S T A T E O F N E W Y O R K

2872--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. MARKEY, SEPULVEDA, MILLER, ENGLEBRIGHT, GUNTHER, BRINDISI, ROBERTS, OTIS, JAFFEE, ROBINSON, STIRPE, AUBRY, KEARNS, SIMOTAS, CLARK, GALEF, HOOPER, MOSLEY, RUSSELL, ROSENTHAL, LIFTON, BARRETT, NOJAY, PAULIN, PERRY, SKOUFIS, BROOK-KRASNY, COOK, DINOWITZ, SALADINO, GRAF, LALOR, PICHARDO, BRABENEC, ARROYO, PALUMBO, WALKER, KAMINSKY, LINARES, CURRAN, MURRAY, WEPRIN, JOHNS, BICHOTTE -- Multi-Sponsored by -- M. of A. BLANKENBUSH, BRENNAN, CERETTO, CROUCH, FAHY, GLICK, HAWLEY, HEVESI, KATZ, LOPEZ, MAGEE, ORTIZ, PRETLOW, RIVERA, SIMON, TENNEY, WOZNIAK -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, 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:

Section 1. The opening paragraph of section 208 of the civil practice law and rules is designated subdivision (a) and a new subdivision (b) is added to read as follows:

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, WITH RESPECT TO ALL CIVIL CLAIMS OR CAUSES OF ACTION BROUGHT BY ANY PERSON 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,

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

LBD01379-07-5

WHICH CONDUCT WAS COMMITTED AGAINST SUCH PERSON WHO WAS LESS THAN EIGHTEEN YEARS OF AGE, SUCH ACTION MAY BE COMMENCED AT ANY TIME.

S 2. The civil practice law and rules is amended by adding a new section 214-f to read as follows:

S 214-F. CERTAIN CHILD SEXUAL ABUSE CASES. NOTWITHSTANDING ANY PROVISION OF LAW WHICH IMPOSES A PERIOD OF LIMITATION TO THE CONTRARY, EVERY CIVIL CLAIM OR CAUSE OF ACTION BROUGHT BY A PERSON FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD 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 A CHILD LESS THAN EIGHTEEN YEARS OF AGE, WHICH IS BARRED AS OF THE EFFECTIVE DATE OF THIS SECTION BECAUSE THE APPLICABLE PERIOD OF LIMITATION HAS EXPIRED IS HEREBY REVIVED, AND ACTION THEREON MAY BE COMMENCED ON OR BEFORE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, SUBJECT TO PARAGRAPH TWO OF SUBDIVISION (I) OF RULE THIRTY-TWO HUNDRED ELEVEN OF THIS CHAPTER.

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

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

(I) WHERE THE PLAINTIFF IS TWENTY-THREE YEARS OF AGE OR OLDER WHEN THE ACTION WAS COMMENCED, ANY AFFIRMATIVE DEFENSE OF LACHES, DELAY, OR MATERIAL IMPAIRMENT IN THE DEFENSE OR INVESTIGATION OF THE CLAIM MUST ALSO BE SUPPORTED BY A CERTIFICATE OF MERIT SUBMITTED BY A PERSON WITH KNOWLEDGE OF THE FACTS SETTING FORTH THE SPECIFIC MANNER IN WHICH THE DEFENSE OR INVESTIGATION HAS BEEN AFFECTED. SAID CERTIFICATE MUST BE FILED AT OR BEFORE THE TIME IN WHICH THE ANSWER IS SERVED UNLESS OTHERWISE PROVIDED BY ORDER OF THE COURT; OR

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

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

3. ANY SUCH AFFIRMATIVE DEFENSE SHALL BE DISMISSED, AND ANY SUCH MOTION TO DISMISS THE ACTION DENIED, IF THE COURT FINDS THAT PLAINTIFF

ACTED IN GOOD FAITH AND WITH DUE DILIGENCE IN PURSUING THE CLAIM UNDER THE CIRCUMSTANCES, WHICH SHALL INCLUDE WHETHER DEFENDANT TOOK ANY ACTIONS TO IMPEDE OR DELAY ANY INVESTIGATION OR PREVENT DISCLOSURE OF THE FACTS ALLEGED TO THE PLAINTIFF OR TO THE GENERAL PUBLIC, AS WELL AS WHETHER PLAINTIFF TOOK ANY ACTIONS WHICH DELIBERATELY PREJUDICED THE DEFENSE OR INVESTIGATION OF THE CLAIM. NOTHING HEREIN SHALL LIMIT THE COURT, IN ITS DISCRETION, FROM RESERVING ANY DISPUTED ISSUES OF FACT FOR LATER DISPOSITION BY THE FINDER OF FACT.

S 4. 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 5. This act shall take effect immediately.