

6992

I N S E N A T E

March 14, 2016

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to a civil cause of action for human trafficking

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

1 Section 1. Subdivision (c) of section 483-bb of the social services
2 law, as added by chapter 368 of the laws of 2015, is amended to read as
3 follows:
4 (c) (I) An individual who is a victim of the conduct prohibited by
5 section 230.33, 230.34, 135.35 or 135.37 of the penal law may bring a
6 civil action against the perpetrator or whoever knowingly advances or
7 profits from, or whoever should have known he or she was advancing or
8 profiting from, an act in violation of section 230.33, 230.34, 135.35 or
9 135.37 of the penal law to recover ACTUAL, COMPENSATORY AND PUNITIVE
10 damages [and], INJUNCTIVE RELIEF, ANY COMBINATION OF THOSE OR ANY OTHER
11 APPROPRIATE RELIEF, AS WELL AS reasonable attorney's fees.
12 (II) IN ADDITION TO THE REMEDIES SPECIFIED IN THIS SUBDIVISION, IN AN
13 ACTION UNDER THIS SUBDIVISION, SUCH INDIVIDUAL MAY BE AWARDED UP TO
14 THREE TIMES HIS OR HER ACTUAL DAMAGES OR TEN THOUSAND DOLLARS (\$10,000),
15 WHICHEVER IS GREATER. IN ADDITION, PUNITIVE DAMAGES MAY ALSO BE AWARDED
16 UPON PROOF OF THE PERPETRATOR'S MALICE, OPPRESSION, FRAUD, OR DURESS IN
17 COMMITTING THE ACT OF HUMAN TRAFFICKING.
18 (III) AN ACTION BROUGHT PURSUANT TO THIS SUBDIVISION SHALL BE
19 COMMENCED WITHIN SEVEN YEARS OF THE DATE ON WHICH THE TRAFFICKING VICTIM
20 WAS FREED FROM THE TRAFFICKING SITUATION OR, IF THE VICTIM WAS A MINOR
21 WHEN THE ACT OF HUMAN TRAFFICKING AGAINST THE VICTIM OCCURRED, WITHIN
22 TEN YEARS AFTER THE DATE THE VICTIM ATTAINS THE AGE OF MAJORITY.
23 (IV) IF A PERSON ENTITLED TO SUE IS UNDER A DISABILITY AT THE TIME THE
24 CAUSE OF ACTION ACCRUES SO THAT IT IS IMPOSSIBLE OR IMPRACTICABLE FOR
25 HIM OR HER TO BRING AN ACTION UNDER THIS SUBDIVISION, THE TIME OF THE
26 DISABILITY IS NOT PART OF THE TIME LIMITED FOR THE COMMENCEMENT OF THE
27 ACTION. DISABILITY WILL TOLL THE RUNNING OF THE STATUTE OF LIMITATIONS
28 FOR THIS ACTION.

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

LBD13532-02-6

1 (A) DISABILITY INCLUDES BEING A MINOR, LACKING LEGAL CAPACITY TO MAKE
2 DECISIONS, IMPRISONMENT, OR OTHER INCAPACITY OR INCOMPETENCE.

3 (B) THE STATUTE OF LIMITATIONS SHALL NOT RUN AGAINST A VICTIM WHO IS A
4 MINOR OR WHO LACKS THE LEGAL COMPETENCE TO MAKE DECISIONS SIMPLY BECAUSE
5 A GUARDIAN AD LITEM HAS BEEN APPOINTED. A GUARDIAN AD LITEM'S FAILURE TO
6 BRING A VICTIM'S ACTION WITHIN THE APPLICABLE LIMITATION PERIOD WILL NOT
7 PREJUDICE THE VICTIM'S RIGHT TO DO SO AFTER HIS OR HER DISABILITY CEAS-
8 ES.

9 (C) THE PERPETRATOR IS ESTOPPED FROM ASSERTING A DEFENSE OF THE STAT-
10 UTE OF LIMITATIONS WHEN THE EXPIRATION OF THE STATUTE IS DUE TO CONDUCT
11 BY SUCH PERPETRATOR INDUCING THE VICTIM TO DELAY THE FILING OF THE
12 ACTION, OR DUE TO THREATS MADE BY THE PERPETRATOR CAUSING DURESS UPON
13 THE VICTIM.

14 (D) THE SUSPENSION OF THE STATUTE OF LIMITATIONS DUE TO DISABILITY,
15 LACK OF KNOWLEDGE, OR ESTOPPEL APPLIES TO ALL OTHER RELATED CLAIMS ARISING
16 OUT OF THE TRAFFICKING SITUATION.

17 (E) THE RUNNING OF THE STATUTE OF LIMITATIONS IS POSTPONED DURING THE
18 PENDENCY OF CRIMINAL PROCEEDINGS AGAINST THE VICTIM.

19 (V) THE RUNNING OF THE STATUTE OF LIMITATIONS MAY BE SUSPENDED IF A
20 PERSON ENTITLED TO SUE COULD NOT HAVE REASONABLY DISCOVERED THE CAUSE OF
21 ACTION DUE TO CIRCUMSTANCES RESULTING FROM THE TRAFFICKING SITUATION,
22 SUCH AS PSYCHOLOGICAL TRAUMA, CULTURAL AND LINGUISTIC ISOLATION, AND THE
23 INABILITY TO ACCESS SERVICES.

24 (VI) A PREVAILING VICTIM MAY ALSO BE AWARDED REASONABLE ATTORNEY'S
25 FEES AND LITIGATION COSTS INCLUDING, BUT NOT LIMITED TO, EXPERT WITNESS
26 FEES AND EXPENSES AS PART OF THE COSTS.

27 (VII) RESTITUTION PAID BY THE PERPETRATOR TO THE VICTIM SHALL BE CRED-
28 ITED AGAINST A JUDGMENT, AWARD, OR SETTLEMENT OBTAINED PURSUANT TO AN
29 ACTION UNDER THIS SUBDIVISION.

30 (VIII) A CIVIL ACTION FILED UNDER THIS SUBDIVISION SHALL BE STAYED
31 DURING THE PENDENCY OF ANY CRIMINAL ACTION ARISING OUT OF THE SAME
32 OCCURRENCE IN WHICH THE CLAIMANT IS THE VICTIM. AS USED IN THIS SUBDIVI-
33 SION, A "CRIMINAL ACTION" INCLUDES INVESTIGATION AND PROSECUTION, AND IS
34 PENDING UNTIL A FINAL ADJUDICATION IN THE TRIAL COURT OR DISMISSAL.

35 S 2. This act shall take effect immediately.