

ASSEMBLY THIRD READING

AB 2777 (Wicks)

As Amended May 4, 2022

Majority vote

SUMMARY

Allows specified claims for recovery of damages suffered as a result of sexual assault or other inappropriate conduct, communication, or activity of a sexual nature, including those which are time-barred solely due to the expiration of the applicable statute of limitations, to be revived.

Major Provisions

- 1) Declares that this bill shall be known and may be cited as the Sexual Abuse and Cover Up Accountability Act.
- 2) Makes findings and declarations on behalf of the Legislature regarding the prevalence of sexual assault and its traumatic impact on survivors.
- 3) Revives claims for sexual assault of an adult that are based upon conduct that occurred on or after January 1, 2009, and commenced on or after January 1, 2019, that would have been barred solely because the applicable statute of limitations has or had expired. Specifies that such claims are hereby revived and may be commenced until December 31, 2026. Specifies that the bill 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.
- 4) Provides that notwithstanding any other law, any claim seeking to recover damages suffered as a result of a sexual assault or other inappropriate conduct, communication, or activity of a sexual nature 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. Specifies that the bill revives claims brought by a plaintiff who alleges all of the following:
 - a) The plaintiff was sexually assaulted or was subjected to other inappropriate conduct, communication, or activity of a sexual nature.
 - b) One or more entities are legally responsible for damages arising out of the sexual assault or other inappropriate conduct, communication, or activity of a sexual nature.
 - 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 allegation of sexual assault or other inappropriate conduct, communication, or activity of a sexual nature by an alleged perpetrator of such abuse.

- d) Failure to allege a cover up as required as to one entity does not affect revival of the plaintiff's claim or claims against any other entity.
- 5) Defines the following for purposes of 4), above:
- a) "Cover up" means a concerted effort to hide evidence relating to a sexual assault or other inappropriate conduct, communication, or activity of a sexual nature that incentivizes individuals to remain silent or prevents information relating to a sexual assault or other inappropriate conduct, communication, or activity of a sexual nature 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.
- 6) Specifies that 4), above, revives any related claims, including, but not limited to, wrongful termination and sexual harassment, arising out of the sexual assault or other inappropriate conduct, communication, or activity of a sexual nature that is the basis for a claim.
- 7) Specifies that 4), above, 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.
- 8) Clarifies that 4), above, shall not be construed to alter the otherwise applicable burden of proof, as defined in Evidence Code Section 115, that a plaintiff has in a civil action subject to this section.
- 9) Clarifies that 4), above, does not preclude a plaintiff from bringing an action for sexual assault pursuant to 3), above.
- 10) Provides that the provisions of the bill are severable. If any provision of this bill 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.

COMMENTS

This bill, sponsored by Victim Policy Institute, allows specified claims for recovery of damages suffered as a result of sexual assault or other inappropriate conduct, communication, or activity of a sexual nature, including those which are time-barred solely due to the expiration of the applicable statute of limitations, to be revived.

Sexual assault and its long-term psychological impact on survivors. Sexual assault is a widespread and serious problem in our society. According to an ongoing, nationally

representative survey that assesses sexual violence, stalking, and intimate partner violence victimization among adult women and men in the United States, 43.6% of women (nearly 52.2 million) experienced some form of contact sexual violence in their lifetime, with 4.7% of women experiencing this violence in the 12 months preceding the survey. (S. G. Smith, *et al.*, *The National Intimate Partner and Sexual Violence Survey: 2015 data brief – updated release*, (2018) Centers for Disease Control and Prevention, at p. 2.) Approximately one in five (21.3% or an estimated 25.5 million) women in the U.S. reported completed or attempted rape at some point in their lifetime. (*Ibid.*) More than a third of women (37.0% or approximately 44.3 million women) reported unwanted sexual contact (e.g., groping) in their lifetime. (*Ibid.*)

The Legislature has the power to create, extend, and change statutes of limitation, as it deems appropriate. The policy behind statutes of limitations provides that they "are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and the right to be free of stale claims in time comes to prevail over the right to prosecute them." (3 Witkin, California Procedure Section 433, 4th Ed.) Nonetheless, courts have acknowledged that, "the need for repose is not so overarching that the Legislature cannot by express legislative provision allow certain actions to be brought at any time, and it has occasionally done so." (*Duty v. Abex Corp* (1989) 214 Cal.App.3rd 742, 749 [citations omitted].)

Perhaps most importantly for purposes of this bill, the California Supreme Court in *Quarry v. Doe I* (2009) 53 Cal.4th 945, held that the provision of Code of Civil Procedure (CCP) Section 340.1, allowing a plaintiff over 26 years of age to file suit against specified third parties in specified circumstances, did not apply to claims that had lapsed under prior law; the court did not say that the Legislature could not revive the claims by express terms, but rather (the majority) held that the Legislature had *not* expressly done so. *Quarry* is relevant to this bill because 1) the statute it seeks to amend – CCP Section 340.16 – does not expressly revive lapsed claims for adult sexual assault, even though it was amended in 2018 to extend the statute of limitations governing claims that are filed *after* January 1, 2019; and 2) this bill seeks to do just that.

This bill. The bill revives two types of claims that otherwise would be barred solely because of the expiration of the applicable statute of limitations: 1) any claim seeking the recovery of damages suffered as a result of sexual assault alleged to have occurred on or after January 1, 2009 and commenced on or after January 1, 2019, that would have been barred solely because the statute of limitations has or had expired, as long as such claims are commenced no later than December 31, 2026; and 2) any claim seeking to recover damages suffered as a result of a *cover up* of a sexual assault or other inappropriate conduct, communication, or activity of a sexual nature, including a claim that was time-barred prior to January 1, 2023, as long as such claims are commenced during a one-year period from January 1, 2023, until December 31, 2023.

According to the Author

At a moment of reckoning in the United States about sexual harassment, abuse and sexual assault, California has made landmark decisions that recognize for many survivors it takes years before being able to come forward.

With this bill, California takes another step to protect survivors of sexual abuse when there is evidence of cover up by a defendant entity.

Arguments in Support

The Victim Policy Institute, sponsor of this bill, writes the following in support of the Sexual Abuse Cover Up and Accountability Act: "With this bill, California takes another small step to protect victims of sexual abuse. This bill opens a one-year window in the statute of limitations but does so only when there is evidence a defendant entity has engaged in a cover-up of a prior incident of sexual abuse or misconduct."

Arguments in Opposition

The business coalition opposing this bill predicts that it will bring a deluge of new claims based upon old facts: "AB 2777 provides a one-year "reviver" window in 2023 to sue for alleged sexual assault or other inappropriate conduct of a sexual nature that can go back in time for half a century or more. As a result, this bill could result in an onslaught of ancient claims against which businesses of all types and sizes across every industry will have no ability to defend themselves due to records and witnesses that are no longer accessible."

FISCAL COMMENTS

None

VOTES**ASM JUDICIARY: 8-0-2**

YES: Stone, Cunningham, Kalra, Maienschein, Reyes, Robert Rivas, Bloom, Carrillo

ABS, ABST OR NV: Davies, Kiley

UPDATED

VERSION: May 4, 2022

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

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