STATE OF NEW YORK

1328

2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law and rules, in relation to the period of limitation for certain child abuse cases; to amend the general municipal law, the court of claims act and the education law, in relation to certain notices of claim and commencement of certain actions; and to amend the judiciary law, in relation to requiring that the office of court administration shall provide training for judges and justices with respect to crimes involving sexual abuse of minors (Part A); to amend the social services law, in relation to reports of child abuse to law enforcement; and to amend the penal law, in relation to falsely reporting an incident in the third degree (Part B); and to amend the labor law, in relation to prohibiting retaliatory personnel action by employers of corporations formed other than for profit (Part C)

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

Section 1. This act shall be known and may be cited as the "child victims protection and accountability act".

§ 2. This act enacts into law major components of legislation which are necessary to implement procedures related to victim protection and accountability. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of the Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

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

LBD03843-01-9

PART A

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:

(f) [~~For purposes of a~~] 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 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.

§ 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 cause of 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. 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.

§ 4. 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.

§ 5. 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.

§ 6. 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 255.55 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 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.

§ 8. This act shall take effect immediately; provided, however that section seven of this act shall take effect six months after this act shall have become a law.

PART B

Section 1. Paragraph (a) of subdivision 1 of section 413 of the social services law, as amended by section 7 of part C of chapter 57 of the laws of 2018, is amended to read as follows:

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; hospital personnel engaged in the admission, examination, care or treatment of persons; **member of the clergy;** a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; employee of a publicly-funded emergency shelter for families with children; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home as designated by the department of health and authorized under section three hundred sixty-five-l of this chapter or such employees who provide home and community based services under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

§ 2. Subdivision 1 of section 413 of the social services law is amended by adding three new paragraphs (e), (f) and (g) to read as follows:

(e) Unless the person confessing or confiding waives the privilege pursuant to section four thousand five hundred five of the civil practice law and rules, a member of the clergy or duly accredited Christian Science practitioner shall not be required to make a report as required by paragraph (a) of this subdivision if the confession or confidence was made to him or her in his or her professional character as spiritual advisor.

(f) The provisions for paragraph (e) of this subdivision shall not be deemed to exempt a member of the clergy or Christian Science practitioner from any other requirements of law to prevent the perpetrator from committing additional acts of abuse.

(g) For the purposes of this subdivision the term "member of the clergy" shall have the same meaning as defined under subdivision four of section four hundred twenty-nine-a of this article.

§ 3. Article 6 of the social services law is amended by adding a new title 6-B to read as follows:

TITLE 6-B

REPORTS OF CHILD ABUSE TO LAW ENFORCEMENT

Section 429-a. Definitions.

429-b. Persons and officials required to report cases of suspected child abuse to law enforcement authorities.

429-c. Penalties for failure to report.

429-d. Immunity from liability.

429-e. Training.

§ 429-a. Definitions. For the purposes of this title the following terms shall have the following meanings:

1. "Child abuse" shall mean any of the following acts committed against a child by persons or officials defined under section four hundred twenty-nine-b of this title, who are eighteen years of age or older: (a) intentionally or recklessly inflicting physical injury, serious physical injury or death, or (b) intentionally or recklessly engaging in conduct which creates a substantial risk of such physical injury, serious physical injury or death, or (c) any child sexual abuse as defined in this section, or (d) conduct prohibited by article one hundred thirty or two hundred sixty-three of the penal law, or (e) the commission or attempted commission against a child of the crime of disseminating indecent materials to minors pursuant to article two hundred thirty-five of the penal law.

2. "Child" shall mean a person under the age of eighteen years.

3. "Law enforcement authorities" shall mean a municipal police department, sheriff's department, the division of state police or any officer thereof. Notwithstanding any other provision of law, law enforcement authorities shall not include any child protective service or any society for the prevention of cruelty to children as such terms are defined in section four hundred twenty-three of this article.

4. "Member of the clergy" shall mean any duly authorized pastor, rector, deacon, priest, rabbi, pandit, swami, guru, granthi, imam, moulvi, maulana and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.

5. "Religious institution" shall mean a religious corporation created to enable its members to meet for divine worship or other religious observances or a congregation, society, or other assemblage of persons

who are accustomed to statedly meet for divine worship or other religious observances, without having been incorporated for that purpose.

§ 429-b. Persons and officials required to report cases of suspected child abuse to law enforcement authorities. 1. The following persons and officials are required to report or cause a report to be made to the appropriate law enforcement authorities when they have reasonable suspicion to believe that in their professional or official capacity an act of child abuse has occurred: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; emergency medical technician; hospital personnel engaged in the admission, examination, care or treatment of persons; member of the clergy; a Christian Science practitioner; school official, which includes but is not limited to a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate, or full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care worker; provider of family or group family day care; employee or volunteer in a residential care facility or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

(a) Unless the person confessing or confiding waives the privilege, pursuant to section four thousand five hundred five of the civil practice law and rules, a member of the clergy, or duly accredited Christian Science practitioner, shall not be required to make a report as required pursuant to subdivision one of this section if the confession or confidence was made to him or her in his or her professional character as spiritual advisor.

(b) When a member of the clergy has reasonable suspicion to believe that an act of child abuse has occurred based upon information received other than through a confession or confidence made pursuant to paragraph (a) of this subdivision, then such member of the clergy shall promptly make a report as required by this subdivision notwithstanding the fact that he or she may have also received a report of child abuse through a confession or confidence made pursuant to paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not be deemed to exempt a member of the clergy from any other requirements of law to prevent the perpetrator from committing additional acts of abuse.

2. Nothing in this title shall be construed to require the report of information by a person required to report herein when such information is otherwise privileged from disclosure by law.

§ 429-c. Penalties for failure to report. 1. Any person required by this title to report a case of suspected child abuse who willfully fails to do so shall be guilty of a class A misdemeanor.

2. Any person required by this title to report a case of suspected child abuse who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure to report.

§ 429-d. Immunity from liability. Any person who reasonably and in good faith makes a report of allegations of child abuse as required pursuant to this title shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions.

§ 429-e. Training. 1. All persons or officials required to report cases of suspected child abuse to law enforcement employed on or after the effective date of this title shall be required to complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set forth under this title as well as sections four hundred thirteen through four hundred twenty of this article, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. The department shall be authorized to publish a list of persons who are not in compliance with this subdivision on its website.

2. The coursework or training required by this section shall not apply to those persons already required to undergo coursework or training regarding the identification and reporting of child abuse and maltreatment pursuant to any other pertinent section of law.

§ 4. Paragraph (b) of subdivision 4 of section 240.50 of the penal law, as amended by section 1 of part G of chapter 501 of the laws of 2012, is amended and a new paragraph (c) is added to read as follows:

(b) any person required to report cases of suspected child abuse or maltreatment pursuant to subdivision one of section four hundred thirteen of the social services law or to report cases of suspected abuse or neglect of a vulnerable person pursuant to section four hundred ninety-one of such law, knowing that the person is required to report such cases, and with the intent that such an alleged occurrence be reported to the statewide central register or vulnerable persons' central register[~~.~~], or

(c) any person required to report cases of suspected child abuse to law enforcement pursuant to title six-B of article six of the social services law.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however that the form used to report suspected cases of child abuse be revised, as necessary, by the office of children and family services prior to the effective date of this act so that it is applicable for reporting to law enforcement agencies.

PART C

Section 1. Paragraph (b) of subdivision 1 of section 740 of the labor law, as added by chapter 660 of the laws of 1984, is amended and a new paragraph (h) is added to read as follows:

(b) "Employer" means any person, firm, partnership, institution, corporation, except a corporation formed other than for profit, or association that employs one or more employees.

(h) "Corporation formed other than for profit" is a corporation as defined by subdivision thirteen of section sixty-six of the general construction law, except that for purposes of this section such definition shall not apply to a general hospital, as defined in section two

thousand eight hundred one of the public health law, incorporated other than for profit.

§ 2. The labor law is amended by adding a new section 742 to read as follows:

§ 742. Retaliatory personnel action by employers of corporations formed other than for profit; prohibition. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Employee" means a person who performs services for and under the control and direction of an employer for wages or other remuneration.

(b) "Employer" means a corporation formed other than for profit that employs one or more employees.

(c) "Law, rule or regulation" includes any duly enacted federal, state or local statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(d) "Public body" includes the following:

(i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; or

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(e) "Retaliatory personnel action" means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of law, rule or regulation of which the employee complains.

(g) "Corporation formed other than for profit" is a corporation as defined by subdivision thirteen of section sixty-six of the general construction law. A general hospital, as defined in section two thousand eight hundred one of the public health law, shall not fall within the meaning of a "corporation formed other than for profit" for purposes of this section.

(h) "Improper action" shall mean any action by an employer or employee of a corporation formed other than for profit, which is undertaken in the performance of their official duties, whether or not such action is within the scope of employment, and which is in violation of any federal, state or local law, rule or regulation.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of any law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which the employee reasonably believes to be true and reasonably believes constitutes an improper action;

(b) provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Employer notification shall not be required pursuant to this subdivision when an employee discloses an improper action pertaining to endangering the welfare of a child.

4. Violation; remedy. (a) An employee who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one year after the alleged retaliatory action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. It shall also be a defense that the individual was an independent contractor.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration; and

(e) the payment by the employer of reasonable costs, disbursements, and attorneys' fees.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Publication. An employer shall notify all new employees in writing of their protections, rights and obligations under this section. A notice shall also be posted conspicuously on the premises of such employer regarding the protections, rights and obligations provided for within this section.

8. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule, or regulation or under the common law.

§ 3. This act shall take effect immediately; provided, however that all current employees of an employer protected pursuant to this act shall be provided written notice of their protections, rights and obligations upon the effective date of this act.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of compe-

tent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgement shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately, provided, however, that the applicable effective date of Parts A through C of this act shall be as specifically set forth in the last section of such Part.