

AMENDED IN SENATE JULY 15, 2015

AMENDED IN ASSEMBLY MAY 6, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 15

Introduced by Assembly Member Holden

December 1, 2014

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 with 2 years.

This bill would 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 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~~ *the* 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.
 16 (c) An action brought pursuant to this section shall be
 17 commenced within seven years of the date on which the trafficking
 18 victim was freed from the trafficking situation or, if the victim was
 19 a minor when the act of human trafficking against the victim
 20 occurred, within 10 years after the date the plaintiff attains the age
 21 of majority.
 22 (d) If a person entitled to sue is under a disability at the time
 23 the cause of action ~~accrues~~, *accrues* so that it is impossible or
 24 impracticable for him or her to bring an action, ~~then~~ the time of

1 the disability is not part of the time limited for the commencement
2 of the action. Disability will toll the running of the statute of
3 limitation for this action.

4 (1) Disability includes being a minor, lacking legal capacity to
5 make decisions, imprisonment, or other incapacity or
6 incompetence.

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

13 (3) A defendant is estopped from asserting a defense of the
14 statute of limitations when the expiration of the statute is due to
15 conduct by the defendant inducing the plaintiff to delay the filing
16 of the action, or due to threats made by the defendant causing
17 duress upon the plaintiff.

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

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

23 (e) The running of the statute of limitations may be suspended
24 if a person entitled to sue could not have reasonably discovered
25 the cause of action due to circumstances resulting from the
26 trafficking situation, such as psychological trauma, cultural and
27 linguistic isolation, and the inability to access services.

28 (f) A prevailing plaintiff may also be awarded reasonable
29 attorney's fees and litigation costs including, but not limited to,
30 expert witness fees and expenses as part of the costs.

31 (g) Restitution paid by the defendant to the victim shall be
32 credited against a judgment, award, or settlement obtained pursuant
33 to this section. A judgment, award, or settlement obtained pursuant
34 to an action under this section shall be subject to Section 13963
35 of the Government Code.

36 (h) A civil action filed under this section shall be stayed during
37 the pendency of any criminal action arising out of the same
38 occurrence in which the claimant is the victim. As used in this
39 section, a "criminal action" includes investigation and prosecution,

1 and is pending until a final adjudication in the trial court or
2 dismissal.

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

5 354.8. (a) Notwithstanding any other law, including, but not
6 limited to Section 335.1, the following actions shall be commenced
7 within 10 years:

8 (1) An action for assault, battery, or both, where the conduct
9 constituting the assault or battery would also constitute any of the
10 following:

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

13 (B) An act of genocide, as described in Section 1091(a) of Title
14 18 of the United States Code.

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

17 (D) An attempted extrajudicial killing, as defined in Section
18 3(a) of Public Law 102-256.

19 (E) (i) Crimes against humanity.

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

24 (I) Murder.

25 (II) Extermination.

26 (III) Enslavement.

27 (IV) Forcible transfer of population.

28 (V) Arbitrary detention.

29 (VI) Rape, sexual slavery, enforced prostitution, forced
30 pregnancy, enforced sterilization, or any other form of sexual
31 violence of comparable gravity.

32 (VII) Persecution on political, race, national, ethnic, cultural,
33 religious, or gender grounds.

34 (VIII) Enforced disappearance of persons.

35 (IX) Other inhuman acts of similar character intentionally
36 causing great suffering, serious bodily injury, or serious mental
37 injury.

38 (2) An action for wrongful death, where the death arises out of
39 conduct constituting any of the acts described in paragraph (1), or

1 where the death would constitute an extrajudicial killing, as defined
2 in Section 3(a) of Public Law 102-256.

3 (3) An action for the taking of property in violation of
4 international law, in which either of the following apply:

5 (A) That property, or any property exchanged for such property,
6 is present in the United States in connection with a commercial
7 activity carried on in the United States by a foreign state.

8 (B) That property, or any property exchanged for such property,
9 is owned or operated by an agency or instrumentality of a foreign
10 state and that agency or instrumentality is engaged in a commercial
11 activity in the United States.

12 (4) An action seeking benefits under an insurance policy where
13 the insurance claim arises out of any of the conduct described in
14 paragraphs (1) to (3), inclusive.

15 (b) An action brought under this section shall not be dismissed
16 for failure to comply with any previously applicable statute of
17 limitations.

18 (c) Section 361 shall not apply to an action brought under this
19 section.

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

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

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

32 (f) This section shall apply to all pending and statutorily-barred
33 actions commenced on or before January 1, 2018, including any
34 actions dismissed based on the expiration of statutes of limitations
35 in effect before January 1, 2016, if the judgment in that action is
36 not yet final or if the time for filing an appeal from a decision on
37 that action has not expired, if the action concerns an act described
38 in paragraphs (1) to (4), inclusive, of subdivision (a), that occurred
39 within 115 years before January 1, 2016.

40 ~~(g)~~

1 (f) The provisions of this section are severable. If any provision
2 of this ~~act~~ *section* or its application is held invalid, that invalidity
3 shall not affect other provisions or applications that can be given
4 effect without the invalid provision or application.