraphs (a) and (b) could not be obtained before the  
106 impairment of the action. If a certificate is executed pursuant  
107 to this paragraph, the certificates required by paragraphs (a) and  
108 (b) shall be filed within sixty (60) days after filing the  
109 complaint.

110 (9) Where certificates are required pursuant to subsection  
111 (7), the attorney for the plaintiff shall execute a separate  
112 certificate of merit for each defendant named in the complaint.

113 (10) In any action subject to subsection (7), no defendant  
114 may be served, and the duty to serve a defendant with process does  
115 not attach, until the court has reviewed the certificates of merit  
116 filed pursuant to subsection (8) with respect to that defendant,  
117 and has found, in camera, based solely on those certificates of  
118 merit, that there is reasonable and meritorious cause for the  
119 filing of the action against that defendant. At that time, the  
120 duty to serve that defendant with process shall attach.

121 (11) A violation of this section may constitute  
122 unprofessional conduct and may be the grounds for discipline  
123 against the attorney.

124 (12) The failure to file certificates in accordance with  
125 this section shall be grounds for a demurrer or a motion to  
126 strike.

127           (13) In any action subject to subsection (7), no defendant  
128 may be named except by "Doe" designation in any pleadings or  
129 papers filed in the action until there has been a showing of  
130 corroborative fact as to the charging allegations against that  
131 defendant.

132           (14) At any time after the action is filed, the plaintiff  
133 may apply to the court for permission to amend the complaint to  
134 substitute the name of the defendant or defendants for the  
135 fictitious designation, as follows:

136           (a) The application shall be accompanied by a  
137 certificate of corroborative fact executed by the attorney for the  
138 plaintiff. The certificate shall declare that the attorney has  
139 discovered one or more facts corroborative of one or more of the  
140 charging allegations against a defendant or defendants, and shall  
141 set forth in clear and concise terms the nature and substance of  
142 the corroborative fact. If the corroborative fact is evidenced by  
143 the statement of a witness or the contents of a document, the  
144 certificate shall declare that the attorney has personal knowledge  
145 of the statement of the witness or of the contents of the  
146 document, and the identity and location of the witness or document  
147 shall be included in the certificate. For purposes of this  
148 section, a fact is corroborative of an allegation if it confirms  
149 or supports the allegation. The opinion of any mental health  
150 practitioner concerning the plaintiff shall not constitute a  
151 corroborative fact for purposes of this section.

152           (b) Where the application to name a defendant is made  
153 prior to that defendant's appearance in the action, neither the  
154 application nor the certificate of corroborative fact by the  
155 attorney shall be served on the defendant or defendants, nor on  
156 any other party or their counsel of record.

157           (c) Where the application to name a defendant is made  
158 after that defendant's appearance in the action, the application  
159 shall be served on all parties and proof of service provided to

160 the court, but the certificate of corroborative fact by the  
161 attorney shall not be served on any party or their counsel of  
162 record.

163 (15) The court shall review the application and the  
164 certificate of corroborative fact in camera and, based solely on  
165 the certificate and any reasonable inferences to be drawn from the  
166 certificate, shall, if one or more facts corroborative or one or  
167 more of the charging allegations against a defendant has been  
168 shown, order that the complaint may be amended to substitute the  
169 name of the defendant or defendants.

170 (16) The court shall keep under seal and confidential from  
171 the public and all parties to the litigation, other than the  
172 plaintiff, any and all certificates of corroborative fact filed  
173 pursuant to subsection (14).

174 (17) Upon the favorable conclusion of the litigation with  
175 respect to any defendant for whom a certificate of merit was filed  
176 or for whom a certificate of merit should have been filed pursuant  
177 to this section, the court may, upon the motion of a party or upon  
178 the court's own motion, verify compliance with this section by  
179 requiring the attorney for the plaintiff who was required by  
180 subsection (8) to execute the certificate to reveal the name,  
181 address, and telephone number of the person or persons consulted  
182 with pursuant to subsection (8) that were relied upon by the  
183 attorney in preparation of the certificate of merit. The name,  
184 address, and telephone number shall be disclosed to the trial  
185 judge in camera and in the absence of the moving party. If the  
186 court finds there has been a failure to comply with this section,  
187 the court may order a party, a party's attorney, or both, to pay  
188 any reasonable expenses, including attorney's fees, incurred by  
189 the defendant for whom a certificate of merit should have been  
190 filed.

191 **SECTION 2.** Section 99-1-5, Mississippi Code of 1972, is  
192 amended as follows:

193           99-1-5. (1) A person shall not be prosecuted for any  
194 offense, with the exception of murder, manslaughter, aggravated  
195 assault, kidnapping, arson, burglary, forgery, counterfeiting,  
196 robbery, larceny, rape, embezzlement, obtaining money or property  
197 under false pretenses or by fraud, felonious abuse or battery of a  
198 child as described in Section 97-5-39, touching or handling a  
199 child for lustful purposes as described in Section 97-5-23, sexual  
200 battery of a child as described in Section 97-3-95(1)(c) or (d) or  
201 exploitation of children as described in Section 97-5-33, unless  
202 the prosecution for such offense be commenced within two (2) years  
203 next after the commission thereof, but nothing contained in this  
204 section shall bar any prosecution against any person who shall  
205 abscond or flee from justice, or shall absent himself from this  
206 state or out of the jurisdiction of the court, or so conduct  
207 himself that he cannot be found by the officers of the law, or  
208 that process cannot be served upon him.

209           (2) Actions involving childhood sexual abuse may be filed as  
210 provided in Section 1 of House Bill No.\_\_\_\_\_, 2004 Regular Session.

211           **SECTION 3.** This act shall take effect and be in force from  
212 and after July 1, 2004.