

AMENDED IN ASSEMBLY APRIL 22, 2010

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 338 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, as amended, Committee on Judiciary. 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 would apply to pending actions and would also authorize the revival of an action, previously dismissed because of the expiration of a statute of limitation deemed applicable at the time of the dismissal, if the application of these provisions, at the time the action*

was dismissed, would have resulted in a determination that the cause of action had been timely filed.

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.

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.

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 under
22 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 auction
34 as defined in subdivision (b) of Section 1812.601 of the Civil Code.

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

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

1 (4) Section 361 shall not apply to an action brought pursuant to
2 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 of~~
5 ~~an applicable statute of limitations shall be revived, without~~
6 ~~prejudice, and determined in accordance with the provisions of~~
7 ~~this paragraph.~~

8 *(5) The provisions of paragraph (3) shall apply to pending*
9 *actions, including appeals from a prior dismissal of a cause of*
10 *action. Any cause of action, previously dismissed because the*
11 *dismissal of that action was based, in whole or in part, upon the*
12 *expiration of a statute of limitation deemed applicable at the time*
13 *of the dismissal, shall be revived, without prejudice, if the*
14 *provisions of paragraph (3), if applied to that cause of action at*
15 *the time of the dismissal, would have resulted in a determination*
16 *that the cause of action had been timely filed.*

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

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

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

30 (2) Notwithstanding paragraph (1), an action based on
31 malfeasance or misfeasance shall be commenced within one year
32 from discovery, by the aggrieved party or his or her agent, of the
33 facts constituting the cause of action or within three years from
34 the performance of the notarial act giving rise to the action,
35 whichever is later.

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

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

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

7 (i) An action commenced under the Porter-Cologne Water
8 Quality Control Act (Division 7 (commencing with Section 13000)
9 of the Water Code). The cause of action in that case shall not be
10 deemed to have accrued until the discovery by the State Water
11 Resources Control Board or a regional water quality control board
12 of the facts constituting grounds for commencing actions under
13 their jurisdiction.

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

16 (k) An action commenced under Division 26 (commencing with
17 Section 39000) of the Health and Safety Code. These causes of
18 action shall not be deemed to have accrued until the discovery by
19 the State Air Resources Board or by a district, as defined in Section
20 39025 of the Health and Safety Code, of the facts constituting
21 grounds for commencing the action under its jurisdiction.

22 (l) An action commenced under Section 1603.1, 1615, or 5650.1
23 of the Fish and Game Code. These causes of action shall not be
24 deemed to have accrued until discovery by the agency bringing
25 the action of the facts constituting the grounds for commencing
26 the action.

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

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