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I N S E N A T E

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Introduced by Sens. HOYLMAN, STEWART-COUSINS, COMRIE, DILAN, GIANARIS, KENNEDY, KRUEGER, PANEPINTO, PERALTA, PERKINS, RIVERA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the criminal procedure law, the court of claims act and the general municipal law, in relation to the timeliness for commencing certain civil actions related to sex offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of section 208 of the civil practice
2 law and rules is designated subdivision (a) and a new subdivision (b) is
3 added to read as follows:
4 (B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION,
5 WITH RESPECT TO ALL CIVIL CLAIMS OR CAUSES OF ACTION BROUGHT BY ANY
6 PERSON FOR PHYSICAL, PSYCHOLOGICAL OR OTHER INJURY OR CONDITION SUFFERED
7 BY SUCH PERSON WHO WAS EIGHTEEN YEARS OF AGE OR LESS AS A RESULT OF
8 CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE
9 ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST SUCH PERSON WHO
10 WAS LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION
11 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST SUCH PERSON
12 WHO WAS LESS THAN EIGHTEEN YEARS OF AGE, OR THE USE OF SUCH PERSON IN A
13 SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, OR A
14 PREDECESSOR STATUTE THAT PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT,
15 WHICH CONDUCT WAS COMMITTED AGAINST SUCH PERSON WHO WAS LESS THAN EIGH-
16 TEEN YEARS OF AGE, SUCH ACTION MAY BE COMMENCED AT ANY TIME.
17 S 2. The civil practice law and rules is amended by adding a new
18 section 214-f to read as follows:
19 S 214-F. CERTAIN CHILD SEXUAL ABUSE CASES. NOTWITHSTANDING ANY
20 PROVISION OF LAW WHICH IMPOSES A PERIOD OF LIMITATION TO THE CONTRARY,
21 EVERY CIVIL CLAIM OR CAUSE OF ACTION BROUGHT BY A PERSON FOR PHYSICAL,
22 PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF
23 CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE
24 ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR
2 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
3 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED
4 IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR STATUTE THAT
5 PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH CONDUCT WAS
6 COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, WHICH IS
7 BARRED AS OF THE EFFECTIVE DATE OF THIS SECTION BECAUSE THE APPLICABLE
8 PERIOD OF LIMITATION HAS EXPIRED IS HEREBY REVIVED, AND ACTION THEREON
9 MAY BE COMMENCED ON OR BEFORE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS
10 SECTION, SUBJECT TO PARAGRAPH TWO OF SUBDIVISION (I) OF RULE THIRTY-TWO
11 HUNDRED ELEVEN OF THIS CHAPTER.

12 S 3. Rule 3211 of the civil practice law and rules is amended by
13 adding a new subdivision (i) to read as follows:

14 (I) 1. STANDARDS FOR MOTIONS TO DISMISS AND MOTIONS TO DISMISS AFFIR-
15 MATIVE DEFENSES IN CERTAIN ACTIONS IN WHICH THE COMMISSION OF CERTAIN
16 SEXUAL OFFENSES ARE ALLEGED. IN ANY ACTION COMMENCED AFTER THE EFFECTIVE
17 DATE OF THIS SUBDIVISION IN WHICH THE PLAINTIFF ALLEGES THAT HE OR SHE
18 HAS BEEN THE VICTIM OF A SEXUAL OFFENSE AS SET FORTH IN SUBDIVISION (B)
19 OF SECTION TWO HUNDRED EIGHT OF THIS CHAPTER COMMITTED WHEN THE PLAIN-
20 TIFF WAS A CHILD UNDER THE AGE OF EIGHTEEN YEARS OF AGE:

21 (I) WHERE THE PLAINTIFF IS TWENTY-THREE YEARS OF AGE OR OLDER WHEN THE
22 ACTION WAS COMMENCED, ANY AFFIRMATIVE DEFENSE OF LACHES, DELAY, OR MATE-
23 RIAL IMPAIRMENT IN THE DEFENSE OR INVESTIGATION OF THE CLAIM MUST ALSO
24 BE SUPPORTED BY A CERTIFICATE OF MERIT SUBMITTED BY A PERSON WITH KNOW-
25 LEDGE OF THE FACTS SETTING FORTH THE SPECIFIC MANNER IN WHICH THE
26 DEFENSE OR INVESTIGATION HAS BEEN AFFECTED. SAID CERTIFICATE MUST BE
27 FILED AT OR BEFORE THE TIME IN WHICH THE ANSWER IS SERVED UNLESS OTHER-
28 WISE PROVIDED BY ORDER OF THE COURT; OR

29 (II) WHERE THE PLAINTIFF SEEKS TO REVIVE AN ACTION PURSUANT TO SECTION
30 TWO HUNDRED FOURTEEN-F OF THIS CHAPTER AFTER THE EFFECTIVE DATE OF THIS
31 SUBDIVISION WHICH HAD BEEN TIME BARRED, ANY AFFIRMATIVE DEFENSE OF LACH-
32 ES, DELAY, OR MATERIAL IMPAIRMENT IN THE DEFENSE OR INVESTIGATION OF THE
33 CLAIM MUST ALSO BE SUPPORTED BY A CERTIFICATE OF MERIT SUBMITTED BY A
34 PERSON WITH KNOWLEDGE OF THE FACTS SETTING FORTH THE SPECIFIC MANNER IN
35 WHICH THE DEFENSE OR INVESTIGATION HAS BEEN AFFECTED. SAID CERTIFICATE
36 MUST BE FILED AT OR BEFORE THE TIME IN WHICH THE ANSWER IS SERVED,
37 UNLESS OTHERWISE PROVIDED BY ORDER OF THE COURT.

38 2. UPON MOTION BY ANY PARTY, THE COURT SHALL DETERMINE BY A PREPONDER-
39 ANCE OF THE EVIDENCE, WHETHER DEFENDANT HAS SUSTAINED HIS OR HER BURDEN
40 OF PROOF ON ANY MOTION TO DISMISS THE ACTION OR ON ANY AFFIRMATIVE
41 DEFENSE IN WHICH IT IS ALLEGED THAT PREJUDICE HAS BEEN CAUSED TO DEFEND-
42 ANT IN THE INVESTIGATION OR DEFENSE OF THE ACTION DIRECTLY RESULTING
43 FROM A DELAY IN COMMENCING THE ACTION. A DEFENDANT SHALL NOT BE DEEMED
44 PREJUDICED SOLELY ON ACCOUNT OF THE PASSAGE OF TIME.

45 3. ANY SUCH AFFIRMATIVE DEFENSE SHALL BE DISMISSED, AND ANY SUCH
46 MOTION TO DISMISS THE ACTION DENIED, IF THE COURT FINDS THAT PLAINTIFF
47 ACTED IN GOOD FAITH AND WITH DUE DILIGENCE IN PURSUING THE CLAIM UNDER
48 THE CIRCUMSTANCES, WHICH SHALL INCLUDE WHETHER DEFENDANT TOOK ANY
49 ACTIONS TO IMPEDE OR DELAY ANY INVESTIGATION OR PREVENT DISCLOSURE OF
50 THE FACTS ALLEGED TO THE PLAINTIFF OR TO THE GENERAL PUBLIC, AS WELL AS
51 WHETHER PLAINTIFF TOOK ANY ACTIONS WHICH DELIBERATELY PREJUDICED THE
52 DEFENSE OR INVESTIGATION OF THE CLAIM. NOTHING HEREIN SHALL LIMIT THE
53 COURT, IN ITS DISCRETION, FROM RESERVING ANY DISPUTED ISSUES OF FACT FOR
54 LATER DISPOSITION BY THE FINDER OF FACT.

1 S 4. Paragraph (f) of subdivision 3 of section 30.10 of the criminal
2 procedure law, as separately amended by chapters 3 and 320 of the laws
3 of 2006, is amended to read as follows:

4 (f) [For purposes of a] A prosecution involving a sexual offense as
5 defined in article one hundred thirty of the penal law, other than a
6 sexual offense delineated in paragraph (a) of subdivision two of this
7 section, committed against a child less than eighteen years of age,
8 incest in the first, second or third degree as defined in sections
9 255.27, 255.26 and 255.25 of the penal law committed against a child
10 less than eighteen years of age, or use of a child in a sexual perform-
11 ance as defined in section 263.05 of the penal law[, the period of limi-
12 tation shall not begin to run until the child has reached the age of
13 eighteen or the offense is reported to a law enforcement agency or
14 statewide central register of child abuse and maltreatment, whichever
15 occurs earlier] MAY BE COMMENCED AT ANY TIME.

16 S 5. Section 10 of the court of claims act is amended by adding a new
17 subdivision 3-c to read as follows:

18 3-C. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY,
19 INCLUDING ANY OTHER SUBDIVISION OF THIS SECTION, REQUIRING AS A CONDI-
20 TION PRECEDENT TO COMMENCEMENT OF AN ACTION OR SPECIAL PROCEEDING THAT A
21 NOTICE OF CLAIM BE FILED OR PRESENTED, ANY CAUSE OF ACTION BROUGHT BY
22 ANY PERSON AGAINST AN OFFICER OR EMPLOYEE OF THE STATE FOR PHYSICAL,
23 PSYCHOLOGICAL OR OTHER INJURY OR CONDITION SUFFERED BY SUCH PERSON WHO
24 WAS EIGHTEEN YEARS OF AGE OR LESS AS A RESULT OF CONDUCT WHICH WOULD
25 CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF
26 THE PENAL LAW COMMITTED AGAINST SUCH PERSON WHO WAS LESS THAN EIGHTEEN
27 YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF
28 THE PENAL LAW COMMITTED AGAINST SUCH PERSON WHO WAS LESS THAN EIGHTEEN
29 YEARS OF AGE, OR THE USE OF SUCH PERSON IN A SEXUAL PERFORMANCE AS
30 DEFINED IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR STATUTE
31 THAT PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH CONDUCT WAS
32 COMMITTED AGAINST SUCH PERSON WHO WAS LESS THAN EIGHTEEN YEARS OF AGE,
33 MAY BE COMMENCED AT ANY TIME.

34 S 6. Section 50-i of the general municipal law is amended by adding a
35 new subdivision 5 to read as follows:

36 5. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY,
37 INCLUDING ANY OTHER SUBDIVISION OF THIS SECTION, SECTION FIFTY-E OF THIS
38 ARTICLE, SECTION THIRTY-EIGHT HUNDRED THIRTEEN OF THE EDUCATION LAW, AND
39 THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW OR CHARTER REQUIRING
40 AS A CONDITION PRECEDENT TO COMMENCEMENT OF AN ACTION OR SPECIAL
41 PROCEEDING THAT A NOTICE OF CLAIM BE FILED OR PRESENTED, ANY CAUSE OF
42 ACTION BROUGHT BY ANY PERSON AGAINST A CITY, COUNTY, TOWN, VILLAGE, FIRE
43 DISTRICT OR SCHOOL DISTRICT FOR PHYSICAL, PSYCHOLOGICAL OR OTHER INJURY
44 OR CONDITION SUFFERED BY SUCH PERSON WHO WAS EIGHTEEN YEARS OF AGE OR
45 LESS AS A RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS
46 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST
47 SUCH PERSON WHO WAS LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED
48 IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST
49 SUCH PERSON WHO WAS LESS THAN EIGHTEEN YEARS OF AGE, OR THE USE OF SUCH
50 PERSON IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL
51 LAW, OR A PREDECESSOR STATUTE THAT PROHIBITED SUCH CONDUCT AT THE TIME
52 OF THE ACT, WHICH CONDUCT WAS COMMITTED AGAINST SUCH PERSON WHO WAS LESS
53 THAN EIGHTEEN YEARS OF AGE, MAY BE COMMENCED AT ANY TIME.

54 S 7. The provisions of this act shall be severable, and if any clause,
55 sentence, paragraph, subdivision or part of this act shall be adjudged
56 by any court of competent jurisdiction to be invalid, such judgment

1 shall not affect, impair, or invalidate the remainder thereof, but shall
2 be confined in its operation to the clause, sentence, paragraph, subdi-
3 vision or part thereof directly involved in the controversy in which
4 such judgment shall have been rendered.

5 S 8. This act shall take effect immediately.