

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2765

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Lieu, and Monning)**

February 25, 2010

An act to amend Section ~~1281.96~~ 338 of the Code of Civil Procedure, relating to ~~arbitration~~ *civil actions*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, as amended, Committee on Judiciary. ~~Consumer arbitration cases: disclosures. Civil actions: statutes of limitation: theft.~~

Existing law provides that a civil action, in the case of a theft, shall be commenced within 3 years. Existing law provides that in the case of a theft of any article of historical, interpretive, scientific, cultural, or artistic significance, a cause of action is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or a law enforcement agency.

This bill would authorize a civil action against a museum, gallery, auctioneer, or art dealer for the recovery of an article of historical, interpretive, scientific, cultural, or artistic significance to be commenced within 6 years of the actual discovery by the aggrieved party of the whereabouts of the article and of the facts constituting the cause of action.

This bill contains Legislature's findings and declarations in support of a finding that this bill is in agreement and conformity with a specified court decision.

~~Existing law regulates arbitration conducted pursuant to an arbitration agreement, as specified. Existing law requires a private arbitration~~

~~company involved in consumer arbitration cases to make certain information regarding those cases available to the public, as specified.~~

~~This bill would extend these requirements to any arbitrator involved in consumer arbitration cases.~~

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. (a) *The Legislature finds and declares the*
2 *following:*

3 (1) *California's interest in determining the rightful ownership*
4 *of personal property of historical, interpretive, scientific, cultural,*
5 *and artistic significance is a matter of traditional state competence,*
6 *responsibility, and concern.*

7 (2) *Because objects of historical, interpretive, scientific, cultural,*
8 *and artistic significance often circulate in an underground economy*
9 *for many years before surfacing in museums or galleries, existing*
10 *statutes of limitation, which are solely the creatures of the*
11 *legislature, often present an inequitable procedural obstacle to*
12 *recovery of these objects by their rightful owner.*

13 (3) *Decisions from California's intermediate appellate courts*
14 *have reached differing conclusions as to whether the statute of*
15 *limitation based upon the "discovery of the whereabouts of the*
16 *article by the aggrieved party" rule in subdivision (c) of Section*
17 *338 of the Code of Civil Procedure was intended to apply to*
18 *property stolen prior to 1982, when the express discovery rule was*
19 *enacted. In *Naftzger v. American Numismatic Society* (1996) 42*
20 *Cal.App.4th 421, the court held that the discovery rule applies to*
21 *actions to recover property stolen prior to 1982 because there was*
22 *a discovery rule implicit in the prior version of that statute.*

23 (b) *The Legislature finds and declares that the court's decision*
24 *in *Naftzger v. American Numismatic Society* properly construed*
25 *the Legislature's intent, as to the applicability of the discovery*
26 *rule for thefts occurring before 1982, and the Legislature hereby*
27 *abrogates any contrary holding.*

28 SEC. 2. *Section 338 of the Code of Civil Procedure is amended*
29 *to read:*

30 338. Within three years:

1 (a) An action upon a liability created by statute, other than a
2 penalty or forfeiture.

3 (b) An action for trespass upon or injury to real property.

4 (c) (1) An action for taking, detaining, or injuring any goods
5 or chattels, including actions for the specific recovery of personal
6 property. ~~The~~

7 (2) *The cause of action in the case of theft, as defined in Section*
8 *484 of the Penal Code, of any article of historical, interpretive,*
9 *scientific, or artistic significance is not deemed to have accrued*
10 *until the discovery of the whereabouts of the article by the*
11 *aggrieved party, his or her agent, or the law enforcement agency*
12 *that originally investigated the theft.*

13 (3) (A) *Notwithstanding paragraphs (1) and (2), an action*
14 *against a museum, gallery, auctioneer, or dealer for specific*
15 *recovery of an article of historical, interpretive, scientific, cultural,*
16 *or artistic significance shall be commenced within six years of the*
17 *actual discovery by the aggrieved party of the whereabouts of the*
18 *article and of the facts constituting the cause of action.*

19 (B) *The provisions of this paragraph shall apply to property*
20 *taken, by theft, prior to 1982 regardless of whether or not an action*
21 *would have been barred by an applicable statute of limitation*
22 *under any other provision of law in effect prior to 1982.*

23 (C) *For purposes of this paragraph:*

24 (i) *“Actual discovery” means that the party bringing the action*
25 *has express knowledge of the identity and the whereabouts of the*
26 *person or entity that possesses the article of historical, interpretive,*
27 *scientific, cultural, or artistic significance. Notwithstanding Section*
28 *19 of the Civil Code, “actual discovery” does not include any*
29 *constructive knowledge imputed by law.*

30 (ii) *“Auctioneer” means any individual who is engaged in, or*
31 *who by advertising or otherwise holds himself or herself out as*
32 *being available to engage in, the calling for, the recognition of,*
33 *and the acceptance of, offers for the purchase of goods at an*
34 *auction as defined in subdivision (b) of Section 1812.601 of the*
35 *Civil Code.*

36 (iii) *“Dealer” means a person who holds a valid seller’s permit*
37 *and who is actively and principally engaged in, or conducting the*
38 *business of, selling works of fine art or antiquities.*

39 (iv) *“Museum or gallery” shall include any public or private*
40 *organization or foundation operating as a museum or gallery.*

1 (4) Section 361 shall not apply to an action brought pursuant
2 to paragraph (2) or (3).

3 (5) The provisions of this paragraph shall apply to any pending
4 matters, and any causes of action previously dismissed because
5 of an applicable statute of limitations shall be revived, without
6 prejudice, and determined in accordance with the provisions of
7 this paragraph.

8 (d) An action for relief on the ground of fraud or mistake. The
9 cause of action in that case is not deemed to have accrued until
10 the discovery, by the aggrieved party, of the facts constituting the
11 fraud or mistake.

12 (e) An action upon a bond of a public official except any cause
13 of action based on fraud or embezzlement is not deemed to have
14 accrued until the discovery, by the aggrieved party or his or her
15 agent, of the facts constituting the cause of action upon the bond.

16 (f) (1) An action against a notary public on his or her bond or
17 in his or her official capacity except that any cause of action based
18 on malfeasance or misfeasance is not deemed to have accrued until
19 discovery, by the aggrieved party or his or her agent, of the facts
20 constituting the cause of action.

21 (2) Notwithstanding paragraph (1), an action based on
22 malfeasance or misfeasance shall be commenced within one year
23 from discovery, by the aggrieved party or his or her agent, of the
24 facts constituting the cause of action or within three years from
25 the performance of the notarial act giving rise to the action,
26 whichever is later.

27 (3) Notwithstanding paragraph (1), an action against a notary
28 public on his or her bond or in his or her official capacity shall be
29 commenced within six years.

30 (g) An action for slander of title to real property.

31 (h) An action commenced under Section 17536 of the Business
32 and Professions Code. The cause of action in that case shall not
33 be deemed to have accrued until the discovery by the aggrieved
34 party, the Attorney General, the district attorney, the county
35 counsel, the city prosecutor, or the city attorney of the facts
36 constituting grounds for commencing the action.

37 (i) An action commenced under the Porter-Cologne Water
38 Quality Control Act (Division 7 (commencing with Section 13000)
39 of the Water Code). The cause of action in that case shall not be
40 deemed to have accrued until the discovery by the State Water

1 Resources Control Board or a regional water quality control board
2 of the facts constituting grounds for commencing actions under
3 their jurisdiction.

4 (j) An action to recover for physical damage to private property
5 under Section 19 of Article I of the California Constitution.

6 (k) An action commenced under Division 26 (commencing with
7 Section 39000) of the Health and Safety Code. These causes of
8 action shall not be deemed to have accrued until the discovery by
9 the State Air Resources Board or by a district, as defined in Section
10 39025 of the Health and Safety Code, of the facts constituting
11 grounds for commencing the action under its jurisdiction.

12 (l) An action commenced under Section 1603.1, 1615, or 5650.1
13 of the Fish and Game Code. These causes of action shall not be
14 deemed to have accrued until discovery by the agency bringing
15 the action of the facts constituting the grounds for commencing
16 the action.

17 (m) An action challenging the validity of the levy upon a parcel
18 of a special tax levied by a local agency on a per parcel basis.

19 (n) An action commencing under Section 51.7 of the Civil Code.

20 SECTION 1. ~~Section 1281.96 of the Code of Civil Procedure~~
21 ~~is amended to read:~~

22 ~~1281.96. (a) Except as provided in paragraph (2) of subdivision~~
23 ~~(b), any arbitrator or private arbitration company that administers~~
24 ~~or is otherwise involved in, a consumer arbitration, shall collect,~~
25 ~~publish at least quarterly, and make available to the public in a~~
26 ~~computer-searchable format, which shall be accessible at the~~
27 ~~Internet Web site of the private arbitration company, if any, and~~
28 ~~on paper upon request, all of the following information regarding~~
29 ~~each consumer arbitration within the preceding five years:~~

30 ~~(1) The name of the nonconsumer party, if the nonconsumer~~
31 ~~party is a corporation or other business entity.~~

32 ~~(2) The type of dispute involved, including goods, banking,~~
33 ~~insurance, health care, employment, and, if it involves employment,~~
34 ~~the amount of the employee's annual wage divided into the~~
35 ~~following ranges: less than one hundred thousand dollars~~
36 ~~(\$100,000), one hundred thousand dollars (\$100,000) to two~~
37 ~~hundred fifty thousand dollars (\$250,000), inclusive, and over two~~
38 ~~hundred fifty thousand dollars (\$250,000).~~

39 ~~(3) Whether the consumer or nonconsumer party was the~~
40 ~~prevailing party.~~

1 ~~(4) On how many occasions, if any, the nonconsumer party has~~
2 ~~previously been a party in an arbitration or mediation administered~~
3 ~~by the private arbitration company.~~

4 ~~(5) Whether the consumer party was represented by an attorney.~~

5 ~~(6) The date the private arbitration company received the~~
6 ~~demand for arbitration, the date the arbitrator was appointed, and~~
7 ~~the date of disposition by the arbitrator or private arbitration~~
8 ~~company.~~

9 ~~(7) The type of disposition of the dispute, if known, including~~
10 ~~withdrawal, abandonment, settlement, award after hearing, award~~
11 ~~without hearing, default, or dismissal without hearing.~~

12 ~~(8) The amount of the claim, the amount of the award, and any~~
13 ~~other relief granted, if any.~~

14 ~~(9) The name of the arbitrator, his or her total fee for the case,~~
15 ~~and the percentage of the arbitrator’s fee allocated to each party.~~

16 ~~(b) (1) If the information required by subdivision (a) is provided~~
17 ~~by the private arbitration company in a computer-searchable format~~
18 ~~at the company’s Internet Web site and may be downloaded without~~
19 ~~any fee, the company may charge the actual cost of copying to any~~
20 ~~person who requests the information on paper. If the information~~
21 ~~required by subdivision (a) is not accessible by the Internet, the~~
22 ~~company shall provide that information without charge to any~~
23 ~~person who requests the information on paper.~~

24 ~~(2) Notwithstanding paragraph (1), a private arbitration company~~
25 ~~that receives funding pursuant to Chapter 8 (commencing with~~
26 ~~Section 465) of Division 1 of the Business and Professions Code,~~
27 ~~and that administers or conducts fewer than 50 consumer~~
28 ~~arbitrations per year may collect and publish the information~~
29 ~~required by subdivision (a) semiannually, provide the information~~
30 ~~only on paper, and charge the actual cost of copying.~~

31 ~~(e) This section shall apply to any consumer arbitration~~
32 ~~commenced on or after January 1, 2003.~~

33 ~~(d) No private arbitration company shall have any liability for~~
34 ~~collecting, publishing, or distributing the information required by~~
35 ~~this section.~~