FLOOR ALERT

AB 2777 (Wicks) as amended, May 4, 2022 – OPPOSE

The above coalition of organizations must respectfully **OPPOSE AB 2777 (Wicks)** for the following reasons:

1. AB 2777 violates fundamental fairness and due process by permitting lawsuits against which it is impossible to provide a defense.

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.

As Governor Brown explained when he vetoed comparable reviver provisions in bills before him:

> The reason for [the] universal practice [of barring actions after a lapse of years] is one of fairness. [¶] There comes a time when an individual or organization should be secure in the reasonable expectation that past acts are indeed in the past and not subject to further lawsuits. With the passage of time evidence may be lost or disposed of, memories fade and witnesses move away or die. (Veto Messages re: AB 3120, Sept. 30, 2018, and SB 131, Oct. 12, 2013.)

AB 2777 flies in the face of these long-established principles underlying statutes of limitation. As a matter of policy, statutes of limitations recognize that when claims reach too far back in time, the legal system is no longer able to find employees, other witnesses, or records from the time period of the claim to evaluate what did or did not occur. This leaves juries with comparatively little evidence, and leaves defendants with no basis for an appropriate response or ability to defend themselves in court. Those evidentiary problems are magnified because AB 2777 encompasses many types of potential plaintiffs – such as customers, visitors, and vendors – for which records may be minimal or nonexistent in the regular course of business.

Moreover, the current statute of limitations for sexual assault victims was already recently expanded to be lengthy and flexible – currently 10 years or 3 years from the date the plaintiff discovered that he or she was a victim. This discovery period permits victims who have repressed memories to file claims three years from when those memories are revived by therapy or some other triggering event, which can go back a very long time. (Cal. Code. Civ. Pro. §340.16.)

For example – putting these issues together – under AB 2777, a person could file a claim against a retail establishment that they were sexually harassed by an employee in 1985. The retail establishment would be unable to produce evidence to the contrary, given that all employees at that site had since retired or left the company (if they remembered the event at all), and that no security footage or recordings would remain. This puts the company in an impossible position: there is only one witness who claims to remember the events (the plaintiff) and no contrary evidence can be produced because the plaintiff waited for 35 years to bring the claim. That is why statutes of limitations are so basic to our system of justice – because the truth cannot be found if the evidence has all been lost due to the passage of time.

2. AB 2777's scope is so vague and overbroad that it could include a vast number of subjective claims and be subject to abuse.

AB 2777 applies to both alleged acts of sexual assault as well as "other inappropriate conduct, communication, or activity of a sexual nature," phraseology which is unclear and subject to broad interpretation. For example, does an inappropriate communication of a sexual nature include a risqué joke?

Additionally, "cover up" is defined to include "assisting an alleged perpetrator in gaining employment at another entity following allegations of sexual assault or other inappropriate conduct, communication, or activity of a sexual nature." What if a past employer of an alleged perpetrator who was let go or quit work receives a reference request from a prospective future employer? Is the past employer "assisting" the alleged perpetrator in gaining employment if it only confirms dates of employment and provides no other information?

AB 2777 also has such a low pleading burden that there is no way to distinguish meritorious claims from frivolous claims, creating a potential field day for unethical lawyers to bring threatening monetary demands over manufactured allegations. While the measure requires attorneys to provide a certification of merit and obtain a mental health professional's opinion confirming the plaintiff was a victim, there is no requirement of proof that a defendant was in any way connected or responsible beyond allegations. Also, only one certification is needed to sue multiple defendants.

We have seen similar well-intentioned laws with low pleading burdens, such as ADA, Prop 65, and PAGA, which have resulted in ongoing shakedown lawsuits against many small businesses up and down the state with meritless claims. AB 2777 would be far worse since the ease of filing suits would be paired with complete removal of any statute of limitations.

3. AB 2777 creates a questionable disparity between private versus public entities, underscoring why it should not be applied to either.

AB 2777 does not appear to provide the same revival of stale claims for victims of sexual assault who visited or worked for a public entity as it does for private entities. To apply to public sector agencies, AB 2777 would need to eliminate the six-month government claims presentation deadline during 2023, which it does not. (Cal. Gov. Code §911.2.)

If the intent of the measure is to protect victims and provide them recourse, there is no reason to treat victims who visit or work for one differently than the other. For instance, why treat students who attended public colleges and universities differently than those who attended private ones? – Or who visit or work for the Legislature differently than a private nonprofit organization?

In fact, completely eliminating the statutes of limitation as AB 2777 proposes to do would be extremely unfair and harmful to both private and public sector entities and should not be enacted for either.

For the foregoing reasons, we **OPPOSE AB 2777** and urge a "NO" vote.