

AMENDED IN ASSEMBLY MAY 6, 2015  
AMENDED IN ASSEMBLY MARCH 26, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 15**

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**Introduced by Assembly Member Holden**

December 1, 2014

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An act to amend Section 52.5 of the Civil Code, and to add Section 354.8 to the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 15, as amended, Holden. Limitation of actions: human rights abuses.

*Existing law requires a civil action brought by a victim of human trafficking, as defined, to be commenced within 5 years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within 8 years after the date the plaintiff attains the age of majority.*

*This bill would require a civil action for human trafficking, as defined, to be commenced within 7 years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within 10 years after the date the plaintiff attains the age of majority.*

Existing law requires a civil action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another to be commenced within 2 years. ~~Existing law requires a civil action brought by a victim of human trafficking, as defined, to be commenced within 5 years of the date on which the trafficking victim~~

~~was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within 8 years after the date the plaintiff attains the age of majority.~~

This bill would ~~instead require (1) a civil action for assault, battery, or wrongful death, when the conduct would also constitute torture, genocide, a war crime, an attempted extrajudicial killing, or a crime against humanity, as defined, (2) a civil action for the taking of property in violation of international law, as defined, or (3) a civil action seeking benefits under an insurance policy, where the insurance claim arises out of any of the conduct specified above, to be commenced within 10 years. The bill would also require a civil action for human trafficking or the taking of property in violation of international law, as specified, or a civil action seeking benefits under an insurance policy, where the insurance claim arises out of any of the conduct specified above, to be commenced within 10 years.~~ The bill would authorize a prevailing plaintiff to recover reasonable attorney's fees and litigation costs. The bill would require these provisions to be construed as applying retroactively and would provide that these provisions are severable, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
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  
2 read:  
3 52.5. (a) A victim of human trafficking, as defined in Section  
4 236.1 of the Penal Code, may bring a civil action for actual  
5 damages, compensatory damages, punitive damages, injunctive  
6 relief, any combination of those, or any other appropriate relief.  
7 A prevailing plaintiff may also be awarded attorney's fees and  
8 costs.  
9 (b) In addition to the remedies specified in this section, in an  
10 action under subdivision (a), the plaintiff may be awarded up to  
11 three times his or her actual damages or ten thousand dollars  
12 (\$10,000), whichever is greater. In addition, punitive damages  
13 may also be awarded upon proof of the defendant's malice,  
14 oppression, fraud, or duress in committing the act of human  
15 trafficking.

1 (c) An action brought pursuant to this section shall be  
2 commenced within seven years of the date on which the trafficking  
3 victim was freed from the trafficking situation or, if the victim was  
4 a minor when the act of human trafficking against the victim  
5 occurred, within 10 years after the date the plaintiff attains the  
6 age of majority.

7 ~~(e)~~

8 (d) If a person entitled to sue is under a disability at the time  
9 the cause of action accrues, so that it is impossible or impracticable  
10 for him or her to bring an action, then the time of the disability is  
11 not part of the time limited for the commencement of the action.  
12 Disability will toll the running of the statute of limitation for this  
13 action.

14 (1) Disability includes being a minor, lacking legal capacity to  
15 make decisions, imprisonment, or other incapacity or  
16 incompetence.

17 (2) The statute of limitations shall not run against a plaintiff  
18 who is a minor or who lacks the legal competence to make  
19 decisions simply because a guardian ad litem has been appointed.  
20 A guardian ad litem's failure to bring a plaintiff's action within  
21 the applicable limitation period will not prejudice the plaintiff's  
22 right to do so after his or her disability ceases.

23 (3) A defendant is estopped ~~to assert~~ *from asserting* a defense  
24 of the statute of limitations when the expiration of the statute is  
25 due to conduct by the defendant inducing the plaintiff to delay the  
26 filing of the action, or due to threats made by the defendant causing  
27 duress upon the plaintiff.

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

31 (5) The running of the statute of limitations is postponed during  
32 the pendency of criminal proceedings against the victim.

33 ~~(d)~~

34 (e) The running of the statute of limitations may be suspended  
35 ~~where~~ *if* a person entitled to sue could not have reasonably  
36 discovered the cause of action due to circumstances resulting from  
37 the trafficking situation, such as psychological trauma, cultural  
38 and linguistic isolation, and the inability to access services.

39 ~~(e)~~

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

4 ~~(f)~~

5 (g) Restitution paid by the defendant to the victim shall be  
6 credited against a judgment, award, or settlement obtained pursuant  
7 to this section. A judgment, award, or settlement obtained pursuant  
8 to an action under this section shall be subject to the provisions of  
9 Section 13963 of the Government Code.

10 ~~(g)~~

11 (h) A civil action filed under this section shall be stayed during  
12 the pendency of any criminal action arising out of the same  
13 occurrence in which the claimant is the victim. As used in this  
14 section, a “criminal action” includes investigation and prosecution,  
15 and is pending until a final adjudication in the trial court or  
16 dismissal.

17 SEC. 2. Section 354.8 is added to the Code of Civil Procedure,  
18 to read:

19 354.8. (a) Notwithstanding any other law, including, but not  
20 limited to Section 335.1, the following actions shall be commenced  
21 within 10 years:

22 (1) An action for assault, battery, or both, where the conduct  
23 constituting the assault or battery would also constitute any of the  
24 following:

25 (A) An act of torture, as described in Section 206 of the Penal  
26 Code.

27 (B) An act of genocide, as described in Section 1091(a) of Title  
28 18 of the United States Code.

29 (C) A war crime, as defined in Section 2441 of Title 18 of the  
30 United States Code.

31 (D) An attempted extrajudicial killing, as defined in Section  
32 3(a) of Public Law 102-256.

33 (E) (i) Crimes against humanity.

34 (ii) For purposes of this paragraph, “crimes against humanity”  
35 means any of the following acts as part of a widespread or  
36 systematic attack directed against a civil population, with  
37 knowledge of the attack:

38 (I) Murder.

39 (II) Extermination.

40 (III) Enslavement.

- 1 (IV) Forcible transfer of population.
- 2 (V) Arbitrary detention.
- 3 (VI) Rape, sexual slavery, enforced prostitution, forced
- 4 pregnancy, enforced sterilization, or any other form of sexual
- 5 violence of comparable gravity.
- 6 (VII) Persecution on political, race, national, ethnic, cultural,
- 7 religious, or gender grounds.
- 8 (VIII) Enforced disappearance of persons.
- 9 (IX) Other inhuman acts of similar character intentionally
- 10 causing great suffering, serious bodily injury, or serious mental
- 11 injury.
- 12 (2) An action for wrongful death, where the death arises out of
- 13 conduct constituting any of the acts described in paragraph (1), or
- 14 where the death would constitute an extrajudicial killing, as defined
- 15 in Section 3(a) of Public Law 102-256.
- 16 ~~(3) An action brought pursuant to Section 52.5 of the Civil Code.~~
- 17 ~~(4)~~
- 18 (3) An action for the taking of property in violation of
- 19 international law, in which either of the following apply:
- 20 (A) That property, or any property exchanged for such property,
- 21 is present in the United States in connection with a commercial
- 22 activity carried on in the United States by a foreign state.
- 23 (B) That property, or any property exchanged for such property,
- 24 is owned or operated by an agency or instrumentality of a foreign
- 25 state and that agency or instrumentality is engaged in a commercial
- 26 activity in the United States.
- 27 ~~(5)~~
- 28 (4) An action seeking benefits under an insurance policy where
- 29 the insurance claim arises out of any of the conduct described in
- 30 paragraphs (1) to ~~(4)~~, (3), inclusive.
- 31 (b) An action brought under this section shall not be dismissed
- 32 for failure to comply with any previously applicable statute of
- 33 limitations.
- 34 (c) Section 361 shall not apply to an action brought under this
- 35 section.
- 36 (d) A prevailing plaintiff may be awarded reasonable attorney's
- 37 fees and litigation costs including, but not limited to, expert witness
- 38 fees and expenses as part of the costs.

1 (e) (1) This section shall apply to all actions commenced  
2 concerning an act described in paragraphs (1) to (4), inclusive,  
3 of subdivision (a), that occurs on or after January 1, 2016.

4 (e)

5 (2) This section shall also be construed to apply retroactively,  
6 and shall apply regardless of when an action or claim accrues or  
7 is filed and regardless of whether it may have lapsed or otherwise  
8 been barred by time under the laws of the ~~state~~: state, if the conduct  
9 or action upon which the victim's or plaintiff's claim is based  
10 occurred within 115 years before January 1, 2016.

11 (f) This section shall apply to all pending and ~~future~~  
12 ~~statutorily-barred~~ actions commenced on or before January 1,  
13 ~~2016~~, 2018, including any actions dismissed based on the  
14 expiration of statutes of limitations in effect before January 1,  
15 2016, if the judgment in that action is not yet final or if the time  
16 for filing an appeal from a decision on that action has not expired,  
17 if the action concerns an act described in paragraphs (1) to ~~(5)~~,  
18 (4), inclusive, of subdivision (a), that occurred within 115 years  
19 before January 1, 2016.

20 (g) The provisions of this section are severable. If any provision  
21 of this act or its application is held invalid, that invalidity shall not  
22 affect other provisions or applications that can be given effect  
23 without the invalid provision or application.