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SENATE BILL

No. 688

Introduced by Senator Burton and Assembly Member Wesson
**(Principal coauthors: Senators Dunn, Escutia, Romero, and
Torlakson)**

(Principal coauthors: Assembly Members Calderon, Corbett, and
Steinberg)

(Coauthors: Assembly Members Aroner, Canciamilla, Cardoza,
Cedillo, Chan, Chavez, Chu, Cohn, *Diaz*, Firebaugh, Florez,
Frommer, Goldberg, Jackson, Keeley, Kehoe, Koretz, Longville,
Lowenthal, Oropeza, Pavley, Reyes, Salinas, Shelley, Vargas,
Wayne, and Wiggins)

February 23, 2001

An act to amend Sections 340 and 437c of, and to add Sections 335.1
and 340.10 to, the Code of Civil Procedure, relating to civil actions.



LEGISLATIVE COUNSEL'S DIGEST

SB 688, as amended, Burton. Civil actions: limitation of actions: summary judgment.

(1) Existing law specifies a one year statute of limitations for actions for *assault, battery, or injury to, or for the death of, a person caused by the wrongful act or neglect of another.*

This bill would extend that statute of limitations to 2 years. The bill would also specify the same time limit for a civil action for injury or death to a terrorist victim of September 11, 2001.

(2) Existing law prescribes the service deadlines, continuance procedures, and appellate review of motions for summary judgment.

This bill would revise those provisions to extend the service deadlines from 28 to 75 days, to allow additional discovery after continuance, as specified, ~~and~~ to require a reviewing court to allow supplemental briefing on grounds granting summary adjudication not relied upon by the trial court, *and to make technical changes.*

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. The Legislature finds and declares, as follows:

2 (a) The California system for the administration of civil justice
3 is one of the fairest in the world, but certain procedures and
4 standards should be amended to ensure fairness to all parties.

5 (b) Under current law, victims of personal injury and wrongful
6 death are now required to file lawsuits within a year in order to
7 meet unduly short statutes of limitations. Many such matters
8 would be resolved without the need to resort to litigation if
9 California's statute of limitations permitted such actions to be filed
10 within two years, as the vast majority of other states provide for
11 a longer time to resolve claims short of litigation.

12 (c) A prime example of the inequity caused by the one-year
13 statute of limitations is that residents of California who were
14 victims of the terrorist actions of September 11, 2001, must
15 prematurely choose between litigation and federal remedies, while
16 residents of other states have more than twice as long to pursue
17 their remedies. Extending the statute of limitations will reduce
18 litigation in these cases as well, because terrorist victims will have



1 the opportunity to fully evaluate and use other alternatives, rather
2 than being forced to litigate prematurely.

3 (d) The special injustice worked against victims of the
4 September 11, 2001, terrorist actions justifies applying the
5 two-year statute of limitations retroactively to those victims.

6 (e) Longstanding California law favors trial on the merits.
7 Summary judgment is a drastic procedure and should only be
8 granted when an action is without merit and both sides have a fair
9 opportunity to address the merits of an action or when an action
10 lacks a triable issue of fact. It is important to extend the time to
11 respond to a motion for summary judgment to assure that all
12 evidence is before a court before ruling on the motion. This act will
13 assure that frivolous actions are disposed of, and those that have
14 merit can proceed to a fair trial.

15 SEC. 2. Section 335.1 is added to the Code of Civil Procedure,
16 to read:

17 335.1. Within two years: An action for ~~injury to~~ *assault,*
18 *battery, or injury to,* or for the death of, an individual caused by the
19 wrongful act or neglect of another.

20 SEC. 3. Section 340 of the Code of Civil Procedure is
21 amended to read:

22 340. Within one year:

23 (a) An action upon a statute for a penalty or forfeiture, if the
24 action is given to an individual, or to an individual and the state,
25 except if the statute imposing it prescribes a different limitation.

26 (b) An action upon a statute for a forfeiture or penalty to the
27 people of this state.

28 (c) An action for libel, slander, ~~assault, battery,~~ false
29 imprisonment, seduction of a person below the age of legal
30 consent, or by a depositor against a bank for the payment of a
31 forged or raised check, or a check that bears a forged or
32 unauthorized endorsement, or against any person who boards or
33 feeds an animal or fowl or who engages in the practice of
34 veterinary medicine as defined in Section 4826 of the Business and
35 Professions Code, for that person's neglect resulting in injury or
36 death to an animal or fowl in the course of boarding or feeding the
37 animal or fowl or in the course of the practice of veterinary
38 medicine on that animal or fowl.

39 (d) An action against an officer to recover damages for the
40 seizure of any property for a statutory forfeiture to the state, or for



1 the detention of, or injury to property so seized, or for damages
2 done to any person in making that seizure.

3 (e) An action by a good faith improver for relief under Chapter
4 10 (commencing with Section 871.1) of Title 10 of Part 2. The time
5 begins to run from the date upon which the good faith improver
6 discovers that the good faith improver is not the owner of the land
7 upon which the improvements have been made.

8 SEC. 4. Section 340.10 is added to the Code of Civil
9 Procedure, to read:

10 340.10. (a) For purposes of this section, “terrorist victim”
11 means any individual who died or was injured as a consequence of
12 the terrorist-related aircraft crashes of September 11, 2001,
13 including persons who were present at the World Trade Center in
14 New York City, New York, the Pentagon in Arlington, Virginia, or
15 at the site of the crash at Shanksville, Pennsylvania, or in the
16 immediate aftermath of the terrorist-related aircraft crashes of
17 September 11, 2001, including members of the flight crew and
18 passengers on American Airlines Flight 11, American Airlines
19 Flight 77, United Airlines Flight 175, and United Airlines Flight
20 93, and who suffered physical harm or death as a result of any of
21 the crashes, as defined in Section 40101 of Title 49 of the United
22 States Code and the related, applicable regulations, other than an
23 individual identified by the Attorney General of the United States
24 as a participant or conspirator in the terrorist-related aircraft
25 crashes, or a representative *or heir* of such an individual.

26 (b) The statute of limitations for injury or death set forth in
27 Section 335.1 shall apply to any action brought for injury to, or for
28 the death of, any terrorist victim described in subdivision (a) and
29 caused by the wrongful act or neglect of another, regardless of
30 whether that action lapsed or was otherwise barred by time under
31 California law predating the passage of this section and Section
32 335.1.

33 SEC. 5. Section 437c of the Code of Civil Procedure is
34 amended to read:

35 437c. (a) Any party may move for summary judgment in any
36 action or proceeding if it is contended that the action has no merit
37 or that there is no defense to the action or proceeding. The motion
38 may be made at any time after 60 days have elapsed since the
39 general appearance in the action or proceeding of each party
40 against whom the motion is directed or at any earlier time after the



1 general appearance that the court, with or without notice and upon
2 good cause shown, may direct. Notice of the motion and
3 supporting papers shall be served on all other parties to the action
4 at least 75 days before the time appointed for hearing. However,
5 if the notice is served by mail, the required 75-day period of notice
6 shall be increased by five days if the place of address is within the
7 State of California, 10 days if the place of address is outside the
8 State of California but within the United States, and 20 days if the
9 place of address is outside the United States, and if the notice is
10 served by facsimile transmission, Express Mail, or another method
11 of delivery providing for overnight delivery, the required 75-day
12 period of notice shall be increased by two court days. The motion
13 shall be heard no later than 30 days before the date of trial, unless
14 the court for good cause orders otherwise. The filing of the motion
15 shall not extend the time within which a party must otherwise file
16 a responsive pleading.

17 (b) The motion shall be supported by affidavits, declarations,
18 admissions, answers to interrogatories, depositions, and matters of
19 which judicial notice shall or may be taken. The supporting papers
20 shall include a separate statement setting forth plainly and
21 concisely all material facts which the moving party contends are
22 undisputed. Each of the material facts stated shall be followed by
23 a reference to the supporting evidence. The failure to comply with
24 this requirement of a separate statement may in the court's
25 discretion constitute a sufficient ground for denial of the motion.

26 Any opposition to the motion shall be served and filed not less
27 than 14 days preceding the noticed or continued date of hearing,
28 unless the court for good cause orders otherwise. The opposition,
29 where appropriate, shall consist of affidavits, declarations,
30 admissions, answers to interrogatories, depositions, and matters of
31 which judicial notice shall or may be taken.

32 The opposition papers shall include a separate statement which
33 responds to each of the material facts contended by the moving
34 party to be undisputed, indicating whether the opposing party
35 agrees or disagrees that those facts are undisputed. The statement
36 also shall set forth plainly and concisely any other material facts
37 which the opposing party contends are disputed. Each material fact
38 contended by the opposing party to be disputed shall be followed
39 by a reference to the supporting evidence. Failure to comply with



1 this requirement of a separate statement may constitute a sufficient
2 ground, in the court’s discretion, for granting the motion.

3 Any reply to the opposition shall be served and filed by the
4 moving party not less than five days preceding the noticed or
5 continued date of hearing, unless the court for good cause orders
6 otherwise.

7 Evidentiary objections not made at the hearing shall be deemed
8 waived.

9 **Sections**

10 *Except for subdivision (c) of Section 1005 relating to the method*
11 *of service of opposition and reply papers, Sections 1005 and 1013,*
12 *extending the time within which a right may be exercised or an act*
13 *may be done, do not apply to this section.*

14 Any incorporation by reference of matter in the court’s file shall
15 set forth with specificity the exact matter to which reference is
16 being made and shall not incorporate the entire file.

17 (c) The motion for summary judgment shall be granted if all the
18 papers submitted show that there is no triable issue as to any
19 material fact and that the moving party is entitled to a judgment as
20 a matter of law. In determining whether the papers show that there
21 is no triable issue as to any material fact the court shall consider
22 all of the evidence set forth in the papers, except that to which
23 objections have been made and sustained by the court, and all
24 inferences reasonably deducible from the evidence, except
25 summary judgment shall not be granted by the court based on
26 inferences reasonably deducible from the evidence, if contradicted
27 by other inferences or evidence, which raise a triable issue as to any
28 material fact.

29 (d) Supporting and opposing affidavits or declarations shall be
30 made by any person on personal knowledge, shall set forth
31 admissible evidence, and shall show affirmatively that the affiant
32 is competent to testify to the matters stated in the affidavits or
33 declarations. Any objections based on the failure to comply with
34 the requirements of this subdivision shall be made at the hearing
35 or shall be deemed waived.

36 (e) If a party is otherwise entitled to a summary judgment
37 pursuant to this section, summary judgment shall not be denied on
38 grounds of credibility or for want of cross-examination of
39 witnesses furnishing affidavits or declarations in support of the
40 summary judgment, except that summary judgment may be denied



1 in the discretion of the court, where the only proof of a material fact
2 offered in support of the summary judgment is an affidavit or
3 declaration made by an individual who was the sole witness to that
4 fact; or where a material fact is an individual's state of mind, or
5 lack thereof, and that fact is sought to be established solely by the
6 individual's affirmation thereof.

7 (f) (1) A party may move for summary adjudication as to one
8 or more causes of action within an action, one or more affirmative
9 defenses, one or more claims for damages, or one or more issues
10 of duty, if that party contends that the cause of action has no merit
11 or that there is no affirmative defense thereto, or that there is no
12 merit to an affirmative defense as to any cause of action, or both,
13 or that there is no merit to a claim for damages, as specified in
14 Section 3294 of the Civil Code, or that one or more defendants
15 either owed or did not owe a duty to the plaintiff or plaintiffs. A
16 motion for summary adjudication shall be granted only if it
17 completely disposes of a cause of action, an affirmative defense,
18 a claim for damages, or an issue of duty.

19 (2) A motion for summary adjudication may be made by itself
20 or as an alternative to a motion for summary judgment and shall
21 proceed in all procedural respects as a motion for summary
22 judgment. However, a party may not move for summary judgment
23 based on issues asserted in a prior motion for summary
24 adjudication and denied by the court, unless that party establishes
25 to the satisfaction of the court, newly discovered facts or
26 circumstances or a change of law supporting the issues reasserted
27 in the summary judgment motion.

28 (g) Upon the denial of a motion for summary judgment, on the
29 ground that there is a triable issue as to one or more material facts,
30 the court shall, by written or oral order, specify one or more
31 material facts raised by the motion as to which the court has
32 determined there exists a triable controversy. This determination
33 shall specifically refer to the evidence proffered in support of and
34 in opposition to the motion which indicates that a triable
35 controversy exists. Upon the grant of a motion for summary
36 judgment, on the ground that there is no triable issue of material
37 fact, the court shall, by written or oral order, specify the reasons
38 for its determination. The order shall specifically refer to the
39 evidence proffered in support of, and if applicable in opposition to,
40 the motion which indicates that no triable issue exists. The court



1 shall also state its reasons for any other determination. The court
2 shall record its determination by court reporter or written order.

3 (h) If it appears from the affidavits submitted in opposition to
4 a motion for summary judgment or summary adjudication or both
5 that facts essential to justify opposition may exist but cannot, for
6 reasons stated, then be presented, the court shall deny the motion,
7 or order a continuance to permit affidavits to be obtained or
8 discovery to be had or may make any other order as may be just.
9 The application to continue the motion to obtain necessary
10 discovery may also be made by ex parte motion at any time on or
11 before the date the opposition response to the motion is due.

12 (i) If, after granting a continuance to allow specified additional
13 discovery, the court determines that the party seeking summary
14 judgment has unreasonably failed to allow the discovery to be
15 conducted, the court shall grant a continuance to permit the
16 discovery to go forward or deny the motion for summary judgment
17 or summary adjudication. This section does not affect or limit the
18 ability of any party to compel discovery under the Civil Discovery
19 Act (Article 3 (commencing with Section 2016) of Chapter 3 of
20 Title 3 of Part 4.

21 (j) If the court determines at any time that any of the affidavits
22 are presented in bad faith or solely for purposes of delay, the court
23 shall order the party presenting the affidavits to pay the other party
24 the amount of the reasonable expenses which the filing of the
25 affidavits caused the other party to incur. Sanctions may not be
26 imposed pursuant to this subdivision, except on notice contained
27 in a party's papers, or on the court's own noticed motion, and after
28 an opportunity to be heard.

29 (k) Except if a separate judgment may properly be awarded in
30 the action, no final judgment may be entered on a motion for
31 summary judgment prior to the termination of the action, but the
32 final judgment shall, in addition to any matters determined in the
33 action, award judgment as established by the summary proceeding
34 herein provided for.

35 (l) In actions which arise out of an injury to the person or to
36 property, if a motion for summary judgment was granted on the
37 basis that the defendant was without fault, no other defendant
38 during trial, over plaintiff's objection, may attempt to attribute
39 fault to or comment on the absence or involvement of the
40 defendant who was granted the motion.



1 (m) (1) A summary judgment entered under this section is an
2 appealable judgment as in other cases. Upon entry of any order
3 pursuant to this section, except the entry of summary judgment, a
4 party may, within 20 days after service upon him or her of a written
5 notice of entry of the order, petition an appropriate reviewing court
6 for a peremptory writ. If the notice is served by mail, the initial
7 period within which to file the petition shall be increased by five
8 days if the place of address is within the State of California, 10 days
9 if the place of address is outside the State of California but within
10 the United States, and 20 days if the place of address is outside the
11 United States. If the notice is served by facsimile transmission,
12 Express Mail, or another method of delivery providing for
13 overnight delivery, the initial period within which to file the
14 petition shall be increased by two court days. The superior court
15 may, for good cause, and prior to the expiration of the initial
16 period, extend the time for one additional period not to exceed 10
17 days.

18 (2) Before a reviewing court affirms an order granting
19 summary judgment or summary adjudication on a ground not
20 relied upon by the trial court, the reviewing court shall afford the
21 parties an opportunity to present their views on the issue by
22 submitting supplemental briefs. The supplemental briefing may
23 include an argument that additional evidence relating to that
24 ground exists, but that the party has not had an adequate
25 opportunity to present the evidence or to conduct discovery on the
26 issue. The court may reverse or remand based upon the
27 supplemental briefing to allow the parties to present additional
28 evidence or to conduct discovery on the issue. If the court fails to
29 allow supplemental briefing, a rehearing shall be ordered upon
30 timely petition of any party.

31 (n) (1) If a motion for summary adjudication is granted, at the
32 trial of the action, the cause or causes of action within the action,
33 affirmative defense or defenses, claim for damages, or issue or
34 issues of duty as to the motion which has been granted shall be
35 deemed to be established and the action shall proceed as to the
36 cause or causes of action, affirmative defense or defenses, claim
37 for damages, or issue or issues of duty remaining.

38 (2) In the trial of the action, the fact that a motion for summary
39 adjudication is granted as to one or more causes of action,
40 affirmative defenses, claims for damages, or issues of duty within



1 the action shall not operate to bar any cause of action, affirmative
2 defense, claim for damages, or issue of duty as to which summary
3 adjudication was either not sought or denied.

4 (3) In the trial of an action, neither a party, nor a witness, nor
5 the court shall comment upon the grant or denial of a motion for
6 summary adjudication to a jury.

7 (o) A cause of action has no merit if either of the following
8 exists:

9 (1) One or more of the elements of the cause of action cannot
10 be separately established, even if that element is separately
11 pleaded.

12 (2) A defendant establishes an affirmative defense to that cause
13 of action.

14 (p) For purposes of motions for summary judgment and
15 summary adjudication:

16 (1) A plaintiff or cross-complainant has met his or her burden
17 of showing that there is no defense to a cause of action if that party
18 has proved each element of the cause of action entitling the party
19 to judgment on that cause of action. Once the plaintiff or
20 cross-complainant has met that burden, the burden shifts to the
21 defendant or cross-defendant to show that a triable issue of one or
22 more material facts exists as to that cause of action or a defense
23 thereto. The defendant or cross-defendant may not rely upon the
24 mere allegations or denials of its pleadings to show that a triable
25 issue of material fact exists but, instead, shall set forth the specific
26 facts showing that a triable issue of material fact exists as to that
27 cause of action or a defense thereto.

28 (2) A defendant or cross-defendant has met his or her burden
29 of showing that a cause of action has no merit if that party has
30 shown that one or more elements of the cause of action, even if not
31 separately pleaded, cannot be established, or that there is a
32 complete defense to that cause of action. Once the defendant or
33 cross-defendant has met that burden, the burden shifts to the
34 plaintiff or cross-complainant to show that a triable issue of one or
35 more material facts exists as to that cause of action or a defense
36 thereto. The plaintiff or cross-complainant may not rely upon the
37 mere allegations or denials of its pleadings to show that a triable
38 issue of material fact exists but, instead, shall set forth the specific
39 facts showing that a triable issue of material fact exists as to that
40 cause of action or a defense thereto.



1 (q) This section does not extend the period for trial provided by
2 Section 1170.5.

3 (r) Subdivisions (a) and (b) do not apply to actions brought
4 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
5 of Part 3.

6 (s) For the purposes of this section, a change in law does not
7 include a later enacted statute without retroactive application.

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