

By: Senator(s) Williamson, Dawkins

To: Judiciary, Division A

SENATE BILL NO. 2361

1 AN ACT TO REQUIRE THAT AN ACTION FOR RECOVERY OF DAMAGES
 2 SUFFERED AS A RESULT OF CHILDHOOD SEXUAL ABUSE BE COMMENCED WITHIN
 3 EIGHT YEARS OF THE DATE THE PLAINTIFF ATTAINS THE AGE OF MAJORITY
 4 OR WITHIN THREE YEARS OF THE DATE THE PLAINTIFF DISCOVERS OR
 5 REASONABLY SHOULD HAVE DISCOVERED THAT THE PSYCHOLOGICAL INJURY OR
 6 ILLNESS OCCURRING AFTER THE AGE OF MAJORITY WAS CAUSED BY SEXUAL
 7 ABUSE; TO PROVIDE THAT THOSE ACTIONS MAY BE COMMENCED ON OR AFTER
 8 THE PLAINTIFF'S 26TH BIRTHDAY IF THE PERSON OR ENTITY AGAINST WHOM
 9 THE ACTION IS COMMENCED KNEW, HAD REASON TO KNOW, OR WAS OTHERWISE
 10 ON NOTICE OF, ANY UNLAWFUL SEXUAL CONDUCT BY AN EMPLOYEE,
 11 VOLUNTEER, REPRESENTATIVE OR AGENT, AND FAILED TO TAKE REASONABLE
 12 STEPS AND IMPLEMENT REASONABLE SAFEGUARDS TO AVOID FUTURE ACTS OF
 13 UNLAWFUL SEXUAL CONDUCT; TO REVIVE A CAUSE OF ACTION SOLELY FOR
 14 THOSE CLAIMS FOR A PERIOD; TO DEFINE CHILDHOOD SEXUAL ABUSE; AND
 15 FOR RELATED PURPOSES.

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

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

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

27 (b) An action for liability against any person or
 28 entity who owed a duty of care to the plaintiff, where a wrongful
 29 or negligent act by that person or entity was a legal cause of the
 30 childhood sexual abuse which resulted in the injury to the
 31 plaintiff.

32 (c) An action for liability against any person or
 33 entity where an intentional act by that person or entity was a

34 legal cause of the childhood sexual abuse which resulted in the
35 injury to the plaintiff.

36 (2) (a) No action described in paragraph (b) or (c) of
37 subsection (1) may be commenced on or after the plaintiff's 26th
38 birthday.

39 (b) This subsection does not apply if the person or
40 entity knew or had reason to know, or was otherwise on notice, of
41 any unlawful sexual conduct by an employee, volunteer,
42 representative or agent, and failed to take reasonable steps, and
43 to implement reasonable safeguards, to avoid acts of unlawful
44 sexual conduct in the future by that person, including, but not
45 limited to, preventing or avoiding placement of that person in a
46 function or environment in which contact with children is an
47 inherent part of that function or environment. For purposes of
48 this subsection, providing or requiring counseling is not
49 sufficient, in and of itself, to constitute a reasonable step or
50 reasonable safeguard.

51 (3) Notwithstanding any other provision of law, any claim
52 for damages described in paragraph (b) or (c) of subsection (1)
53 that is permitted to be filed pursuant to paragraph (b) of
54 subsection (2) that would otherwise be barred as of July 1, 2006,
55 solely because the applicable statute of limitations has or had
56 expired, is revived, and, in that case, a cause of action may be
57 commenced within one year of July 1, 2006. Nothing in this
58 subsection shall be construed to alter the applicable statute of
59 limitations period of an action that is not time barred as of July
60 1, 2006.

61 (4) Subsection (3) does not apply to either of the
62 following:

63 (a) Any claim that has been litigated to finality on
64 the merits in any court of competent jurisdiction prior to July 1,
65 2006. Termination of a prior action on the basis of the statute

66 of limitations does not constitute a claim that has been litigated
67 to finality on the merits.

68 (b) Any written, compromised settlement agreement which
69 has been entered into between a plaintiff and a defendant where
70 the plaintiff was represented by an attorney who was admitted to
71 practice law in this state at the time of the settlement, and the
72 plaintiff signed the agreement.

73 (5) "Childhood sexual abuse" as used in this section
74 includes any act committed against the plaintiff that occurred
75 when the plaintiff was under the age of eighteen (18) years and
76 that would have been proscribed by Section 97-3-65, 97-3-95,
77 97-5-23 or 97-5-41, or any prior laws of this state of similar
78 effect at the time the act was committed. Nothing in this
79 subsection limits the availability of causes of action permitted
80 under subsection (1), including causes of action against persons
81 or entities other than the alleged perpetrator of the abuse.

82 (6) Nothing in this section shall be construed to alter the
83 otherwise applicable burden of proof that a plaintiff has in a
84 civil action.

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

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

92 (a) That the attorney has reviewed the facts of the
93 case, that the attorney has consulted with at least one (1) mental
94 health practitioner who is licensed to practice and practices in
95 this state and who the attorney reasonably believes is
96 knowledgeable of the relevant facts and issues involved in the
97 particular action, and that the attorney has concluded on the
98 basis of that review and consultation that there is reasonable and

99 meritorious cause for the filing of the action. The person
100 consulted may not be a party to the litigation.

101 (b) That the mental health practitioner consulted is
102 licensed to practice and practices in this state and is not a
103 party to the action, that the practitioner is not treating and has
104 not treated the plaintiff, and that the practitioner has
105 interviewed the plaintiff and is knowledgeable of the relevant
106 facts and issues involved in the particular action, and has
107 concluded, on the basis of his or her knowledge of the facts and
108 issues, that in his or her professional opinion there is a
109 reasonable basis to believe that the plaintiff had been subject to
110 childhood sexual abuse.

111 (c) That the attorney was unable to obtain the
112 consultation required by paragraph (a) because a statute of
113 limitations would impair the action and that the certificates
114 required by paragraphs (a) and (b) could not be obtained before
115 the impairment of the action. If a certificate is executed
116 pursuant to this paragraph, the certificates required by
117 paragraphs (a) and (b) shall be filed within sixty (60) days after
118 filing the complaint.

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

122 (10) In any action subject to subsection (7), no defendant
123 may be served, and the duty to serve a defendant with process does
124 not attach, until the court has reviewed the certificates of merit
125 filed pursuant to subsection (8) with respect to that defendant,
126 and has found, in camera, based solely on those certificates of
127 merit, that there is reasonable and meritorious cause for the
128 filing of the action against that defendant. At that time, the
129 duty to serve that defendant with process shall attach.

130 (11) A violation of this section may constitute
131 unprofessional conduct and may be the grounds for discipline
132 against the attorney.

133 (12) The failure to file certificates in accordance with
134 this section shall be grounds for dismissal of the complaint.

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

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

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

160 (b) Where the application to name a defendant is made
161 prior to that defendant's appearance in the action, neither the
162 application nor the certificate of corroborative fact by the

163 attorney shall be served on the defendant or defendants, nor on
164 any other party or their counsel of record.

165 (c) Where the application to name a defendant is made
166 after that defendant's appearance in the action, the application
167 shall be served on all parties and proof of service provided to
168 the court, but the certificate of corroborative fact by the
169 attorney shall not be served on any party or any party's counsel
170 of record.

171 (15) The court shall review the application and the
172 certificate of corroborative fact in camera and, based solely on
173 the certificate and any reasonable inferences to be drawn from the
174 certificate, if one or more facts corroborative of one or more of
175 the charging allegations against a defendant has been shown, shall
176 order that the complaint may be amended to substitute the name of
177 the defendant or defendants.

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

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

196 expenses, including attorney's fees, incurred by the defendant for
197 whom a certificate of merit should have been filed.

198 (18) This section shall apply to any action commenced on or
199 after July 1, 2006, including any action otherwise barred by the
200 period of limitations in effect prior to July 1, 2006, thereby
201 reviving those causes of action which had lapsed or technically
202 expired under the law existing prior to July 1, 2006, and to any
203 action filed prior to and still pending on that date. Nothing in
204 this section is intended to revive causes of action which have
205 been finally adjudicated.

206 (19) Nothing in this section is intended to create a new
207 theory of liability.

208 **SECTION 2.** This act shall take effect and be in force from
209 and after July 1, 2006.