

Change in Florida Sexual Abuse Law: HB525

Removal of Civil Statutes of Limitation

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-How has the law changed?

-How does this change in law affect you?

-Will this impact other states' laws?

On April 26, 2010, Florida lawmakers passed a bill removing the statute of limitations (or time limits) for victims of child sexual abuse wishing to file a civil lawsuit. The Florida governor is expected to sign the measure into law. Though the new legislation encompasses more than a simple removal of the civil statute of limitations, this analysis will address only the civil limitations issues.

Due to our work in sexual abuse litigation and prevention, our firm closely watches legislative trends and changes in law related to child sexual abuse, particularly changes which may impact our church and non-profit clients. The passing of Florida's HB 525 tracks an important legislative trend sweeping the United States, the proactive lifting of *statutes of limitations*; time limits within which a litigant must file a lawsuit in civil courts.

Florida: Abuse Defined

In Florida, 'Sexual Battery' is defined as any oral, anal, or vaginal penetration or union with the sexual organ of another, or the anal or vaginal penetration of another by any other object, excluding reasonable medical procedures (§794.011, F.S.).

Florida: Old Law

Florida's current Statute of Limitation (§95.11, F.S., §95.031, F.S. and §95.051, F.S.) requires that a victim file a civil lawsuit on or before his or her 22nd birthday, with limited exceptions.

Florida: New Law

HB 525 amends §95.11, F.S., providing *no time limitation* for a civil cause of action for Sexual Battery (as defined above), when the victim was under the age of 16 at the time of the offense. *The bill applies to all actions except those which would have been time barred on or before July 1, 2010.*

Impact of the New Law

With rare exceptions, Florida abuse victims who have passed their 22nd birthday cannot bring a civil lawsuit under the old or new law. Abuse victims presently *under* age 22, abused before reaching 16 years of age, have ***no time limit*** within which to commence a civil action. As an example: a child victim of Sexual Battery at a church or child care facility in 1997, at the age of 5, has no deadline within which file a civil lawsuit; the cause of action will ***never*** be time-barred. Under the new law in Florida, the possible liability exposure will ***never*** expire.

Other states will pattern legislative changes to follow this model. The Texas legislature considered the same bill last session, and will probably do so again in the upcoming session.

California and Delaware

Virtually every lawmaking body in the United States has, is or will address the issue of child sexual abuse time limitations. Legislative initiatives have come in many forms, some meeting strong opposition from religious organizations, insurance lobbies and other groups.

In California and Delaware, legislation involved the lifting of statutes of limitations for civil litigation made the effect retroactive, such that a victim could file suit regardless of age, notwithstanding that the suit would otherwise have been time-barred.

Understandably, insurance companies responded negatively to the retroactive measures. Underwriting decisions are largely based upon an insured's potential exposure and risk. This legislation opened the door to countless lawsuits never considered during underwriting evaluation. And these lawsuits were cases tending to yield the highest payouts to plaintiffs.

The Roman Catholic Church was heavily impacted by the retroactive limitations removal in California. The settlement of clergy sexual abuse claims cost the Roman Catholic Church \$660 million for the Los Angeles Diocese alone. The Catholic Church has lobbied heavily against legislative efforts that would revive time-barred claims or remove limitation periods. A bill similar to those passed in California and Delaware has failed to pass both houses of the New York legislature. Lobbying efforts on both sides of the issue have been enormous.

Legislative Trend?

In the recent past, lawmakers – like Florida – have been sensitive to the business concerns of insurance companies, while resisting the positions of religious lobbies. Florida's HB 525 is an example of this balancing act: legislation lifting civil statutes of limitation without reviving time-barred claims. This response, though not optimal for insurance companies, allows an analysis of prospective claims during the underwriting process, rather than reviving claims in policy periods

considered ‘closed’ by brokers. Florida underwriters have the ability to evaluate risk moving forward, but must factor in Sexual Battery claims which will *never* be time-barred.

Florida entities must understand that exposure for sexual abuse liability claims will not expire. Entities outside of Florida need to understand that there are many other state legislatures considering legal changes similar to those just passed in Florida.

About Gregory Love and Kimberlee Norris:

Love & Norris, Attorneys at Law

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, they represent ministry and secular organizations such as churches, non-profits (adoption and foster care), private schools, camps, churches and para-church ministries.

MinistrySafe/Abuse Prevention Systems

In addition to an active law practice, Love and Norris are co-founders and Directors of MinistrySafe and Abuse Prevention Systems, entities dedicated to sexual abuse awareness and prevention. MinistrySafe and Abuse Prevention Systems provide Sexual Abuse Awareness Training (live and online) and assist child care entities and organizations in the design and implementation of safety systems which reduce the risk of child sexual abuse. Love and Norris are frequent speakers before educational entities, youth and children’s ministries, youth camps, day care, and adoption and foster care organizations. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administration (NACBA), National Council for Adoption (NCFA), Presbyterian General Assembly, Youth Ministry Institute (YMI), Kanakuk Kamps, Young Life, Hawaiian Islands Ministries, and Texas Alliance for Children and Families, and are featured writers for the upcoming NACBA resource entitled *Professional Practices in Church Administration*. Both serve as guest lecturers at Southwestern Baptist Theological Seminary, and are actively involved in High School and Children’s Ministries at Christ Chapel Bible Church in Fort Worth, Texas.

MinistrySafe is endorsed by Philadelphia Insurance Companies and LifeWay Christian Resources. MinistrySafe’s Sexual Abuse Awareness Training is an approved training by the Texas Department of State Health Services and the Departments of Insurance for Texas, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas and Oklahoma. MinistrySafe’s Sexual Abuse Awareness Training is also an approved CEU for the Association of Christian Schools International (ACSI).