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I N A S S E M B L Y

April 20, 2016

Introduced by M. of A. MARKEY -- read once and referred to the Committee
on Codes

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 ASSEM-
BLY, 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
25 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR
26 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
27 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED
28 IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR STATUTE THAT
29 PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH CONDUCT WAS

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

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1 COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, WHICH IS
2 BARRED AS OF THE EFFECTIVE DATE OF THIS SECTION BECAUSE THE APPLICABLE
3 PERIOD OF LIMITATION HAS EXPIRED IS HEREBY REVIVED, AND ACTION THEREON
4 MAY BE COMMENCED ON OR BEFORE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS
5 SECTION, SUBJECT TO PARAGRAPH TWO OF SUBDIVISION (I) OF RULE THIRTY-TWO
6 HUNDRED ELEVEN OF THIS CHAPTER.

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

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

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

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

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

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

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

53 (f) [For purposes of a] A prosecution involving a sexual offense as
54 defined in article one hundred thirty of the penal law, other than a
55 sexual offense delineated in paragraph (a) of subdivision two of this
56 section, committed against a child less than eighteen years of age,

incest in the first, second or third degree as defined in sections 255.27, 255.26 and 255.25 of the penal law committed against a child less than eighteen years of age, or use of a child in a sexual performance as defined in section 263.05 of the penal law[, the period of limitation shall not begin to run until the child has reached the age of eighteen or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier] MAY BE COMMENCED AT ANY TIME.

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

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

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

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

S 7. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 8. This act shall take effect immediately.