

63--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. HOYLMAN, DILAN, ESPAILLAT, HASSELL-THOMPSON, KENNEDY, KLEIN, KRUEGER, PANEPINTO, PARKER, PERALTA, PERKINS, RIVERA, STAVISKY -- read twice and ordered printed, and when printed to be committed 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:

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:

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

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1 S 214-F. CERTAIN CHILD SEXUAL ABUSE CASES. NOTWITHSTANDING ANY
2 PROVISION OF LAW WHICH IMPOSES A PERIOD OF LIMITATION TO THE CONTRARY,
3 EVERY CIVIL CLAIM OR CAUSE OF ACTION BROUGHT BY A PERSON FOR PHYSICAL,
4 PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF
5 CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE
6 ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN
7 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR
8 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
9 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED
10 IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR STATUTE THAT
11 PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH CONDUCT WAS
12 COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, WHICH IS
13 BARRED AS OF THE EFFECTIVE DATE OF THIS SECTION BECAUSE THE APPLICABLE
14 PERIOD OF LIMITATION HAS EXPIRED IS HEREBY REVIVED, AND ACTION THEREON
15 MAY BE COMMENCED ON OR BEFORE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS
16 SECTION, SUBJECT TO PARAGRAPH TWO OF SUBDIVISION (I) OF RULE THIRTY-TWO
17 HUNDRED ELEVEN OF THIS CHAPTER.

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

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

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

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

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

51 3. ANY SUCH AFFIRMATIVE DEFENSE SHALL BE DISMISSED, AND ANY SUCH
52 MOTION TO DISMISS THE ACTION DENIED, IF THE COURT FINDS THAT PLAINTIFF
53 ACTED IN GOOD FAITH AND WITH DUE DILIGENCE IN PURSUING THE CLAIM UNDER
54 THE CIRCUMSTANCES, WHICH SHALL INCLUDE WHETHER DEFENDANT TOOK ANY
55 ACTIONS TO IMPEDE OR DELAY ANY INVESTIGATION OR PREVENT DISCLOSURE OF
56 THE FACTS ALLEGED TO THE PLAINTIFF OR TO THE GENERAL PUBLIC, AS WELL AS

1 WHETHER PLAINTIFF TOOK ANY ACTIONS WHICH DELIBERATELY PREJUDICED THE
2 DEFENSE OR INVESTIGATION OF THE CLAIM. NOTHING HEREIN SHALL LIMIT THE
3 COURT, IN ITS DISCRETION, FROM RESERVING ANY DISPUTED ISSUES OF FACT FOR
4 LATER DISPOSITION BY THE FINDER OF FACT.
5 S 4. The provisions of this act shall be severable, and if any clause,
6 sentence, paragraph, subdivision or part of this act shall be adjudged
7 by any court of competent jurisdiction to be invalid, such judgment
8 shall not affect, impair, or invalidate the remainder thereof, but shall
9 be confined in its operation to the clause, sentence, paragraph, subdivi-
10 sion or part thereof directly involved in the controversy in which
11 such judgment shall have been rendered.
12 S 5. This act shall take effect immediately.