



### FLOOR ALERT

September 6, 2023

TO: Members, California State Senate

**SUBJECT: AB 452 (Addis) Damages: Childhood Sexual Assault: Statute of Limitations –OPPOSE (As Amended July 13, 2023)**

We are committed to working diligently to enhance the safety of all children. However, on behalf of the above organizations, we must respectfully **OPPOSE Assembly Bill 452 (Addis)**, which would eliminate the statute of limitations to bring a civil action against an employer, including school districts, public agencies, and others, where there has been a claim against an employee of that organization for alleged child sexual abuse.

Child safety is a top priority for us. For more than a decade, schools have implemented structural changes, including independent oversight and monitoring, awareness, and training as well as reporting both for students, teachers, staff, volunteers, and parents. We wish to ensure that any new law results in a comprehensive solution that puts our state on a trajectory to prevent assaults on children while maintaining financial viability for schools that is essential to students’ futures. We need to keep the big picture clearly in focus—the future of our children depends on a good education, a safe environment, and the resources needed to make sure they will have both.

As drafted, **AB 452** continuously exposes public schools and others to claims of abuse going back 40 years ago and longer. It is impossible for employers to effectively defend against claims when evidence is likely gone, witnesses have moved or passed away, and there has been a turnover of staff. These barriers have resulted in a substantial diversion of education dollars to finance increased legal costs, whether or not the claim is valid.

Since AB 218 (Gonzalez) was signed into law in 2019 the current statute of limitations allows claims to be made either 22 years after the age of majority (i.e., 40 years old) or anytime thereafter within five years of discovering a related psychological injury for a plaintiff to bring a civil suit against the employer of an accused perpetrator. That bill also retroactively revived all claims, for three years, that were otherwise barred because of the previously applicable statute of limitations. No monetary reserves were ever set aside by school agencies for these historic claims. As a result, today’s schools have been required to pay hundreds of millions of dollars to resolve claims for which they had no part.

Following the passage of AB 218, there was an immediate fiscal impact on our organizations due to the need to assess and fund costly older exposures. Public entities are finding that liability coverage is

drastically more expensive and difficult to obtain as a result of, among other things, the revival of these previously barred claims. Whether or not they have any claims, our members are facing significantly increased rates, hard caps, exclusions, settlement inflation, lower limits of coverage, and stricter underwriting processes. The liability and related cost pressures are leaving our public-school students, education partners, local governments, and the risk pools they are members of, without coverage and exposed to the direct cost of these claims.

The current fiscal reality makes the timing of AB 452 challenging. Even with the clarification that the bill is intended to be applied prospectively, significant financial reserves funded with Prop 98 dollars will need to be collected and retained for the *possibility* of decades of liability exposure that *may* be realized in the future. Assessments to fund the associated risk addressed by AB 452 will be levied on today's schools. These assessments will be happening concurrently with assessments on all schools to continue funding historic claims being brought forward under the current five-year psychiatric injury window that is available to all victims- regardless of age.

Despite these serious financial realities, we are committed to protecting the health and safety of every student and child in California. That is why the entities represented on this letter respectfully offer amendments to AB 452 that will support keeping children safe, serving as prudent fiscal stewards of public tax dollars, and hopefully lead to healing for victims and their families.

Liability created by this bill is being funded by public dollars that would otherwise go directly to funding education, since many public entities including school districts, cities, and counties use the joint powers authority mechanism to self-fund their liability and other risk related obligations in a non-profit, public entity risk pool. These public entity risk pools are not insurance companies with large capital reserves. Instead, risk pools are funded by the revenues of their local government members.

Prior to AB 218, a victim could bring a civil suit against an employer after the expiration of the statute of limitations if the victim alleged that the employer had some reason to know of the proclivities of their employee AND the employer failed to take action to prevent the abuse. **AB 218** changed the “AND” to an “OR” which had the effect of eliminating the requirement for an employer to have culpability, thereby creating strict legal liability, regardless of knowledge of or reasonable steps taken to safeguard children. This has done more harm by restricting limited resources and forcing hundreds of millions of taxpayer dollars to be spent on increased litigation costs for any alleged action of employees and administrations long gone, with attorneys collecting 40 to 60 percent of the settlements.

To ensure an appropriate level of accountability for claims that are decades old, we respectfully request the following amendments to the bill:

- (1) **Conform language to the recently enacted federal law** signed by President Biden, The Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022, S. 3103 (Pub. L. 117-176). Provide a cause of action only against a person who committed one of the listed criminal acts, i.e., the perpetrator. Do not apply vicarious liability or negligence claims against public or private organizations.
- (2) **Clearly define the standard of knowledge** to bring an action against an entity after the expiration of the statute of limitations (plaintiff's 40th birthday or within five years of discovery). To hold an employer financially liable more than 22 years later, employers must have knowledge as well as culpability for failing to prevent abuse. Therefore, we request subdivision (c) of 340.1 of the Code of Civil Procedure to read as follows:

*(c) An action described in paragraph (2) or (3) of subdivision (a) shall not be commenced on or after the plaintiff's 40th birthday unless the person or entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an*

*employee, volunteer, representative, or agent, ~~or~~ and the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard. Nothing in this subdivision shall be construed to constitute a substantive change in negligence law.*

- (3) **Pursue alternatives to punitive measures** via a more comprehensive approach to ensure child safety and recovery which may include state created alternatives such as:
- a. A tracking system/database for employers to access in order to prevent the hiring of known offenders for positions working with students or children. Current employment data limitations means prior offenses that do not result in a conviction remain unseen by the hiring employer.
  - b. A Commission with a continued focus on providing immediate and necessary ongoing medical care and counseling to victims, at no cost to the victim. This avenue would ensure procedures for a victim to seek compensation and ensure the swiftest possible recovery in a process that minimizes the potential for adversarial discovery and litigation to further traumatize victims. These recovery procedures could guarantee adequate defined recoveries. The Commission would also focus on additional ways to prevent these egregious crimes against children and ensure the necessary resources to provide every child with a safe environment and a good education. They may also explore arrangements to identify ongoing funding to ensure implementation of preventative measures with fidelity and to minimize the diversion of resources needed in the classroom.

We sincerely hope that an opportunity exists to discuss our respectful opposition and proposed amendments to ensure aggressive and effective prevention measures to accompany fair and reasonable victim compensation funded by limited public dollars. Please do not hesitate to contact Faith Lane Borges at 916-441-5050.