

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 13, 2014

**SENATE BILL**

**No. 924**

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**Introduced by Senators Beall and Lara**

January 29, 2014

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An act to amend Section 340.1 of, *and to add Section 340.105 to*, 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~~ *establish 2 separate statute of limitations for an action for recovery of damages suffered as a result of childhood sexual abuse. An action for recovery of damages suffered as a result of childhood sexual abuse occurring prior to January 1, 2015, would be subject to the above provisions of existing law. An action involving childhood sexual abuse occurring on or after January 1, 2015, would be required to be commenced within 22 years of the date the plaintiff attains the age of majority, or within 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 plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later. The bill would make conforming changes.~~

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 *that occurred prior to January*  
5     *1, 2015*, the time for commencement of the action shall be within  
6     eight years of the date the plaintiff attains the age of majority or  
7     within three years of the date the plaintiff discovers or reasonably  
8     should have discovered that psychological injury or illness  
9     occurring after the age of majority was caused by the sexual abuse,  
10    whichever period expires later, 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    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

1 placement of that person in a function or environment in which  
2 contact with children is an inherent part of that function or  
3 environment. For purposes of this subdivision, providing or  
4 requiring counseling is not sufficient, in and of itself, to constitute  
5 a reasonable step or reasonable safeguard.

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

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

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

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

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

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

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

7 (h).

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

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

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

29 (3) That the attorney was unable to obtain the consultation  
30 required by paragraph (1) because a statute of limitations would  
31 impair the action and that the certificates required by paragraphs  
32 (1) and (2) could not be obtained before the impairment of the  
33 action. If a certificate is executed pursuant to this paragraph, the  
34 certificates required by paragraphs (1) and (2) shall be filed within  
35 60 days after filing the complaint.

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

39 (j) In any action subject to subdivision (g), no defendant may  
40 be served, and the duty to serve a defendant with process does not

1 attach, until the court has reviewed the certificates of merit filed  
2 pursuant to subdivision (h) with respect to that defendant, and has  
3 found, in camera, based solely on those certificates of merit, that  
4 there is reasonable and meritorious cause for the filing of the action  
5 against that defendant. At that time, the duty to serve that defendant  
6 with process shall attach.

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

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

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

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

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

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

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

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

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

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

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

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

6 (t) Nothing in the amendments to this section enacted at the  
7 1998 portion of the 1997–98 Regular Session is intended to create  
8 a new theory of liability.

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

18 *SEC. 2. Section 340.105 is added to the Code of Civil*  
19 *Procedure, immediately following Section 340.1, to read:*

20 *340.105. (a) In an action for recovery of damages suffered as*  
21 *a result of childhood sexual abuse that occurred on or after*  
22 *January 1, 2015, the time for commencement of the action shall*  
23 *be within 22 years of the date the plaintiff attains the age of*  
24 *majority or within three years of the date the plaintiff discovers*  
25 *or reasonably should have discovered that psychological injury*  
26 *or illness occurring after the age of majority was caused by the*  
27 *sexual abuse, whichever period expires later, for any of the*  
28 *following actions:*

29 *(1) An action against any person for committing an act of*  
30 *childhood sexual abuse.*

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

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

38 *(b) (1) No action described in paragraph (2) or (3) of*  
39 *subdivision (a) may be commenced on or after the plaintiff's 40th*  
40 *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.*

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

26     (d) *Nothing in this section shall be construed to alter the*  
27 *otherwise applicable burden of proof, as defined in Section 115*  
28 *of the Evidence Code, that a plaintiff has in a civil action subject*  
29 *to this section.*

30     (e) *Every plaintiff 40 years of age or older at the time the action*  
31 *is filed shall file certificates of merit as specified in subdivision*  
32 *(f).*

33     (f) *Certificates of merit shall be executed by the attorney for the*  
34 *plaintiff and by a licensed mental health practitioner selected by*  
35 *the plaintiff declaring, respectively, as follows, setting forth the*  
36 *facts that support the declaration:*

37     (1) *That the attorney has reviewed the facts of the case, that the*  
38 *attorney has consulted with at least one mental health practitioner*  
39 *who is licensed to practice and practices in this state and who the*  
40 *attorney reasonably believes is knowledgeable of the relevant facts*

1 *and issues involved in the particular action, and that the attorney*  
2 *has concluded on the basis of that review and consultation that*  
3 *there is reasonable and meritorious cause for the filing of the*  
4 *action. The person consulted may not be a party to the litigation.*

5 (2) *That the mental health practitioner consulted is licensed to*  
6 *practice and practices in this state and is not a party to the action,*  
7 *that the practitioner is not treating and has not treated the plaintiff,*  
8 *and that the practitioner has interviewed the plaintiff and is*  
9 *knowledgeable of the relevant facts and issues involved in the*  
10 *particular action, and has concluded, on the basis of his or her*  
11 *knowledge of the facts and issues, that in his or her professional*  
12 *opinion there is a reasonable basis to believe that the plaintiff had*  
13 *been subject to childhood sexual abuse.*

14 (3) *That the attorney was unable to obtain the consultation*  
15 *required by paragraph (1) because a statute of limitations would*  
16 *impair the action and that the certificates required by paragraphs*  
17 *(1) and (2) could not be obtained before the impairment of the*  
18 *action. If a certificate is executed pursuant to this paragraph, the*  
19 *certificates required by paragraphs (1) and (2) shall be filed within*  
20 *60 days after filing the complaint.*

21 (g) *Where certificates are required pursuant to subdivision (e),*  
22 *the attorney for the plaintiff shall execute a separate certificate of*  
23 *merit for each defendant named in the complaint.*

24 (h) *In any action subject to subdivision (e), no defendant may*  
25 *be served, and the duty to serve a defendant with process does not*  
26 *attach, until the court has reviewed the certificates of merit filed*  
27 *pursuant to subdivision (f) with respect to that defendant, and has*  
28 *found, in camera, based solely on those certificates of merit, that*  
29 *there is reasonable and meritorious cause for the filing of the*  
30 *action against that defendant. At that time, the duty to serve that*  
31 *defendant with process shall attach.*

32 (i) *A violation of this section may constitute unprofessional*  
33 *conduct and may be the grounds for discipline against the attorney.*

34 (j) *The failure to file certificates in accordance with this section*  
35 *shall be grounds for a demurrer pursuant to Section 430.10 or a*  
36 *motion to strike pursuant to Section 435.*

37 (k) *In any action subject to subdivision (e), no defendant may*  
38 *be named except by “Doe” designation in any pleadings or papers*  
39 *filed in the action until there has been a showing of corroborative*  
40 *fact as to the charging allegations against that defendant.*

1     *(l) At any time after the action is filed, the plaintiff may apply*  
2     *to the court for permission to amend the complaint to substitute*  
3     *the name of the defendant or defendants for the fictitious*  
4     *designation, as follows:*

5     *(1) The application shall be accompanied by a certificate of*  
6     *corroborative fact executed by the attorney for the plaintiff. The*  
7     *certificate shall declare that the attorney has discovered one or*  
8     *more facts corroborative of one or more of the charging allegations*  
9     *against a defendant or defendants, and shall set forth in clear and*  
10    *concise terms the nature and substance of the corroborative fact.*  
11    *If the corroborative fact is evidenced by the statement of a witness*  
12    *or the contents of a document, the certificate shall declare that the*  
13    *attorney has personal knowledge of the statement of the witness*  
14    *or of the contents of the document, and the identity and location*  
15    *of the witness or document shall be included in the certificate. For*  
16    *purposes of this section, a fact is corroborative of an allegation*  
17    *if it confirms or supports the allegation. The opinion of any mental*  
18    *health practitioner concerning the plaintiff shall not constitute a*  
19    *corroborative fact for purposes of this section.*

20    *(2) Where the application to name a defendant is made prior*  
21    *to that defendant's appearance in the action, neither the*  
22    *application nor the certificate of corroborative fact by the attorney*  
23    *shall be served on the defendant or defendants, nor on any other*  
24    *party or their counsel of record.*

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

30    *(m) The court shall review the application and the certificate*  
31    *of corroborative fact in camera and, based solely on the certificate*  
32    *and any reasonable inferences to be drawn from the certificate,*  
33    *shall, if one or more facts corroborative of one or more of the*  
34    *charging allegations against a defendant has been shown, order*  
35    *that the complaint may be amended to substitute the name of the*  
36    *defendant or defendants.*

37    *(n) The court shall keep under seal and confidential from the*  
38    *public and all parties to the litigation, other than the plaintiff, any*  
39    *and all certificates of corroborative fact filed pursuant to*  
40    *subdivision (l).*

1     (o) Upon the favorable conclusion of the litigation with respect  
 2 to any defendant for whom a certificate of merit was filed or for  
 3 whom a certificate of merit should have been filed pursuant to this  
 4 section, the court may, upon the motion of a party or upon the  
 5 court’s own motion, verify compliance with this section by  
 6 requiring the attorney for the plaintiff who was required by  
 7 subdivision (f) to execute the certificate to reveal the name,  
 8 address, and telephone number of the person or persons consulted  
 9 with pursuant to subdivision (f) that were relied upon by the  
 10 attorney in preparation of the certificate of merit. The name,  
 11 address, and telephone number shall be disclosed to the trial judge  
 12 in camera and in the absence of the moving party. If the court finds  
 13 there has been a failure to comply with this section, the court may  
 14 order a party, a party’s attorney, or both, to pay any reasonable  
 15 expenses, including attorney’s fees, incurred by the defendant for  
 16 whom a certificate of merit should have been filed.

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

19     ~~340.1. (a) In an action for recovery of damages suffered as a~~  
 20 ~~result of childhood sexual abuse, the time for commencement of~~  
 21 ~~the action shall be within 22 years of the date the plaintiff attains~~  
 22 ~~the age of majority or within three years of the date the plaintiff~~  
 23 ~~discovers or reasonably should have discovered that psychological~~  
 24 ~~injury or illness occurring after the age of majority was caused by~~  
 25 ~~the sexual abuse, whichever period expires later, for any of the~~  
 26 ~~following actions:~~

27     ~~(1) An action against any person for committing an act of~~  
 28 ~~childhood sexual abuse.~~

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

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

36     ~~(b) (1) No action described in paragraph (2) or (3) of~~  
 37 ~~subdivision (a) may be commenced on or after the plaintiff’s 40th~~  
 38 ~~birthday.~~

39     ~~(2) This subdivision does not apply if the person or entity knew~~  
 40 ~~or had reason to know, or was otherwise on notice, of any unlawful~~

1 sexual conduct by an employee, volunteer, representative, or agent,  
2 and failed to take reasonable steps, and to implement reasonable  
3 safeguards, to avoid acts of unlawful sexual conduct in the future  
4 by that person, including, but not limited to, preventing or avoiding  
5 placement of that person in a function or environment in which  
6 contact with children is an inherent part of that function or  
7 environment. For purposes of this subdivision, providing or  
8 requiring counseling is not sufficient, in and of itself, to constitute  
9 a reasonable step or reasonable safeguard.

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

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

20 (1) Any claim that has been litigated to finality on the merits in  
21 any court of competent jurisdiction prior to January 1, 2003.  
22 Termination of a prior action on the basis of the statute of  
23 limitations does not constitute a claim that has been litigated to  
24 finality on the merits.

25 (2) Any written, compromised settlement agreement that has  
26 been entered into between a plaintiff and a defendant where the  
27 plaintiff was represented by an attorney who was admitted to  
28 practice law in this state at the time of the settlement, and the  
29 plaintiff signed the agreement.

30 (e) “Childhood sexual abuse” as used in this section includes  
31 any act committed against the plaintiff that occurred when the  
32 plaintiff was under 18 years of age and that would have been  
33 proscribed by Section 266j of the Penal Code; Section 285 of the  
34 Penal Code; paragraph (1) or (2) of subdivision (b), or of  
35 subdivision (c), of Section 286 of the Penal Code; subdivision (a)  
36 or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of  
37 subdivision (b), or of subdivision (c), of Section 288a of the Penal  
38 Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;  
39 Section 647.6 of the Penal Code; or any prior laws of this state of  
40 similar effect at the time the act was committed. Nothing in this

1 ~~subdivision limits the availability of causes of action permitted~~  
2 ~~under subdivision (a), including causes of action against persons~~  
3 ~~or entities other than the alleged perpetrator of the abuse.~~

4 ~~(f) Nothing in this section shall be construed to alter the~~  
5 ~~otherwise applicable burden of proof, as defined in Section 115~~  
6 ~~of the Evidence Code, that a plaintiff has in a civil action subject~~  
7 ~~to this section.~~

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

11 ~~(h) Certificates of merit shall be executed by the attorney for~~  
12 ~~the plaintiff and by a licensed mental health practitioner selected~~  
13 ~~by the plaintiff declaring, respectively, as follows, setting forth~~  
14 ~~the facts that support the declaration:~~

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

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

32 ~~(3) That the attorney was unable to obtain the consultation~~  
33 ~~required by paragraph (1) because a statute of limitations would~~  
34 ~~impair the action and that the certificates required by paragraphs~~  
35 ~~(1) and (2) could not be obtained before the impairment of the~~  
36 ~~action. If a certificate is executed pursuant to this paragraph, the~~  
37 ~~certificates required by paragraphs (1) and (2) shall be filed within~~  
38 ~~60 days after filing the complaint.~~

1     ~~(i) Where certificates are required pursuant to subdivision (g),~~  
2 ~~the attorney for the plaintiff shall execute a separate certificate of~~  
3 ~~merit for each defendant named in the complaint.~~  
4     ~~(j) In any action subject to subdivision (g), no defendant may~~  
5 ~~be served, and the duty to serve a defendant with process does not~~  
6 ~~attach, until the court has reviewed the certificates of merit filed~~  
7 ~~pursuant to subdivision (h) with respect to that defendant, and has~~  
8 ~~found, in camera, based solely on those certificates of merit, that~~  
9 ~~there is reasonable and meritorious cause for the filing of the action~~  
10 ~~against that defendant. At that time, the duty to serve that defendant~~  
11 ~~with process shall attach.~~  
12     ~~(k) A violation of this section may constitute unprofessional~~  
13 ~~conduct and may be the grounds for discipline against the attorney.~~  
14     ~~(l) The failure to file certificates in accordance with this section~~  
15 ~~shall be grounds for a demurrer pursuant to Section 430.10 or a~~  
16 ~~motion to strike pursuant to Section 435.~~  
17     ~~(m) In any action subject to subdivision (g), no defendant may~~  
18 ~~be named except by “Doe” designation in any pleadings or papers~~  
19 ~~filed in the action until there has been a showing of corroborative~~  
20 ~~fact as to the charging allegations against that defendant.~~  
21     ~~(n) At any time after the action is filed, the plaintiff may apply~~  
22 ~~to the court for permission to amend the complaint to substitute~~  
23 ~~the name of the defendant or defendants for the fictitious~~  
24 ~~designation, as follows:~~  
25         ~~(1) The application shall be accompanied by a certificate of~~  
26 ~~corroborative fact executed by the attorney for the plaintiff. The~~  
27 ~~certificate shall declare that the attorney has discovered one or~~  
28 ~~more facts corroborative of one or more of the charging allegations~~  
29 ~~against a defendant or defendants, and shall set forth in clear and~~  
30 ~~concise terms the nature and substance of the corroborative fact.~~  
31 ~~If the corroborative fact is evidenced by the statement of a witness~~  
32 ~~or the contents of a document, the certificate shall declare that the~~  
33 ~~attorney has personal knowledge of the statement of the witness~~  
34 ~~or of the contents of the document, and the identity and location~~  
35 ~~of the witness or document shall be included in the certificate. For~~  
36 ~~purposes of this section, a fact is corroborative of an allegation if~~  
37 ~~it confirms or supports the allegation. The opinion of any mental~~  
38 ~~health practitioner concerning the plaintiff shall not constitute a~~  
39 ~~corroborative fact for purposes of this section.~~

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

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

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

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

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

38     ~~(r) The amendments to this section enacted at the 1990 portion~~  
39 ~~of the 1989-90 Regular Session shall apply to any action~~  
40 ~~commenced on or after January 1, 1991, including any action~~

1 otherwise barred by the period of limitations in effect prior to  
2 January 1, 1991, thereby reviving those causes of action which  
3 had lapsed or technically expired under the law existing prior to  
4 January 1, 1991.

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

10 (t) ~~Nothing in the amendments to this section enacted at the~~  
11 ~~1998 portion of the 1997–98 Regular Session is intended to create~~  
12 ~~a new theory of liability.~~

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