STATE OF NEW YORK

5885--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 16, 2017

Introduced by M. of A. ROSENTHAL, DINOWITZ, SEPULVEDA, ENGLEBRIGHT, GUNTHER, OTIS, JAFFEE, STIRPE, SIMOTAS, GALEF, HOOPER, MOSLEY, JENNE, LIFTON, BARRETT, PAULIN, ARROYO, WALKER, WEPRIN, BICHOTTE, SIMON, BLAKE, CAHILL, SEAWRIGHT, BARRON, BUCHWALD, BRONSON, BRINDISI, HEVESI, HYNDMAN, ORTIZ, NOLAN, SKOUFIS, HARRIS, JONES, CARROLL, RIVERA, GLICK, NIOU, DE LA ROSA, PRETLOW, GOTTFRIED, D'URSO, VANEL, HIKIND, TITUS -- Multi-Sponsored by -- M. of A. PEOPLES-STOKES -- 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 criminal procedure law, in relation to the statute of limitations in criminal prosecution of a sexual offense committed against a child; to amend the civil practice law and rules, in relation to the statute of limitations for civil actions related to a sexual offense committed against a child, reviving such actions otherwise barred by the existing statute of limitations and granting trial preference to such actions; to amend the general municipal law, in relation to providing that the notice of claim provisions shall not apply to such actions; to amend the court of claims act, in relation to providing that the notice of intention to file provisions shall not apply to such actions; to amend the education law, in relation to providing that the notice of claim provisions shall not apply to such actions; and to amend the judiciary law, in relation to judicial training relating to sexual abuse of minors and rules reviving civil actions relating to sexual offenses committed against children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

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

LBD10047-03-7

(f) For purposes of a prosecution involving a sexual offense as defined in article one hundred thirty of the penal law, other than a sexual offense delineated in paragraph (a) of subdivision two of this 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~~] twenty-three or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier.

§ 2. 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 any provision of law which imposes a period of limitation to the contrary, 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 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 255.27, 255.26 or 255.25 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, such action may be commenced, against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of said conduct, on or before the plaintiff or infant plaintiff reaches the age of fifty years. In any such claim or action, in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such section of the penal law shall apply.

§ 3. The civil practice law and rules is amended by adding a new section 214-g to read as follows:

§ 214-g. 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 against any party alleging intentional or negligent acts or omissions 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 255.27, 255.26 or 255.25 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 not earlier than six months after, and not later than one year and six months after the effective date of this section,

subject to paragraph two of subdivision (i) of rule thirty-two hundred eleven of this chapter. In any such claim or action, in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such section of the penal law shall apply.

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

(i) Motions to dismiss and motions to dismiss affirmative defenses in certain actions in which conduct constituting the commission of certain sexual offenses are alleged. 1. In any action where the plaintiff seeks to revive an action pursuant to section two hundred fourteen-g 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 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. Furthermore, in any such action, in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such section of the penal law shall apply.

§ 5. Subdivision (a) of rule 3403 of the civil practice law and rules is amended by adding a new paragraph 7 to read as follows:

7. any action which has been revived pursuant to section two hundred fourteen-g of this chapter.

§ 6. Subdivision 8 of section 50-e of the general municipal law, as amended by chapter 24 of the laws of 1988, is amended to read as follows:

8. Inapplicability of section. (a) This section shall not apply to claims arising under the provisions of the workers' compensation law, the volunteer firefighters' benefit law, or the volunteer ambulance workers' benefit law or to claims against public corporations by their own infant wards.

(b) This section shall not apply to any claim made 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 255.27, 255.26 or 255.25 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 committed against a child less than eighteen years of age.

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

5. Notwithstanding any provision of law to the contrary, this section shall not apply to any claim made against a city, county, town, village, fire district or school district 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 255.27, 255.26 or 255.25 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 committed against a child less than eighteen years of age.

§ 8. Section 10 of the court of claims act is amended by adding a new subdivision 10 to read as follows:

10. Notwithstanding any provision of law to the contrary, this section shall not apply to any claim to recover damages 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 255.27, 255.26 or 255.25 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 committed against a child less than eighteen years of age.

§ 9. Subdivision 2 of section 3813 of the education law, as amended by chapter 346 of the laws of 1978, is amended to read as follows:

2. Notwithstanding anything to the contrary hereinbefore contained in this section, no action or special proceeding founded upon tort shall be prosecuted or maintained against any of the parties named in this section or against any teacher or member of the supervisory or administrative staff or employee where the alleged tort was committed by such teacher or member or employee acting in the discharge of his duties within the scope of his employment and/or under the direction of the board of education, trustee or trustees, or governing body of the school unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law. Every such action shall be commenced pursuant to the provisions of section fifty-i of the general municipal law; provided, however, that this section shall not apply to any claim to recover damages 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 255.27, 255.26 or 255.25 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 committed against a child less than eighteen years of age.

§ 10. Section 219-c of the judiciary law, as added by chapter 506 of the laws of 2011, is amended to read as follows:

§ 219-c. Crimes involving sexual assault and the sexual abuse of minors; judicial training. The office of court administration shall provide training for judges and justices with respect to crimes involving sexual assault, and the sexual abuse of minors.

§ 11. The judiciary law is amended by adding a new section 219-d to read as follows:

§ 219-d. Rules reviving certain actions; sexual offenses against children. The chief administrator of the courts shall promulgate rules for the timely adjudication of revived actions brought pursuant to section two hundred fourteen-g of the civil practice law and rules.

§ 12. 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.

§ 13. This act shall take effect immediately; except that section ten of this act shall take effect six months after this act shall have become a law; provided, however, that training for cases brought pursuant to section 214-g of the civil practice law and rules, as added by section three of this act, shall commence three months after this act shall have become a law; and section eleven of this act shall take effect three months after this act shall have become a law.