

Assembly Bill No. 15

Passed the Assembly September 9, 2015

Chief Clerk of the Assembly

Passed the Senate September 8, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 provide that the provisions are severable, as specified.

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

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

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

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

(c) An action brought pursuant to this section shall be commenced within seven 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.

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

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

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

(3) A defendant is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to

conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) (i) Crimes against humanity.

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

(I) Murder.

(II) Extermination.

(III) Enslavement.

(IV) Forcible transfer of population.

(V) Arbitrary detention.

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

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

(VIII) Enforced disappearance of persons.

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

(2) An action for wrongful death, where the death arises out of conduct constituting any of the acts described in paragraph (1), or where the death would constitute an extrajudicial killing, as defined in Section 3(a) of Public Law 102-256.

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

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

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

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

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

(c) Section 361 shall not apply to an action brought pursuant to this section if all or part of the unlawful act or acts out of which the action arises occurred in this state.

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

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

(f) The provisions of this section are severable. If any provision of this section 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.

Approved _____, 2015

Governor