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AB-2777 Sexual assault: statute of limitations. (2021-2022)

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Assembly Bill No. 2777

CHAPTER 442

An act to amend Section 340.16 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 19, 2022. Filed with Secretary of State September 19, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2777, Wicks. Sexual assault: statute of limitations.

Existing law sets the time for commencement of any civil action for recovery of damages suffered as a result of sexual assault, as defined, as the later of within 10 years from the date of the last act, attempted act, or assault with the intent to commit an act of sexual assault against the plaintiff or within 3 years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from those acts. Under existing law, this provision applies to any action that is commenced on or after January 1, 2019.

This bill would, until December 31, 2026, revive claims seeking to recover damages suffered as a result of a sexual assault that occurred on or after January 1, 2009, that would otherwise be barred solely because the statute of limitations has or had expired. The bill would additionally revive claims seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday when one or more entities are legally responsible for damages and the entity or their agents engaged in a cover up, as defined, and any related claims, that would otherwise be barred prior to January 1, 2023, solely because the applicable statute of limitations has or had expired, and would authorize a cause of action to proceed if already pending in court on the effective date of the bill or, if not filed by the effective date of the bill, to be commenced between January 1, 2023, and December 31, 2023. The bill would not revive claims that have been litigated to finality before January 1, 2023, and claims that have been compromised by written settlement agreements entered into before January 1, 2023. The bill would specify the required allegations to state a claim subject to revival under these provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Sexual Abuse and Cover Up Accountability Act.

Sexual Abuse and Cover Up Accountability Act

SEC. 2. The Legislature finds and declares as follows:

- (a) Every 68 seconds, an American is sexually assaulted.
- (b) One out of every six American women has been the victim of an attempted or completed rape in their lifetime.

(c) According to the Rape, Abuse and Incest National Network, only about 300 out of every 1,000 sexual assaults are reported to police. That means more than two out of three go unreported.

(d) Thirty-three percent of women who are raped contemplate suicide; 13 percent attempt it.

(e) A 2016 analysis of 28 studies of nearly 6,000 women and girls 14 years of age or older who had experienced sexual violence found that 60 percent of survivors did not label their experience as "rape."

(f) Women may not define a victimization as a rape or sexual assault for many reasons such as self-blame, embarrassment, not clearly understanding the legal definition of the terms, or not wanting to define someone they know who victimized them as a rapist or because others blame them for their sexual assault.

(g) When the perpetrator is someone a victim trusts, it can take years for the victim even to identify what happened to them as a sexual assault.

(h) For these reasons, it is self-evident that the unique nature of the emotional and psychological consequences of sexual assault, especially on women, can paradoxically permit wrongdoers to escape civil accountability unless statutes of limitation are crafted to prevent this injustice from occurring.

(i) Moreover, when these data are combined with widespread news reports of major companies being accused of covering up sexual assaults by their employees it is self-evident that statutes of limitation for sexual assault need to be crafted in a way that does not cause the covering-up company to enjoy the fruits of their cover-up solely because our statutes of limitation permit, and thus motivate, such behavior.

SEC. 3. Section 340.16 of the Code of Civil Procedure is amended to read:

340.16. (a) In any civil action for recovery of damages suffered as a result of sexual assault, where the assault occurred on or after the plaintiff's 18th birthday, the time for commencement of the action shall be the later of the following:

(1) Within 10 years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

(2) Within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

(b) (1) As used in this section, "sexual assault" means any of the crimes described in Section 243.4, 261, 264.1, 286, 287, or 289, or former Sections 262 and 288a, of the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes.

(2) For the purpose of this section, it is not necessary that a criminal prosecution or other proceeding have been brought as a result of the sexual assault or, if a criminal prosecution or other proceeding was brought, that the prosecution or proceeding resulted in a conviction or adjudication. This subdivision does not limit the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged person who committed the crime.

(3) This section applies to any action described in subdivision (a) that is based upon conduct that occurred on or after January 1, 2009, and is commenced on or after January 1, 2019, that would have been barred solely because the applicable statute of limitations has or had expired. Such claims are hereby revived and may be commenced until December 31, 2026. This subdivision does not revive any of the following claims:

(A) A claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2023.

(B) A claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2023.

(c) (1) Notwithstanding any other law, any claim seeking to recover more than two hundred fifty thousand dollars (\$250,000) in damages arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician occurring at a student health center between January 1, 1988, and January 1, 2017, that would otherwise be barred before January 1, 2020, solely because the applicable statute of limitations has or had expired, is hereby revived and, a cause of action may proceed if already pending in court on October 2, 2019, or, if not filed by that date, may be commenced between January 1, 2020, and December 31, 2020.

(2) This subdivision does not revive any of the following claims:

(A) A claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2020.

(B) A claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2020.

(C) A claim brought against a public entity.

(3) An attorney representing a claimant seeking to recover under this subdivision shall file a declaration with the court under penalty of perjury stating that the attorney has reviewed the facts of the case and consulted with a mental health practitioner, and that the attorney has concluded on the basis of this review and consultation that it is the attorney's good faith belief that the claim value is more than two hundred fifty thousand dollars (\$250,000). The declaration shall be filed upon filing the complaint, or for those claims already pending, by December 1, 2019.

(d) (1) Notwithstanding any other law, any claim seeking to recover damages arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician while employed by a medical clinic owned and operated by the University of California, Los Angeles, or a physician who held active privileges at a hospital owned and operated by the University of California, Los Angeles, at the time that the sexual assault or other inappropriate contact, communication, or activity of a sexual nature occurred, between January 1, 1983, and January 1, 2019, that would otherwise be barred before January 1, 2021, solely because the applicable statute of limitations has or had expired, is hereby revived, and a cause of action may proceed if already pending in court on January 1, 2021, or, if not filed by that date, may be commenced between January 1, 2021, and December 31, 2021.

(2) This subdivision does not revive either of the following claims:

(A) A claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2021.

(B) A claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2021.

(e) (1) Notwithstanding any other law, any claim seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday that would otherwise be barred before January 1, 2023, solely because the applicable statute of limitations has or had expired, is hereby revived, and a cause of action may proceed if already pending in court on January 1, 2023, or, if not filed by that date, may be commenced between January 1, 2023, and December 31, 2023.

(2) This subdivision revives claims brought by a plaintiff who alleges all of the following:

(A) The plaintiff was sexually assaulted.

(B) One or more entities are legally responsible for damages arising out of the sexual assault.

(C) The entity or entities, including, but not limited to, their officers, directors, representatives, employees, or agents, engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse.

(3) Failure to allege a cover up as required by subparagraph (C) of paragraph (2) as to one entity does not affect revival of the plaintiff's claim or claims against any other entity.

(4) For purposes of this subdivision:

(A) "Cover up" means a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.

(B) "Entity" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity.

(C) "Legally responsible" means that the entity or entities are liable under any theory of liability established by statute or common law, including, but not limited to, negligence, intentional torts, and vicarious liability.

(5) This subdivision revives any related claims, including, but not limited to, wrongful termination and sexual harassment, arising out of the sexual assault that is the basis for a claim pursuant to this subdivision.

(6) This subdivision does not revive either of the following claims:

(A) A claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2023.

(B) A claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2023.

(7) This subdivision shall not be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

(8) Nothing in this subdivision precludes a plaintiff from bringing an action for sexual assault pursuant to subdivisions (a) and (b).

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.