

AMENDED IN SENATE MAY 13, 2014

SENATE BILL

No. 924

Introduced by Senators Beall and Lara

January 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 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.

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 3 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. *The bill would make conforming changes.*

~~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 within ~~eight~~ 22 years of the date the plaintiff
6 attains the age of majority or within three years of the date the
7 plaintiff discovers or reasonably should have discovered that
8 psychological injury or illness occurring after the age of majority
9 was caused by the sexual abuse, whichever period expires later,
10 for any of the following actions:

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

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

17 (3) An action for liability against any person or entity where an
18 intentional act by that person or entity was a legal cause of the
19 childhood sexual abuse ~~which~~ that resulted in the injury to the
20 plaintiff.

21 (b) (1) No action described in paragraph (2) or (3) of
22 subdivision (a) may be commenced on or after the plaintiff's ~~26th~~
23 40th birthday.

24 (2) This subdivision does not apply if the person or entity knew
25 or had reason to know, or was otherwise on notice, of any unlawful
26 sexual conduct by an employee, volunteer, representative, or agent,
27 and failed to take reasonable steps, and to implement reasonable
28 safeguards, to avoid acts of unlawful sexual conduct in the future
29 by that person, including, but not limited to, preventing or avoiding
30 placement of that person in a function or environment in which
31 contact with children is an inherent part of that function or
32 environment. For purposes of this subdivision, providing or

1 requiring counseling is not sufficient, in and of itself, to constitute
2 a reasonable step or reasonable safeguard.

3 (c) Notwithstanding any other provision of law, any claim for
4 damages described in paragraph (2) or (3) of subdivision (a) that
5 is permitted to be filed pursuant to paragraph (2) of subdivision
6 (b) that would otherwise be barred as of January 1, 2003, solely
7 because the applicable statute of limitations has or had expired, is
8 revived, and, in that case, a cause of action may be commenced
9 within one year of January 1, 2003. Nothing in this subdivision
10 shall be construed to alter the applicable statute of limitations
11 period of an action that is not time barred as of January 1, 2003.

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

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

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

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

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

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

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

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

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

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

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

35 (j) In any action subject to subdivision (g), no defendant may
36 be served, and the duty to serve a defendant with process does not
37 attach, until the court has reviewed the certificates of merit filed
38 pursuant to subdivision (h) with respect to that defendant, and has
39 found, in camera, based solely on those certificates of merit, that
40 there is reasonable and meritorious cause for the filing of the action

1 against that defendant. At that time, the duty to serve that defendant
2 with process shall attach.

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

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

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

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

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

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

36 (3) Where the application to name a defendant is made after
37 that defendant’s appearance in the action, the application shall be
38 served on all parties and proof of service provided to the court,
39 but the certificate of corroborative fact by the attorney shall not
40 be served on any party or their counsel of record.

- 1 (o) The court shall review the application and the certificate of
2 corroborative fact in camera and, based solely on the certificate
3 and any reasonable inferences to be drawn from the certificate,
4 shall, if one or more facts corroborative of one or more of the
5 charging allegations against a defendant has been shown, order
6 that the complaint may be amended to substitute the name of the
7 defendant or defendants.
- 8 (p) The court shall keep under seal and confidential from the
9 public and all parties to the litigation, other than the plaintiff, any
10 and all certificates of corroborative fact filed pursuant to
11 subdivision (n).
- 12 (q) Upon the favorable conclusion of the litigation with respect
13 to any defendant for whom a certificate of merit was filed or for
14 whom a certificate of merit should have been filed pursuant to this
15 section, the court may, upon the motion of a party or upon the
16 court’s own motion, verify compliance with this section by
17 requiring the attorney for the plaintiff who was required by
18 subdivision (h) to execute the certificate to reveal the name,
19 address, and telephone number of the person or persons consulted
20 with pursuant to subdivision (h) that were relied upon by the
21 attorney in preparation of the certificate of merit. The name,
22 address, and telephone number shall be disclosed to the trial judge
23 in camera and in the absence of the moving party. If the court finds
24 there has been a failure to comply with this section, the court may
25 order a party, a party’s attorney, or both, to pay any reasonable
26 expenses, including attorney’s fees, incurred by the defendant for
27 whom a certificate of merit should have been filed.
- 28 (r) The amendments to this section enacted at the 1990 portion
29 of the 1989–90 Regular Session shall apply to any action
30 commenced on or after January 1, 1991, including any action
31 otherwise barred by the period of limitations in effect prior to
32 January 1, 1991, thereby reviving those causes of action which
33 had lapsed or technically expired under the law existing prior to
34 January 1, 1991.
- 35 (s) The Legislature declares that it is the intent of the Legislature,
36 in enacting the amendments to this section enacted at the 1994
37 portion of the 1993–94 Regular Session, that the express language
38 of revival added to this section by those amendments shall apply
39 to any action commenced on or after January 1, 1991.

1 (t) Nothing in the amendments to this section enacted at the
2 1998 portion of the 1997–98 Regular Session is intended to create
3 a new theory of liability.

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

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

15 ~~340.1. (a) In an action for recovery of damages suffered as a~~
16 ~~result of childhood sexual abuse, the time for commencement of~~
17 ~~the action shall be as follows:~~

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

25 ~~(2) Within 22 years of the date the plaintiff attains the age of~~
26 ~~majority, or within five years of the date the fact of the~~
27 ~~psychological injury or illness occurring after the age of majority~~
28 ~~and its causal connection to the sexual abuse is first communicated~~
29 ~~to the plaintiff by a licensed mental health practitioner practicing~~
30 ~~within the state, whichever period expires later, for either of the~~
31 ~~following actions:~~

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

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

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

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

15 ~~(e) Notwithstanding any other provision of law, any claim for~~
16 ~~damages described in paragraph (2) or (3) of subdivision (a) that~~
17 ~~is permitted to be filed pursuant to paragraph (2) of subdivision~~
18 ~~(b) that would otherwise be barred as of January 1, 2003, solely~~
19 ~~because the applicable statute of limitations has or had expired, is~~
20 ~~revived, and, in that case, a cause of action may be commenced~~
21 ~~within one year of January 1, 2003. Nothing in this subdivision~~
22 ~~shall be construed to alter the applicable statute of limitations~~
23 ~~period of an action that is not time barred as of January 1, 2003.~~

24 ~~(d) Subdivision (e) does not apply to either of the following:~~

25 ~~(1) Any claim that has been litigated to finality on the merits in~~
26 ~~any court of competent jurisdiction prior to January 1, 2003.~~
27 ~~Termination of a prior action on the basis of the statute of~~
28 ~~limitations does not constitute a claim that has been litigated to~~
29 ~~finality on the merits.~~

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

35 ~~(e) "Childhood sexual abuse" as used in this section includes~~
36 ~~any act committed against the plaintiff that occurred when the~~
37 ~~plaintiff was under 18 years of age and that would have been~~
38 ~~proscribed by Section 266j of the Penal Code; Section 285 of the~~
39 ~~Penal Code; paragraph (1) or (2) of subdivision (b), or of~~
40 ~~subdivision (c), of Section 286 of the Penal Code; subdivision (a)~~

1 or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of
2 subdivision (b), or of subdivision (c), of Section 288a of the Penal
3 Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;
4 Section 647.6 of the Penal Code; or any prior laws of this state of
5 similar effect at the time the act was committed. Nothing in this
6 subdivision limits the availability of causes of action permitted
7 under subdivision (a), including causes of action against persons
8 or entities other than the alleged perpetrator of the abuse.

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

13 (g) Every plaintiff 40 years of age or older at the time the action
14 is filed shall file certificates of merit as specified in subdivision
15 (h).

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

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

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

37 (3) That the attorney was unable to obtain the consultation
38 required by paragraph (1) because a statute of limitations would
39 impair the action and that the certificates required by paragraphs
40 (1) and (2) could not be obtained before the impairment of the

1 action. If a certificate is executed pursuant to this paragraph, the
2 certificates required by paragraphs (1) and (2) shall be filed within
3 60 days after filing the complaint.

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

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

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

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

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

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

28 (1) The application shall be accompanied by a certificate of
29 corroborative fact executed by the attorney for the plaintiff. The
30 certificate shall declare that the attorney has discovered one or
31 more facts corroborative of one or more of the charging allegations
32 against a defendant or defendants, and shall set forth in clear and
33 concise terms the nature and substance of the corroborative fact.
34 If the corroborative fact is evidenced by the statement of a witness
35 or the contents of a document, the certificate shall declare that the
36 attorney has personal knowledge of the statement of the witness
37 or of the contents of the document, and the identity and location
38 of the witness or document shall be included in the certificate. For
39 purposes of this section, a fact is corroborative of an allegation if
40 it confirms or supports the allegation. The opinion of any mental

1 health practitioner concerning the plaintiff shall not constitute a
2 corroborative fact for purposes of this section.

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

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

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

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

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

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

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

13 ~~(t) Nothing in the amendments to this section enacted at the~~
14 ~~1998 portion of the 1997–98 Regular Session is intended to create~~
15 ~~a new theory of liability.~~

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