

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 9, 2013

AMENDED IN SENATE MAY 2, 2013

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 131

Introduced by Senators Beall and Lara
(Coauthor: Assembly Member Skinner)

January 24, 2013

An act to amend Section 340.1 of the Code of Civil Procedure, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Beall. Damages: childhood sexual abuse: statute of limitations.

Existing law requires that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later. Existing law provides that certain actions may be commenced on and after the plaintiff's 26th birthday if ~~specified conditions are met~~ *the person or entity against whom the action is commenced knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person. For a period of one year commencing January 1, 2003, existing law revived*

certain actions that would otherwise be barred solely because the applicable statute of limitations had expired.

~~This bill would instead require that an action for recovery of damages suffered as a result of childhood sexual abuse be commenced within 12 or 25 years, as applicable, of the date the plaintiff attains the age of majority, or within 5 years of the date the fact of the psychological injury or illness occurring after the age of majority and its causal connection to the sexual abuse is first communicated to the plaintiff by a licensed mental health practitioner practicing within the state, whichever period expires later. This bill would provide that these the time limits for commencement of an action for recovery of damages suffered as a result of childhood sexual abuse shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. This bill would revive, for a period of one year, a cause of action, as specified, that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his or her injury on or after January 1, 2004.~~

~~This bill would also provide that a plaintiff shall be entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing that a person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct and failed to take reasonable steps, and to implement reasonable safeguards, to avoid those act in the future. This bill would specify that this entitlement shall not apply to a cause of action revived pursuant to these provisions.~~

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. Section 340.1 of the Code of Civil Procedure is
- 2 amended to read:
- 3 340.1. (a) In an action for recovery of damages suffered as a
- 4 result of childhood sexual abuse, the time for commencement of
- 5 the action shall be within eight years of the date the plaintiff attains
- 6 the age of majority or within three years of the date the plaintiff
- 7 discovers or reasonably should have discovered that psychological
- 8 injury or illness occurring after the age of majority was caused by

1 the sexual abuse, whichever period expires later, for any of the
2 following actions:

3 (1) An action against any person for committing an act of
4 childhood sexual abuse.

5 (2) An action for liability against any person or entity who owed
6 a duty of care to the plaintiff, where a wrongful or negligent act
7 by that person or entity was a legal cause of the childhood sexual
8 abuse ~~which~~ *that* resulted in the injury to the plaintiff.

9 (3) An action for liability against any person or entity where an
10 intentional act by that person or entity was a legal cause of the
11 childhood sexual abuse ~~which~~ *that* resulted in the injury to the
12 plaintiff.

13 (b) (1) No action described in paragraph (2) or (3) of
14 subdivision (a) may be commenced on or after the plaintiff's 26th
15 birthday.

16 (2) This subdivision does not apply if the person or entity knew
17 or had reason to know, or was otherwise on notice, of any unlawful
18 sexual conduct by an employee, volunteer, representative, or agent,
19 and failed to take reasonable steps, and to implement reasonable
20 safeguards, to avoid acts of unlawful sexual conduct in the future
21 by that person, including, but not limited to, preventing or avoiding
22 placement of that person in a function or environment in which
23 contact with children is an inherent part of that function or
24 environment. For purposes of this subdivision, providing or
25 requiring counseling is not sufficient, in and of itself, to constitute
26 a reasonable step or reasonable safeguard.

27 (3) *Notwithstanding any other provision of law, a plaintiff shall*
28 *be entitled to conduct discovery before the court may rule on a*
29 *motion challenging the sufficiency of the plaintiff's showing under*
30 *paragraph (2).*

31 ~~(e) Notwithstanding any other provision of law, any claim for~~
32 ~~damages described in paragraph (2) or (3) of subdivision (a) that~~
33 ~~is permitted to be filed pursuant to paragraph (2) of subdivision~~
34 ~~(b) that would otherwise be barred as of January 1, 2003, solely~~
35 ~~because the applicable statute of limitations has or had expired, is~~
36 ~~revived, and, in that case, a cause of action may be commenced~~
37 ~~within one year of January 1, 2003. Nothing in this subdivision~~
38 ~~shall be construed to alter the applicable statute of limitations~~
39 ~~period of an action that is not time barred as of January 1, 2003.~~

1 (c) *The time limits for commencement of actions described in*
2 *subdivisions (a) and (b) shall be applied retroactively to any claim*
3 *that has not been adjudicated to finality on the merits as of January*
4 *1, 2014. Notwithstanding any other provision of law, any cause*
5 *of action for damages described in paragraph (2) or (3) of*
6 *subdivision (a) that would otherwise be barred solely by the statute*
7 *of limitations as of January 1, 2014, is revived, and, in that case,*
8 *a cause of action may be commenced within one year of January*
9 *1, 2014, provided that the plaintiff's 26th birthday was before*
10 *January 1, 2003, and the plaintiff discovered the cause of his or*
11 *her injuries on or after January 1, 2004. Paragraph (3) of*
12 *subdivision (b) shall not apply to a cause of action revived pursuant*
13 *to this subdivision.*

14 (d) Subdivision (c) does not apply to either of the following:

15 (1) Any claim that has been litigated to finality on the merits in
16 any court of competent jurisdiction prior to January 1, ~~2003~~ 2014.
17 Termination of a prior action on the basis of the statute of
18 limitations does not constitute a claim that has been litigated to
19 finality on the merits.

20 (2) Any written, compromised settlement agreement ~~which that~~
21 has been entered into between a plaintiff and a defendant where
22 the plaintiff was represented by an attorney who was admitted to
23 practice law in this state at the time of the settlement, and the
24 plaintiff signed the agreement.

25 (e) "Childhood sexual abuse" as used in this section includes
26 any act committed against the plaintiff that occurred when the
27 plaintiff was under ~~the age of~~ 18 years *of age* and that would have
28 been proscribed by Section 266j of the Penal Code; Section 285
29 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of
30 subdivision (c), of Section 286 of the Penal Code; subdivision (a)
31 or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of
32 subdivision (b), or of subdivision (c), of Section 288a of the Penal
33 Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;
34 Section 647.6 of the Penal Code; or any prior laws of this state of
35 similar effect at the time the act was committed. Nothing in this
36 subdivision limits the availability of causes of action permitted
37 under subdivision (a), including causes of action against persons
38 or entities other than the alleged perpetrator of the abuse.

39 (f) Nothing in this section shall be construed to alter the
40 otherwise applicable burden of proof, as defined in Section 115

1 of the Evidence Code, that a plaintiff has in a civil action subject
2 to this section.

3 (g) Every plaintiff 26 years of age or older at the time the action
4 is filed shall file certificates of merit as specified in subdivision
5 (h).

6 (h) Certificates of merit shall be executed by the attorney for
7 the plaintiff and by a licensed mental health practitioner selected
8 by the plaintiff declaring, respectively, as follows, setting forth
9 the facts ~~which~~ *that* support the declaration:

10 (1) That the attorney has reviewed the facts of the case, that the
11 attorney has consulted with at least one mental health practitioner
12 who is licensed to practice and practices in this state and who the
13 attorney reasonably believes is knowledgeable of the relevant facts
14 and issues involved in the particular action, and that the attorney
15 has concluded on the basis of that review and consultation that
16 there is reasonable and meritorious cause for the filing of the action.
17 The person consulted may not be a party to the litigation.

18 (2) That the mental health practitioner consulted is licensed to
19 practice and practices in this state and is not a party to the action,
20 that the practitioner is not treating and has not treated the plaintiff,
21 and that the practitioner has interviewed the plaintiff and is
22 knowledgeable of the relevant facts and issues involved in the
23 particular action, and has concluded, on the basis of his or her
24 knowledge of the facts and issues, that in his or her professional
25 opinion there is a reasonable basis to believe that the plaintiff had
26 been subject to childhood sexual abuse.

27 (3) That the attorney was unable to obtain the consultation
28 required by paragraph (1) because a statute of limitations would
29 impair the action and that the certificates required by paragraphs
30 (1) and (2) could not be obtained before the impairment of the
31 action. If a certificate is executed pursuant to this paragraph, the
32 certificates required by paragraphs (1) and (2) shall be filed within
33 60 days after filing the complaint.

34 (i) Where certificates are required pursuant to subdivision (g),
35 the attorney for the plaintiff shall execute a separate certificate of
36 merit for each defendant named in the complaint.

37 (j) In any action subject to subdivision (g), no defendant may
38 be served, and the duty to serve a defendant with process does not
39 attach, until the court has reviewed the certificates of merit filed
40 pursuant to subdivision (h) with respect to that defendant, and has

1 found, in camera, based solely on those certificates of merit, that
2 there is reasonable and meritorious cause for the filing of the action
3 against that defendant. At that time, the duty to serve that defendant
4 with process shall attach.

5 (k) A violation of this section may constitute unprofessional
6 conduct and may be the grounds for discipline against the attorney.

7 (l) The failure to file certificates in accordance with this section
8 shall be grounds for a demurrer pursuant to Section 430.10 or a
9 motion to strike pursuant to Section 435.

10 (m) In any action subject to subdivision (g), no defendant may
11 be named except by “Doe” designation in any pleadings or papers
12 filed in the action until there has been a showing of corroborative
13 fact as to the charging allegations against that defendant.

14 (n) At any time after the action is filed, the plaintiff may apply
15 to the court for permission to amend the complaint to substitute
16 the name of the defendant or defendants for the fictitious
17 designation, as follows:

18 (1) The application shall be accompanied by a certificate of
19 corroborative fact executed by the attorney for the plaintiff. The
20 certificate shall declare that the attorney has discovered one or
21 more facts corroborative of one or more of the charging allegations
22 against a defendant or defendants, and shall set forth in clear and
23 concise terms the nature and substance of the corroborative fact.
24 If the corroborative fact is evidenced by the statement of a witness
25 or the contents of a document, the certificate shall declare that the
26 attorney has personal knowledge of the statement of the witness
27 or of the contents of the document, and the identity and location
28 of the witness or document shall be included in the certificate. For
29 purposes of this section, a fact is corroborative of an allegation if
30 it confirms or supports the allegation. The opinion of any mental
31 health practitioner concerning the plaintiff shall not constitute a
32 corroborative fact for purposes of this section.

33 (2) Where the application to name a defendant is made prior to
34 that defendant’s appearance in the action, neither the application
35 nor the certificate of corroborative fact by the attorney shall be
36 served on the defendant or defendants, nor on any other party or
37 their counsel of record.

38 (3) Where the application to name a defendant is made after
39 that defendant’s appearance in the action, the application shall be
40 served on all parties and proof of service provided to the court,

1 but the certificate of corroborative fact by the attorney shall not
2 be served on any party or their counsel of record.

3 (o) The court shall review the application and the certificate of
4 corroborative fact in camera and, based solely on the certificate
5 and any reasonable inferences to be drawn from the certificate,
6 shall, if one or more facts corroborative of one or more of the
7 charging allegations against a defendant has been shown, order
8 that the complaint may be amended to substitute the name of the
9 defendant or defendants.

10 (p) The court shall keep under seal and confidential from the
11 public and all parties to the litigation, other than the plaintiff, any
12 and all certificates of corroborative fact filed pursuant to
13 subdivision (n).

14 (q) Upon the favorable conclusion of the litigation with respect
15 to any defendant for whom a certificate of merit was filed or for
16 whom a certificate of merit should have been filed pursuant to this
17 section, the court may, upon the motion of a party or upon the
18 court's own motion, verify compliance with this section by
19 requiring the attorney for the plaintiff who was required by
20 subdivision (h) to execute the certificate to reveal the name,
21 address, and telephone number of the person or persons consulted
22 with pursuant to subdivision (h) that were relied upon by the
23 attorney in preparation of the certificate of merit. The name,
24 address, and telephone number shall be disclosed to the trial judge
25 in camera and in the absence of the moving party. If the court finds
26 there has been a failure to comply with this section, the court may
27 order a party, a party's attorney, or both, to pay any reasonable
28 expenses, including attorney's fees, incurred by the defendant for
29 whom a certificate of merit should have been filed.

30 (r) The amendments to this section enacted at the 1990 portion
31 of the 1989–90 Regular Session shall apply to any action
32 commenced on or after January 1, 1991, including any action
33 otherwise barred by the period of limitations in effect prior to
34 January 1, 1991, thereby reviving those causes of action which
35 had lapsed or technically expired under the law existing prior to
36 January 1, 1991.

37 (s) The Legislature declares that it is the intent of the Legislature,
38 in enacting the amendments to this section enacted at the 1994
39 portion of the 1993–94 Regular Session, that the express language

1 of revival added to this section by those amendments shall apply
2 to any action commenced on or after January 1, 1991.

3 (t) Nothing in the amendments to this section enacted at the
4 1998 portion of the 1997–98 Regular Session is intended to create
5 a new theory of liability.

6 (u) The amendments to subdivision (a) of this section, enacted
7 at the 1998 portion of the 1997–98 Regular Session, shall apply
8 to any action commenced on or after January 1, 1999, and to any
9 action filed prior to January 1, 1999, and still pending on that date,
10 including any action or causes of action which would have been
11 barred by the laws in effect prior to January 1, 1999. Nothing in
12 this subdivision is intended to revive actions or causes of action
13 as to which there has been a final adjudication prior to January 1,
14 1999.

15 ~~SECTION 1. Section 340.1 of the Code of Civil Procedure is~~
16 ~~amended to read:~~

17 ~~340.1. (a) In an action for recovery of damages suffered as a~~
18 ~~result of childhood sexual abuse, the time for commencement of~~
19 ~~the action shall be as follows:~~

20 ~~(1) Within 25 years of the date the plaintiff attains the age of~~
21 ~~majority, or within five years of the date the fact of the~~
22 ~~psychological injury or illness occurring after the age of majority~~
23 ~~and its causal connection to the sexual abuse is first communicated~~
24 ~~to the plaintiff by a licensed mental health practitioner practicing~~
25 ~~within the state, whichever period expires later, for an action~~
26 ~~against any person for committing an act of childhood sexual abuse.~~

27 ~~(2) Within 12 years of the date the plaintiff attains the age of~~
28 ~~majority, or within five years of the date the fact of the~~
29 ~~psychological injury or illness occurring after the age of majority~~
30 ~~and its causal connection to the sexual abuse is first communicated~~
31 ~~to the plaintiff by a licensed mental health practitioner practicing~~
32 ~~within the state, whichever period expires later, for either of the~~
33 ~~following actions:~~

34 ~~(A) An action for liability against any person or entity who~~
35 ~~owed a duty of care to the plaintiff, where a wrongful or negligent~~
36 ~~act by that person or entity was a legal cause of the childhood~~
37 ~~sexual abuse that resulted in the injury to the plaintiff.~~

38 ~~(B) An action for liability against any person or entity where~~
39 ~~an intentional act by that person or entity was a legal cause of the~~
40 ~~childhood sexual abuse that resulted in the injury to the plaintiff.~~

1 ~~(b) (1) No action described in paragraph (2) of subdivision (a)~~
2 ~~may be commenced on or after the plaintiff's 30th birthday.~~

3 ~~(2) This subdivision does not apply if the person or entity knew~~
4 ~~or had reason to know, or was otherwise on notice, of any unlawful~~
5 ~~sexual conduct by an employee, volunteer, representative, or agent,~~
6 ~~and failed to take reasonable steps, and to implement reasonable~~
7 ~~safeguards, to avoid acts of unlawful sexual conduct in the future~~
8 ~~by that person, including, but not limited to, preventing or avoiding~~
9 ~~placement of that person in a function or environment in which~~
10 ~~contact with children is an inherent part of that function or~~
11 ~~environment. For purposes of this subdivision, providing or~~
12 ~~requiring counseling is not sufficient, in and of itself, to constitute~~
13 ~~a reasonable step or reasonable safeguard. Notwithstanding any~~
14 ~~other provision of law, a plaintiff shall be entitled to conduct~~
15 ~~discovery before the court may rule on a motion challenging the~~
16 ~~sufficiency of the plaintiff's showing under this subparagraph.~~

17 ~~(c) The time limits for commencement of actions described in~~
18 ~~subdivisions (a) and (b) shall be applied retroactively to any claim~~
19 ~~that has not been adjudicated to finality on the merits as of January~~
20 ~~1, 2014. Notwithstanding any other provision of law, any cause~~
21 ~~of action for damages described in paragraph (2) of subdivision~~
22 ~~(a) that would otherwise be barred by the statute of limitations as~~
23 ~~of January 1, 2014, is revived, and, in that case, a cause of action~~
24 ~~may be commenced within one year of January 1, 2014, provided~~
25 ~~that the plaintiff discovered the cause of his or her injuries, as~~
26 ~~described in paragraph (2) of subdivision (a), on or after January~~
27 ~~1, 2004.~~

28 ~~(d) Subdivision (c) does not apply to either of the following:~~

29 ~~(1) Any claim that has been litigated to finality on the merits in~~
30 ~~any court of competent jurisdiction prior to January 1, 2014.~~
31 ~~Termination of a prior action on the basis of the statute of~~
32 ~~limitations does not constitute a claim that has been litigated to~~
33 ~~finality on the merits.~~

34 ~~(2) Any written, compromised settlement agreement that has~~
35 ~~been entered into between a plaintiff and a defendant where the~~
36 ~~plaintiff was represented by an attorney who was admitted to~~
37 ~~practice law in this state at the time of the settlement, and the~~
38 ~~plaintiff signed the agreement.~~

39 ~~(e) "Childhood sexual abuse" as used in this section includes~~
40 ~~any act committed against the plaintiff that occurred when the~~

1 plaintiff was under 18 years of age and that would have been
2 proscribed by Section 266j of the Penal Code; Section 285 of the
3 Penal Code; paragraph (1) or (2) of subdivision (b), or of
4 subdivision (c), of Section 286 of the Penal Code; subdivision (a)
5 or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of
6 subdivision (b), or of subdivision (c), of Section 288a of the Penal
7 Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;
8 Section 647.6 of the Penal Code; or any prior laws of this state of
9 similar effect at the time the act was committed. Nothing in this
10 subdivision limits the availability of causes of action permitted
11 under subdivision (a), including causes of action against persons
12 or entities other than the alleged perpetrator of the abuse.

13 (f) Nothing in this section shall be construed to alter the
14 otherwise applicable burden of proof, as defined in Section 115
15 of the Evidence Code, that a plaintiff has in a civil action subject
16 to this section.

17 (g) Every plaintiff 30 years of age or older at the time the action
18 is filed shall file certificates of merit as specified in subdivision
19 (h).

20 (h) Certificates of merit shall be executed by the attorney for
21 the plaintiff and by a licensed mental health practitioner selected
22 by the plaintiff declaring, respectively, as follows, setting forth
23 the facts that support the declaration:

24 (1) That the attorney has reviewed the facts of the case, that the
25 attorney has consulted with at least one mental health practitioner
26 who is licensed to practice and practices in this state and who the
27 attorney reasonably believes is knowledgeable of the relevant facts
28 and issues involved in the particular action, and that the attorney
29 has concluded on the basis of that review and consultation that
30 there is reasonable and meritorious cause for the filing of the action.
31 The person consulted may not be a party to the litigation.

32 (2) That the mental health practitioner consulted is licensed to
33 practice and practices in this state and is not a party to the action,
34 that the practitioner is not treating and has not treated the plaintiff,
35 and that the practitioner has interviewed the plaintiff and is
36 knowledgeable of the relevant facts and issues involved in the
37 particular action, and has concluded, on the basis of his or her
38 knowledge of the facts and issues, that in his or her professional
39 opinion there is a reasonable basis to believe that the plaintiff had
40 been subject to childhood sexual abuse.

1 ~~(3) That the attorney was unable to obtain the consultation~~
2 ~~required by paragraph (1) because a statute of limitations would~~
3 ~~impair the action and that the certificates required by paragraphs~~
4 ~~(1) and (2) could not be obtained before the impairment of the~~
5 ~~action. If a certificate is executed pursuant to this paragraph, the~~
6 ~~certificates required by paragraphs (1) and (2) shall be filed within~~
7 ~~60 days after filing the complaint.~~

8 ~~(i) Where certificates are required pursuant to subdivision (g),~~
9 ~~the attorney for the plaintiff shall execute a separate certificate of~~
10 ~~merit for each defendant named in the complaint.~~

11 ~~(j) In any action subject to subdivision (g), no defendant may~~
12 ~~be served, and the duty to serve a defendant with process does not~~
13 ~~attach, until the court has reviewed the certificates of merit filed~~
14 ~~pursuant to subdivision (h) with respect to that defendant, and has~~
15 ~~found, in camera, based solely on those certificates of merit, that~~
16 ~~there is reasonable and meritorious cause for the filing of the action~~
17 ~~against that defendant. At that time, the duty to serve that defendant~~
18 ~~with process shall attach.~~

19 ~~(k) A violation of this section may constitute unprofessional~~
20 ~~conduct and may be the grounds for discipline against the attorney.~~

21 ~~(l) The failure to file certificates in accordance with this section~~
22 ~~shall be grounds for a demurrer pursuant to Section 430.10 or a~~
23 ~~motion to strike pursuant to Section 435.~~

24 ~~(m) In any action subject to subdivision (g), no defendant may~~
25 ~~be named except by “Doe” designation in any pleadings or papers~~
26 ~~filed in the action until there has been a showing of corroborative~~
27 ~~fact as to the charging allegations against that defendant.~~

28 ~~(n) At any time after the action is filed, the plaintiff may apply~~
29 ~~to the court for permission to amend the complaint to substitute~~
30 ~~the name of the defendant or defendants for the fictitious~~
31 ~~designation, as follows:~~

32 ~~(1) The application shall be accompanied by a certificate of~~
33 ~~corroborative fact executed by the attorney for the plaintiff. The~~
34 ~~certificate shall declare that the attorney has discovered one or~~
35 ~~more facts corroborative of one or more of the charging allegations~~
36 ~~against a defendant or defendants, and shall set forth in clear and~~
37 ~~concise terms the nature and substance of the corroborative fact.~~
38 ~~If the corroborative fact is evidenced by the statement of a witness~~
39 ~~or the contents of a document, the certificate shall declare that the~~
40 ~~attorney has personal knowledge of the statement of the witness~~

1 or of the contents of the document, and the identity and location
2 of the witness or document shall be included in the certificate. For
3 purposes of this section, a fact is corroborative of an allegation if
4 it confirms or supports the allegation. The opinion of any mental
5 health practitioner concerning the plaintiff shall not constitute a
6 corroborative fact for purposes of this section.

7 ~~(2) Where the application to name a defendant is made prior to~~
8 ~~that defendant's appearance in the action, neither the application~~
9 ~~nor the certificate of corroborative fact by the attorney shall be~~
10 ~~served on the defendant or defendants, nor on any other party or~~
11 ~~their counsel of record.~~

12 ~~(3) Where the application to name a defendant is made after~~
13 ~~that defendant's appearance in the action, the application shall be~~
14 ~~served on all parties and proof of service provided to the court,~~
15 ~~but the certificate of corroborative fact by the attorney shall not~~
16 ~~be served on any party or their counsel of record.~~

17 ~~(o) The court shall review the application and the certificate of~~
18 ~~corroborative fact in camera and, based solely on the certificate~~
19 ~~and any reasonable inferences to be drawn from the certificate,~~
20 ~~shall, if one or more facts corroborative of one or more of the~~
21 ~~charging allegations against a defendant has been shown, order~~
22 ~~that the complaint may be amended to substitute the name of the~~
23 ~~defendant or defendants.~~

24 ~~(p) The court shall keep under seal and confidential from the~~
25 ~~public and all parties to the litigation, other than the plaintiff, any~~
26 ~~and all certificates of corroborative fact filed pursuant to~~
27 ~~subdivision (n).~~

28 ~~(q) Upon the favorable conclusion of the litigation with respect~~
29 ~~to any defendant for whom a certificate of merit was filed or for~~
30 ~~whom a certificate of merit should have been filed pursuant to this~~
31 ~~section, the court may, upon the motion of a party or upon the~~
32 ~~court's own motion, verify compliance with this section by~~
33 ~~requiring the attorney for the plaintiff who was required by~~
34 ~~subdivision (h) to execute the certificate to reveal the name,~~
35 ~~address, and telephone number of the person or persons consulted~~
36 ~~with pursuant to subdivision (h) that were relied upon by the~~
37 ~~attorney in preparation of the certificate of merit. The name,~~
38 ~~address, and telephone number shall be disclosed to the trial judge~~
39 ~~in camera and in the absence of the moving party. If the court finds~~
40 ~~there has been a failure to comply with this section, the court may~~

1 order a party, a party's attorney, or both, to pay any reasonable
2 expenses, including attorney's fees, incurred by the defendant for
3 whom a certificate of merit should have been filed.

4 ~~(r) The amendments to this section enacted at the 1990 portion
5 of the 1989-90 Regular Session shall apply to any action
6 commenced on or after January 1, 1991, including any action
7 otherwise barred by the period of limitations in effect prior to
8 January 1, 1991, thereby reviving those causes of action which
9 had lapsed or technically expired under the law existing prior to
10 January 1, 1991.~~

11 ~~(s) The Legislature declares that it is the intent of the Legislature,
12 in enacting the amendments to this section enacted at the 1994
13 portion of the 1993-94 Regular Session, that the express language
14 of revival added to this section by those amendments shall apply
15 to any action commenced on or after January 1, 1991.~~

16 ~~(t) Nothing in the amendments to this section enacted at the
17 1998 portion of the 1997-98 Regular Session is intended to create
18 a new theory of liability.~~

19 ~~(u) The amendments to subdivision (a) of this section, enacted
20 at the 1998 portion of the 1997-98 Regular Session, shall apply
21 to any action commenced on or after January 1, 1999, and to any
22 action filed prior to January 1, 1999, and still pending on that date,
23 including any action or causes of action which would have been
24 barred by the laws in effect prior to January 1, 1999. Nothing in
25 this subdivision is intended to revive actions or causes of action
26 as to which there has been a final adjudication prior to January 1,
27 1999.~~