STATE OF NEW YORK

952

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sens. YOUNG, AMEDORE, FELDER, FUNKE, GALLIVAN, GRIFFO, HELMING, JACOBS, LANZA, LITTLE, ORTT, RANZENHOFER, RITCHIE, ROBACH, SERINO, SEWARD, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to establishing the New York child victim reconciliation and compensation fund; to amend the criminal procedure law, in relation to the statute of limitations for sex offenses committed against a child; to amend the social services law, in relation to the reporting of child abuse; to amend the business corporation law, the not-for-profit corporation law, the religious corporations law and the cooperative corporations law, in relation to child protection and criminal history searches; and to amend part J of chapter 62 of the laws of 2003 amending the county law and other laws relating to fees collected, in relation to providing for the reimbursement of not-for-profit corporations for fees collected for criminal history searches by the office of court administration

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

Section 1. Legislative findings. The Legislature hereby finds that a number of individuals within the state have been unable to seek redress for sexual abuse suffered as a child. Due to the unique nature of child sexual abuse and fears of reprisal, child victims often suffer for years in silence and are often unable to comprehend the fact that they have been victimized. This can lead to repression of the abuse and often results in the victim's confusion, anger and associated difficulties later in life. Due to the nature of abuse a victim has been subject to, and their perceived or actual inability to pursue legal action at the time of the abuse, many victims have been psychologically unable to file a civil litigation claim within the requisite statute of limitations. Due to the amount of time that may have transpired since the instance or

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

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instances of abuse, the claim may no longer be pursued through typical litigation. In some instances, the sexual abuser may now be impoverished, unavailable, unable to be located, or may have passed away, making it impossible or impractical for the victim to seek redress through the court system. In order to afford those victims an opportunity to seek the redress due to them, the legislature hereby establishes a New York child victim reconciliation and compensation fund, which is intended to provide assistance to those who were sexually abused as children.

§ 2. The state finance law is amended by adding a new article 17 to read as follows:

ARTICLE 17

NEW YORK CHILD VICTIM RECONCILIATION AND COMPENSATION FUND

Section 300. Purpose.
301. Definitions.
302. New York child victim reconciliation and compensation fund.
303. Filing of claim.
304. Hearing officers; powers and duties.
305. Claims administrator review.
306. Payments to eligible individuals.
307. Regulations.

§ 300. Purpose. It is the purpose of this article to provide compensation and assistance to any individual who has incurred physical and psychological damages based upon the result of childhood sexual abuse who has not previously been compensated for such alleged abuse and is now barred from pursuing a civil action for damages against the abuser.

§ 301. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "claimant" means any individual who:

(a) suffered sexual abuse as defined in subdivision five of this section; and

(b) such abuse occurred prior to the claimant's eighteenth birthday; and

(c) such individual is barred by article two of the civil practice law and rules from instituting a civil action or proceeding; and

(d) such individual has not otherwise received compensation for damages resulting from, or on account of, such sexual abuse by civil settlement, judgment or other private method, including but not limited to arbitration; and

(e) no other individual on behalf of the claimant during the period of the claimant's minority has received compensation for the same claim.

2. "economic loss" means any identifiable pecuniary loss from employment, medical expenses, loss of business, loss of economic opportunities to the extent that such loss would be recoverable had the statute of limitations not expired and for which the claimant has not previously received compensation;

3. "eligible individual" means an individual determined to be eligible for compensation pursuant to section three hundred five of this article;

4. "noneconomic losses" means losses for physical and emotional pain, suffering inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind of nature; and

5. "sexual abuse" means acts proscribed under article one hundred thirty of the penal law, acts constituting incest as defined in section

255.27, 255.26 or 255.25 of the penal law, or acts including the individual 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.

§ 302. New York child victim reconciliation and compensation fund. 1. There is hereby created in the joint custody of the state comptroller and a chief administrator, who shall be appointed as provided in subdivision three of this section, a special fund to be known as the "New York child victim reconciliation and compensation fund."

2. (a) Such fund shall consist of three hundred million dollars transferred from the state asset forfeiture funds and funds secured by payments associated with state sanctioned deferred prosecution agreements currently held on deposit with the office of the Manhattan district attorney.

(b) The office of the Manhattan district attorney shall additionally remit five percent of the total of any future state asset forfeiture funds which have been secured by such district attorney by January first of the subsequent year.

(c) The chief administrator is authorized to accept such amounts as may be contributed by individuals, business concerns, or other entities to carry out the purposes of this article.

3. (a) The chief administrator shall be selected by the state comptroller in consultation with the leaders of the senate and assembly.

(b) The chief administrator shall be qualified by previous experience, training and education to administer such a fund. The chief administrator shall be subject to removal pursuant to the public officers law and shall be subject to the jurisdiction of the joint commission on public ethics for all disciplinary matters. No bond shall be required before entering into service.

(c) Prior to entering into service, the chief administrator shall be required to file a long form ethics filing with the joint commission on public ethics.

4. The chief administrator shall appoint a claims administrator. The claims administrator, in consultation with the chief administrator, shall promulgate procedural and substantive rules for the administration of the fund.

5. (a) The chief administrator shall appoint hearing officers who have a record of substantive experience in the investigation, prosecution and defense of child sexual abuse allegations. Such hearing officers shall receive the same remuneration as hearing officers in a comparable agency.

(b) The chief administrator shall have the power to appoint and pay such experts as sought by hearing officers in aid of the determination.

6. The chief administrator shall have the power to appoint administrative personnel to administer the provisions of this section pursuant to a hiring plan approved by the state comptroller.

7. The claims administrator, in conjunction with the state comptroller, shall be responsible for the administration of funds deposited in the New York child victim reconciliation and compensation fund established pursuant to this section.

§ 303. Filing of claim. 1. The claims administrator shall develop a claim form that claimants shall use when submitting claims under this section and shall ensure that such form may be submitted electronically if determined to be practicable.

2. A claimant may file a claim for compensation under this article with the claims administrator. The claim shall state the factual basis for eligibility for compensation and the amount of compensation sought.

3. The form required under subdivision one of this section shall be under oath and shall provide the following information:

(a) a narrative of the events containing Information from the claimant concerning the identity of the alleged abuser, the physical or mental harm that the claimant suffered, is suffering from, and/or may reasonably be expected to suffer in the future.

(b) information from the claimant concerning any possible economic losses that the claimant has suffered or is expected to suffer as the result of sexual abuse.

(c) information regarding collateral sources of compensation the claimant has received or is entitled to receive as a result of such abuse.

(d) any other material that the claimant wishes to present in aid of the determination of the claim.

§ 304. Hearing officers; powers and duties. 1. Proceedings conducted pursuant to this article shall be presided over by a hearing officer who shall have substantial experience relating to the litigation, investigation, prosecution or defense of child sexual abuse claims.

2. The hearing officer shall set the time and place of any hearing and shall give reasonable notice to the parties.

3. The hearing officer shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The hearing officer shall have all powers necessary to those ends, including, but not limited to, the power to:

(a) administer oaths and affirmations;

(b) cause subpoenas to be issued as authorized by law;

(c) rule upon offers of proof and receive evidence;

(d) order or limit discovery as the interests of justice may require;

(e) regulate the course of the hearing and the conduct of the parties and their counsel;

(f) hold conferences for the settlement or simplification of the issues by consent of the parties;

(g) consider and rule upon all procedural and other motions appropriate in adjudicative proceedings;

(h) take notice of any material fact not appearing in evidence in the record that is properly a matter of judicial notice;

(i) make and file determinations to the claims administrator; and

(j) exercise such other authority as is necessary to carry out the responsibilities of the hearing officer under this section.

4. Claimants and defendants taking part in a proceeding under this section shall have:

(a) the right to be represented by an attorney, and upon a showing of indigence, may obtain appointed counsel;

(b) the right to present evidence, including the presentation of witnesses and documents, expert testimony; and

(c) any other due process rights deemed appropriate by the claims administrator.

§ 305. Claims administrator review. 1. The claims administrator shall review all findings made by a hearing officer in each case submitted under this section and shall determine:

(a) whether the defendant is responsible for the conduct alleged by the claimant; and

(b) whether the claimant is an eligible individual under this section.

2. A claimant shall be deemed an eligible individual under this section when the claim administrator determines the claimant:

(a) was a victim of the alleged conduct;

(b) is an individual who has suffered economic or noneconomic loss as a result of sexual abuse which occurred within the state; and

(c) the individual has been unable to pursue a civil claim for damages resulting from the loss described in paragraph (b) of this subdivision due to the failure to file a judicial claim for damages resulting from such abuse within the requisite statute of limitations.

3. The following factors shall be considered in determining the amount of compensation to be paid to such eligible individuals:

(a) the nature, extent and frequency of the sexual abuse that was found to have occurred;

(b) the extent of the harm to the claimant, including any economic and noneconomic loss; and

(c) the extent to which aggravating circumstances are alleged, such as:

(i) the age of the claimant;

(ii) the severity of the abuse;

(iii) the location of the abuse;

(iv) threats of physical harm and/or retaliation;

(v) significant, verifiable and life altering psychological damage; and/or

(vi) any other significant information relevant to the claim or the defense of the claim.

4. No later than ninety days after that date on which a claim is filed under section three hundred three of this article, unless good cause can be demonstrated, the claim administrator shall complete a review, make a determination, and provide written notice to the claimant, with respect to the matters that were the subject of the claim under review. Such a determination shall be final and not subject to judicial review.

5. The claims administrator may not include punitive damages in any compensation paid under a claim under this article.

6. The claims administrator shall reduce the amount of compensation determined under this section solely by the amount of any collateral compensation the claimant has received or is entitled to receive as a result of such sexual abuse.

§ 306. Payments to eligible individuals. 1. No later than twenty days after the date on which a determination is made by the claims administrator regarding the amount of compensation due a claimant under this article, the claims administrator shall authorize payment to such claimant of the amount determined with respect to such claimant.

2. The chief administrator shall maintain a publicly accessible website which lists the name of the perpetrator of the abuse which was found to have occurred, and which also includes the approximate date or dates the abuse occurred and the approximate geographic location of each instance of abuse, as well as any other identifying information deemed by the chief administrator to be appropriate.

§ 307. Regulations. No later than ninety days after the effective date of this article, the chief administrator, in consultation with the state comptroller and the claims administrator, shall promulgate regulations to carry out this article, including regulations prescribing:

1. forms to be used in submitting claims under this article;

2. the information to be included in such forms;

3. procedures for hearings and the presentation of evidence;

4. procedures to assist an individual in filing and pursuing claims under this article; and

5. other matters determined by the chief administrator and approved by the state comptroller necessary to carry out the purposes of this article.

§ 3. 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.

§ 4. 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.

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

(e) Unless the person confessing or confiding waives the privilege, a member of the clergy, or other minister of any religion 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) When a member of the clergy has reasonable cause to suspect that a child is an abused or maltreated child based upon any information received other than through a confession or confidence made pursuant to paragraph (e) of this subdivision, then such member of the clergy shall promptly make a report as required by paragraph (a) of this subdivision notwithstanding the fact that he or she may have also received a report of abuse or maltreatment through a confession or confidence made pursuant to paragraph (e) of this subdivision.

(g) The provisions of paragraph (e) 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.

(h) For the purposes of this subdivision the term "member of the clergy" shall have the same definition as the term "clergyman" as set forth in section two of the religious corporations law and shall also include any person responsible for supervising a member of the clergy of a religious institution or responsible for the administration of a religious institution.

(i) For the purposes of this subdivision the term "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, as provided in section two of the religious corporations law.

§ 6. 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. Persons and officials required to report cases of suspected child abuse to appropriate law enforcement agency.
429-b. Penalties for failure to report.
429-c. Immunity from liability.
429-d. Review of existing records for allegations that a child is an abused child; district attorney; penalty.

§ 429-a. Persons and officials required to report cases of suspected child abuse to appropriate law enforcement agency. 1. (a) The following persons and officials are required to report or cause a report to be made to an appropriate law enforcement agency when they have reasonable cause to suspect in their professional or official capacity that a child is an abused child: 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; social services worker; day care center 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.

(b) For the purposes of this section the term "abused child" shall mean a child under the age of eighteen years upon whom a person eighteen years of age or more who is defined in paragraph (a) of this subdivision and who is not the parent or other person legally responsible for such child's care:

(i) intentionally or recklessly inflicts physical injury, serious physical injury or death, or

(ii) intentionally or recklessly engages in conduct which creates a substantial risk of such physical injury, serious physical injury or death, or

(iii) commits or attempts to commit against a child the crime of disseminating indecent materials to minors pursuant to article two hundred thirty-five of the penal law, or

(iv) engages in any conduct prohibited by article one hundred thirty or two hundred sixty-three of the penal law.

(c) For the purposes of this section the term "law enforcement authorities" shall mean a municipal police department, sheriff's department, the division of state police or any officer thereof or a district attorney or assistant district attorney. 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.

(d) For the purposes of this section the term "member of the clergy" shall have the same definition as the term "clergyman" as set forth in section two of the religious corporations law and shall also include any person responsible for supervising a member of the clergy of a religious institution or responsible for the administration of a religious institution.

(e) For the purposes of this section the term "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, as provided in section two of the religious corporations law.

2. (a) Unless the person confessing or confiding waives the privilege, a member of the clergy, or other minister of any religion or duly

accredited Christian Science practitioner, shall not be required to make a report as required by paragraph (a) of 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 cause to suspect that a child is an abused child based upon any 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 paragraph (a) of subdivision one of this section notwithstanding the fact that he or she may have also received a report of 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.

3. 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-b. 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.

§ 429-c. Immunity from liability. 1. Any person who in good faith makes a report of allegations of child abuse as required by this title, including those who in good faith make a report to the wrong recipient, shall have immunity from criminal liability which might otherwise result by reason of such actions.

2. Any person who reasonably and in good faith makes a report of allegations of child abuse as required by this title, shall have immunity from civil liability which might otherwise result by reason of such actions.

§ 429-d. Review of existing records for allegations that a child is an abused child; district attorney; penalty. 1. Within three months of the effective date of this section, all members of the clergy shall: (a) review all institutional records within their control and any other information they have obtained regarding allegations that a child is an abused child by a member of the clergy within twenty years prior to the effective date of this section; and (b) review whether they are aware of any other allegations that a child is an abused child alleged to have been abused by a member of the clergy who remains actively in the service of a religious institution, regardless of the date on which such allegation was made; and where such information or records raise reasonable cause to suspect that a child is an abused child, report such allegation to the district attorney. This section shall not apply to information obtained through confidential communications with clergy and privileged under law and no report need be made of allegations against a deceased individual.

2. The willful failure of an individual defined in paragraph (a) of subdivision one of section four hundred twenty-nine-a of this title to review existing records and information and report allegations contained therein, as provided by this section, shall be a class A misdemeanor.

§ 7. The commissioner of the office of children and family services shall review the reporting form used to report suspected child abuse pursuant to section 429-a of the social services law, as added by

section six of this act, and, if necessary, shall revise such form to make it appropriate for reporting to law enforcement agencies.

§ 8. The business corporation law is amended by adding a new section 113 to read as follows:

§ 113. Child protection and criminal history searches.

Any corporation as defined by section one hundred two of this article shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 9. The not-for-profit corporation law is amended by adding a new section 116 to read as follows:

§ 116. Child protection and criminal history searches.

Any corporation as defined by section one hundred two of this article shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 10. The religious corporations law is amended by adding a new section 28 to read as follows:

§ 28. Child protection and criminal history searches. Any religious corporation as defined by section two of this chapter shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 11. The cooperative corporations law is amended by adding a new section 6 to read as follows:

§ 6. Child protection and criminal history searches. Any cooperative corporation as defined by section three of this article shall perform a criminal history search on all individuals that may work or otherwise have reason in their duties to be engaged in unsupervised activities with children under the age of eighteen; or individuals that may participate in activities with children under the age of eighteen in a setting without constant agency or parental oversight.

§ 12. Section 14 of part J of chapter 62 of the laws of 2003 amending the county law and other laws relating to fees collected, as amended by section 7 of part K of chapter 56 of the laws of 2010, is amended to read as follows:

§ 14. Notwithstanding the provisions of any other law: (a) the fee collected by the office of court administration for the provision of criminal history searches and other searches for data kept electronically by the unified court system shall be sixty-five dollars; (b) thirty-five dollars of each such fee collected shall be deposited in the indigent legal services fund established by section 98-b of the state finance law, as added by section twelve of this act, (c) nine dollars of each such fee collected shall be deposited in the legal services assistance fund established by section 98-c of the state finance law, as added by section nineteen of this act, (d) sixteen dollars of each such fee collected shall be deposited to the judiciary data processing offset fund established by section 94-b of the state finance law, [~~and~~] (e) the remainder shall be deposited in the general fund[~~.~~]**, and (f) provided, however, if a criminal history search or other searches for data kept**

electronically by the unified court system is being requested by or on the behalf of a not-for-profit corporation, to perform a criminal history search on an individual that would be working with children under the age of eighteen, the office of court administration shall, subject to the approval of the director of the budget, establish protocols to reimburse the not-for-profit corporation for searches conducted and such reimbursement shall come from the general fund. The division of budget shall also promulgate regulations to prevent not-for-profit corporations from over utilizing this reimbursement mechanism and to assure that all reimbursed search fees are used for criminal history searches of positions that would have direct interaction with children.

§ 13. 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.

§ 14. This act shall take effect on the one hundred eightieth day after it shall have become a law.