

Introduced by Senators Beall and LaraJanuary 29, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

SB 924, as introduced, 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.

This bill would instead require that an action for recovery of damages suffered as a result of childhood sexual abuse be commenced within 22 years 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 also provide that a party may 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 acts in the future.

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 as follows:*

6 (a)
7 (1) ~~In an action for recovery of damages suffered as a result of~~
8 ~~childhood sexual abuse, the time for commencement of the action~~
9 ~~shall be within eight~~ *Within 22 years of the date the plaintiff attains*
10 *the age of majority majority, or within three five years of the date*
11 ~~the plaintiff discovers or reasonably should have discovered that~~
12 *fact of the psychological injury or illness occurring after the age*
13 *of majority was caused by and its causal connection to the sexual*
14 ~~abuse, abuse is first communicated to the plaintiff by a licensed~~
15 *mental health practitioner practicing within the state, whichever*
16 *period expires later, for an action against any person for*
17 *committing an act of the following actions: childhood sexual abuse.*

18 (1)
19 (2) ~~An action against any person~~ *Within 22 years of the date*
20 *the plaintiff attains the age of majority, or within five years of the*
21 *date the fact of the psychological injury or illness occurring after*
22 *the age of majority and its causal connection to the sexual abuse*
23 *is first communicated to the plaintiff by a licensed mental health*
24 *practitioner practicing within the state, whichever period expires*
25 ~~later, for committing an act either of childhood sexual abuse. the~~
26 *following actions:*

27 (2)
28 (A) *An action for liability against any person or entity who owed*
29 *a duty of care to the plaintiff, where a wrongful or negligent act*
30 *by that person or entity was a legal cause of the childhood sexual*
31 ~~abuse which that~~ *resulted in the injury to the plaintiff.*

32 (3)

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

5 (b) (1) No action described in paragraph (2) ~~or (3)~~ of
6 subdivision (a) may be commenced on or after the plaintiff's ~~26th~~
7 *40th* birthday.

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

22 (c) Notwithstanding any other provision of law, any claim for
23 damages described in paragraph (2) or (3) of subdivision (a) that
24 is permitted to be filed pursuant to paragraph (2) of subdivision
25 (b) that would otherwise be barred as of January 1, 2003, solely
26 because the applicable statute of limitations has or had expired, is
27 revived, and, in that case, a cause of action may be commenced
28 within one year of January 1, 2003. Nothing in this subdivision
29 shall be construed to alter the applicable statute of limitations
30 period of an action that is not time barred as of January 1, 2003.

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

32 (1) Any claim that has been litigated to finality on the merits in
33 any court of competent jurisdiction prior to January 1, 2003.
34 Termination of a prior action on the basis of the statute of
35 limitations does not constitute a claim that has been litigated to
36 finality on the merits.

37 (2) Any written, compromised settlement agreement ~~which~~ *that*
38 has been entered into between a plaintiff and a defendant where
39 the plaintiff was represented by an attorney who was admitted to

1 practice law in this state at the time of the settlement, and the
2 plaintiff signed the agreement.

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

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

21 (g) Every plaintiff ~~26~~ 40 years of age or older at the time the
22 action is filed shall file certificates of merit as specified in
23 subdivision (h).

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

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

36 (2) That the mental health practitioner consulted is licensed to
37 practice and practices in this state and is not a party to the action,
38 that the practitioner is not treating and has not treated the plaintiff,
39 and that the practitioner has interviewed the plaintiff and is
40 knowledgeable of the relevant facts and issues involved in the

1 particular action, and has concluded, on the basis of his or her
2 knowledge of the facts and issues, that in his or her professional
3 opinion there is a reasonable basis to believe that the plaintiff had
4 been subject to childhood sexual abuse.

5 (3) That the attorney was unable to obtain the consultation
6 required by paragraph (1) because a statute of limitations would
7 impair the action and that the certificates required by paragraphs
8 (1) and (2) could not be obtained before the impairment of the
9 action. If a certificate is executed pursuant to this paragraph, the
10 certificates required by paragraphs (1) and (2) shall be filed within
11 60 days after filing the complaint.

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

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

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

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

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

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

36 (1) The application shall be accompanied by a certificate of
37 corroborative fact executed by the attorney for the plaintiff. The
38 certificate shall declare that the attorney has discovered one or
39 more facts corroborative of one or more of the charging allegations
40 against a defendant or defendants, and shall set forth in clear and

1 concise terms the nature and substance of the corroborative fact.
2 If the corroborative fact is evidenced by the statement of a witness
3 or the contents of a document, the certificate shall declare that the
4 attorney has personal knowledge of the statement of the witness
5 or of the contents of the document, and the identity and location
6 of the witness or document shall be included in the certificate. For
7 purposes of this section, a fact is corroborative of an allegation if
8 it confirms or supports the allegation. The opinion of any mental
9 health practitioner concerning the plaintiff shall not constitute a
10 corroborative fact for purposes of this section.

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

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

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

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

32 (q) Upon the favorable conclusion of the litigation with respect
33 to any defendant for whom a certificate of merit was filed or for
34 whom a certificate of merit should have been filed pursuant to this
35 section, the court may, upon the motion of a party or upon the
36 court's own motion, verify compliance with this section by
37 requiring the attorney for the plaintiff who was required by
38 subdivision (h) to execute the certificate to reveal the name,
39 address, and telephone number of the person or persons consulted
40 with pursuant to subdivision (h) that were relied upon by the

1 attorney in preparation of the certificate of merit. The name,
2 address, and telephone number shall be disclosed to the trial judge
3 in camera and in the absence of the moving party. If the court finds
4 there has been a failure to comply with this section, the court may
5 order a party, a party's attorney, or both, to pay any reasonable
6 expenses, including attorney's fees, incurred by the defendant for
7 whom a certificate of merit should have been filed.

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

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

20 (t) Nothing in the amendments to this section enacted at the
21 1998 portion of the 1997–98 Regular Session is intended to create
22 a new theory of liability.

23 (u) The amendments to subdivision (a) of this section, enacted
24 at the 1998 portion of the 1997–98 Regular Session, shall apply
25 to any action commenced on or after January 1, 1999, and to any
26 action filed prior to January 1, 1999, and still pending on that date,
27 including any action or causes of action which would have been
28 barred by the laws in effect prior to January 1, 1999. Nothing in
29 this subdivision is intended to revive actions or causes of action
30 as to which there has been a final adjudication prior to January 1,
31 1999.