

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 988

Introduced by Assembly Member Brownley

February 27, 2009

~~An act to add Section 236.3 to the Penal Code, relating to human~~ *An act to amend Section 52.5 of the Civil Code, and to add Section 13835.11 to the Penal Code, relating to human trafficking.*

LEGISLATIVE COUNSEL'S DIGEST

AB 988, as amended, Brownley. Human trafficking: ~~U-visas~~. *civil actions: training of caseworkers.*

Existing law establishes the offense of human trafficking. Existing law authorizes a victim of human trafficking to bring a civil action for specified forms of relief. Existing law requires that any civil action filed under these provisions be stayed during the pendency of any criminal action arising out of the same occurrence.

This bill would require, instead, that a civil action filed under the above provisions, at the request of the prosecuting or investigating agency, be stayed until any criminal action arising out of the same occurrence is no longer pending, or until the prosecuting or investigating agency requests that the stay be lifted, whichever occurs first.

Existing law requires the Director of Finance to designate an agency or agencies to establish a statewide victim assistance training program for specified purposes, including certifying training programs.

This bill would require the agency designated by the Director of Finance to certify the training program for human trafficking caseworkers to be the same agency designated by the director to certify

the training program for sexual assault counselors. The bill would require that agency to complete the certification of the training program for human trafficking caseworkers on or before June 30, 2010.

~~Existing law establishes the offense of human trafficking.~~

~~This bill would require the Department of Justice to provide to victims of human trafficking, in a timely manner and in their language of origin, proper and detailed information regarding U visas, including contact information for obtaining U visas.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 52.5 of the Civil Code is amended to read:

2 52.5. (a) A victim of human trafficking, as defined in Section
3 236.1 of the Penal Code, may bring a civil action for actual
4 damages, compensatory damages, punitive damages, injunctive
5 relief, any combination of those, or any other appropriate relief.
6 A prevailing plaintiff may also be awarded attorney’s fees and
7 costs.

8 (b) In addition to the remedies specified herein, in any action
9 under subdivision (a), the plaintiff may be awarded up to three
10 times his or her actual damages or ten thousand dollars (\$10,000),
11 whichever is greater. In addition, punitive damages may also be
12 awarded upon proof of the defendant’s malice, oppression, fraud,
13 or duress in committing the act of human trafficking.

14 (c) An action brought pursuant to this section shall be
15 commenced within five years of the date on which the trafficking
16 victim was freed from the trafficking situation, or if the victim was
17 a minor when the act of human trafficking against the victim
18 occurred, within eight years after the date the plaintiff attains the
19 age of majority.

20 (d) If a person entitled to sue is under a disability at the time
21 the cause of action accrues, so that it is impossible or impracticable
22 for him or her to bring an action, then the time of the disability is
23 not part of the time limited for the commencement of the action.
24 Disability will toll the running of the statute of limitation for this
25 action.

26 (1) Disability includes being a minor, insanity, imprisonment,
27 or other incapacity or incompetence.

1 (2) The statute of limitations shall not run against an incompetent
2 or minor plaintiff simply because a guardian ad litem has been
3 appointed. A guardian ad litem’s failure to bring a plaintiff’s action
4 within the applicable limitation period will not prejudice the
5 plaintiff’s right to do so after his or her disability ceases.

6 (3) A defendant is estopped to assert a defense of the statute of
7 limitations when the expiration of the statute is due to conduct by
8 the defendant inducing the plaintiff to delay the filing of the action,
9 or due to threats made by the defendant causing duress upon the
10 plaintiff.

11 (4) The suspension of the statute of limitations due to disability,
12 lack of knowledge, or estoppel applies to all other related claims
13 arising out of the trafficking situation.

14 (5) The running of the statute of limitations is postponed during
15 the pendency of any criminal proceedings against the victim.

16 (e) The running of the statute of limitations may be suspended
17 where a person entitled to sue could not have reasonably discovered
18 the cause of action due to circumstances resulting from the
19 trafficking situation, such as psychological trauma, cultural and
20 linguistic isolation, and the inability to access services.

21 (f) A prevailing plaintiff may also be awarded reasonable
22 attorney’s fees and litigation costs including, but not limited to,
23 expert witness fees and expenses as part of the costs.

24 (g) Any restitution paid by the defendant to the victim shall be
25 credited against any judgment, award, or settlement obtained
26 pursuant to this section. Any judgment, award, or settlement
27 obtained pursuant to an action under this section shall be subject
28 to the provisions of Section 13963 of the Government Code.

29 (h) Any civil action filed under this section shall, *at the request*
30 *of the prosecuting or investigating agency*, be stayed ~~during the~~
31 ~~pendency of~~ *until* any criminal action arising out of the same
32 occurrence in which the claimant is the victim *is no longer pending,*
33 *or until the prosecuting or investigating agency requests that the*
34 *stay be lifted, whichever occurs first.* As used in this section, a
35 “criminal action” includes investigation and prosecution, and is
36 pending until a final adjudication in the trial court, or dismissal.

37 *SEC. 2. Section 13835.11 is added to the Penal Code, to read:*
38 *13835.11. The agency designated by the Director of Finance*
39 *pursuant to Section 13820 to certify the training program for*
40 *human trafficking caseworkers, as defined in subdivision (b) of*

1 *Section 1038.2 of the Evidence Code, shall be the same agency*
2 *designated by the Director of Finance to certify the training*
3 *program for sexual assault counselors, as defined in Section 1035.2*
4 *of the Evidence Code. That agency shall complete the certification*
5 *of the training program for human trafficking caseworkers on or*
6 *before June 30, 2010.*

7 SECTION 1.— ~~Section 236.3 is added to the Penal Code, to read:~~

8 ~~236.3.— The Department of Justice shall provide to victims of~~
9 ~~human trafficking, in a timely manner and in their language of~~
10 ~~origin, proper and detailed information regarding U visas, including~~
11 ~~contact information for obtaining U visas.~~