

Assembly Bill No. 593

CHAPTER 55

An act to amend Section 1390 of the Evidence Code, relating to evidence.

[Approved by Governor July 6, 2015. Filed with Secretary
of State July 6, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 593, Levine. Hearsay: admissibility of statements.

Existing law, known as the "hearsay rule," provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible. Existing law also provides exceptions to the hearsay rule to permit the admission of specified kinds of evidence. Existing law provides that evidence of a statement that is offered against a party who has engaged, or aided and abetted, in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness is not made inadmissible by the hearsay rule, as specified. Existing law would repeal this exception on January 1, 2016.

This bill would delete the January 1, 2016, repeal date for these provisions, thereby extending the hearsay exemption into perpetuity.

The people of the State of California do enact as follows:

SECTION 1. Section 1390 of the Evidence Code is amended to read:

1390. (a) Evidence of a statement is not made inadmissible by the hearsay rule if the statement is offered against a party that has engaged, or aided and abetted, in the wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

(b) (1) The party seeking to introduce a statement pursuant to subdivision (a) shall establish, by a preponderance of the evidence, that the elements of subdivision (a) have been met at a foundational hearing.

(2) The hearsay evidence that is the subject of the foundational hearing is admissible at the foundational hearing. However, a finding that the elements of subdivision (a) have been met shall not be based solely on the unfronted hearsay statement of the unavailable declarant, and shall be supported by independent corroborative evidence.

(3) The foundational hearing shall be conducted outside the presence of the jury. However, if the hearing is conducted after a jury trial has begun, the judge presiding at the hearing may consider evidence already presented to the jury in deciding whether the elements of subdivision (a) have been met.

(4) In deciding whether or not to admit the statement, the judge may take into account whether it is trustworthy and reliable.

(c) This section shall apply to any civil, criminal, or juvenile case or proceeding initiated or pending as of January 1, 2011.