

AMENDED IN ASSEMBLY MAY 2, 2016
AMENDED IN ASSEMBLY APRIL 18, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2748

Introduced by Assembly Member Gatto

February 19, 2016

An act to add ~~Sections~~ *Section 1544 and 3484.5* to the Civil Code, and to amend Section 340.8 of, and to add Section 1021.3 to, the Code of Civil Procedure, relating to environmental disaster.

LEGISLATIVE COUNSEL'S DIGEST

AB 2748, as amended, Gatto. ~~Aliso Canyon Gas Storage Facility: leak: claims for damage to property. Environmental disaster: release of claims: statute of limitations: attorneys' fees.~~

Existing law provides that an obligation is extinguished by a release given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration. A general release does not extend to claims the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

~~This bill would prohibit a~~

~~Under this bill, a partial or interim payment or reimbursement, made in connection with an environmental disaster by the responsible polluter or any agent or entity related to the responsible polluter to any recipient, from being conditioned upon the release by the recipient of any claim unrelated to the environmental disaster or all future claims, or both.~~

would not release the polluter from liability to the recipient for any claim related to the environmental disaster or for any future claim by the recipient against the polluter, or for both current and future claims. The bill would prohibit any such partial or interim payment or reimbursement from being conditioned upon the recipient's agreement to release the polluter from liability for any current or future claim. The bill would allow such a payment or reimbursement to any recipient to be credited against the liability of the polluter, agent, or entity to the recipient for any current or future claim that is related to the environmental disaster.

Under the bill, a final settlement of any kind made in connection with an environmental disaster by the responsible polluter or any agent or entity related to the responsible polluter to any recipient would release the responsible polluter from liability to the recipient only for a claim related to the environmental disaster and would not release any future claim by the recipient against the polluter, or any claim unconnected to the environmental disaster. The bill would prohibit any such payment from being conditioned upon the recipient's agreement to release the polluter from liability for any current or future claim.

The bill would make any agreement in violation of those prohibitions that is entered into on or after January 1, 2017, void as a matter of law and against public policy.

~~Existing law defines a nuisance as anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, as specified. Existing law defines a public nuisance as a nuisance that affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and makes every public nuisance a private nuisance as to those affected by it. Existing law provides that the abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.~~

~~This bill would create a right of action against Southern California Gas Company for any person owning real property in the Porter Ranch area, as defined, on October 23, 2015, who suffers a diminution in value of that real property resulting from the leakage of natural gas from the Aliso Canyon Gas Storage Facility during 2015 and 2016. The bill would specify a mechanism for measuring the diminution in value.~~

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the Aliso Canyon Gas Storage Facility leak.~~

Existing law establishes statutes of limitations for civil actions for injury or illness or wrongful death based upon exposure to a hazardous material or toxic substance other than asbestos, as specified. For injury or illness, the statute of limitations is 2 years from the date of injury, or 2 years after the plaintiff becomes aware of, or reasonably should have become aware of, an injury, the physical cause of the injury, and sufficient facts to put a reasonable person on inquiry notice that the injury was caused or contributed to by the wrongful act of another, whichever occurs later. For wrongful death, the statute of limitations is no later than either 2 years from the date of the death of the plaintiff's decedent, or 2 years from the first date on which the plaintiff is aware of, or reasonably should have become aware of, the physical cause of the death and sufficient facts to put a reasonable person on inquiry notice that the death was caused or contributed to by the wrongful act of another, whichever occurs later.

This bill would change all those dates from 2 to 3 years.

Under existing law, except as ~~attorney's~~ *attorneys'* fees are specifically provided for by statute, the measure and mode of compensation of attorneys is left to the agreement of the parties.

This bill would authorize the court, in any action for private nuisance against an environmental polluter defendant arising out of an environmental disaster for which the defendant has been adjudged civilly liable, upon motion, to award reasonable attorneys' fees to a prevailing plaintiff against the defendant.

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 1544 is added to the Civil Code, to read:
- 2 1544. (a) *A partial or interim payment or reimbursement of*
- 3 *any kind* made in connection with an environmental disaster by
- 4 the responsible polluter or any agent or entity related to the
- 5 responsible polluter to any recipient shall ~~not be conditioned upon~~
- 6 ~~the release by the polluter from liability to the recipient or for any~~
- 7 ~~claim unrelated~~ *related to the environmental disaster or all for any*
- 8 ~~future claims, or both.~~ *claim by the recipient against the polluter,*

1 or for both current and future claims. Any such partial or interim
 2 payment or reimbursement shall not be conditioned upon the
 3 recipient’s agreement to release the polluter from liability for any
 4 current or future claim.

5 (b) Notwithstanding subdivision (a), a payment or
 6 reimbursement made in connection with an environmental disaster
 7 by the responsible polluter or any agent or entity related to the
 8 responsible polluter to any recipient may be credited against the
 9 liability of the polluter, agent, or entity to the recipient for any
 10 current or future claim that is related to the environmental disaster.

11 (c) A final settlement of any kind made in connection with an
 12 environmental disaster by the responsible polluter or any agent
 13 or entity related to the responsible polluter to any recipient shall
 14 release the responsible polluter from liability to the recipient only
 15 for a claim related to the environmental disaster and shall not
 16 release any future claim by the recipient against the polluter, or
 17 any claim unconnected to the environmental disaster. Any such
 18 payment shall not be conditioned upon the recipient’s agreement
 19 to release the polluter from liability for any current or future claim.

20 (d) Any agreement in violation of subdivision (a) or (c) that is
 21 entered into on or after January 1, 2017, is void as a matter of law
 22 and against public policy.

23 (e) For purposes of this section, a “partial or interim payment
 24 or reimbursement” is a payment of the recipient’s immediate
 25 out-of-pocket expenses, including, but not limited to, food, clothing,
 26 and shelter.

27 **SEC. 2.** Section 3484.5 is added to the Civil Code, to read:

28 3484.5. (a) As used in this section, “Porter Ranch area” has
 29 the same meaning as defined in the document titled “SS-25 Incident
 30 Aliso Canyon Gas Leak Odorous Emissions Mitigation Plan and
 31 Temporary Relocation Plan,” dated December 15, 2015, included
 32 as Exhibit A in the stipulation and order, filed December 24, 2015,
 33 with the superior court of the County of Los Angeles in the People
 34 of the State of California v. Southern California Gas Company,
 35 Case No. BC602973, and including, but not limited to, the map
 36 titled “SoCalGas Complaints and SCAQMD Air Sampling
 37 Locations” located in Attachment B of the plan document.

38 (b) Any person owning real property in the Porter Ranch area
 39 on October 23, 2015, who suffers a diminution in value of that
 40 real property resulting from the leakage of natural gas from the

1 ~~Aliso Canyon Gas Storage Facility during 2015 and 2016 shall~~
2 ~~have a right of action against Southern California Gas Company~~
3 ~~for that diminution in value. The diminution in value shall be~~
4 ~~calculated by determining the value of the real property on October~~
5 ~~22, 2015, identifying similarly priced real property in neighboring~~
6 ~~communities on that date, then comparing the value of the owner's~~
7 ~~real property on June 1, 2016, to the value of the properties in the~~
8 ~~neighboring communities that had been similarly priced, regardless~~
9 ~~of whether the owner has sold or refinanced the real property. The~~
10 ~~diminution in value shall be the value of the property in the Porter~~
11 ~~Ranch area on June 1, 2016, subtracted from an average value on~~
12 ~~June 1, 2016, of properties in neighboring communities that were~~
13 ~~priced similarly to the Porter Ranch area property as of October~~
14 ~~22, 2015.~~

15 ~~(e) This section shall apply only to actions filed on and after~~
16 ~~January 1, 2017.~~

17 ~~SEC. 3.~~

18 *SEC. 2.* Section 340.8 of the Code of Civil Procedure is
19 amended to read:

20 340.8. (a) In any civil action for injury or illness based upon
21 exposure to a hazardous material or toxic substance, the time for
22 commencement of the action shall be no later than either three
23 years from the date of injury, or three years after the plaintiff
24 becomes aware of, or reasonably should have become aware of,
25 (1) an injury, (2) the physical cause of the injury, and (3) sufficient
26 facts to put a reasonable person on inquiry notice that the injury
27 was caused or contributed to by the wrongful act of another,
28 whichever occurs later.

29 (b) In an action for the wrongful death of any plaintiff's
30 decedent, based upon exposure to a hazardous material or toxic
31 substance, the time for commencement of an action shall be no
32 later than either (1) three years from the date of the death of the
33 plaintiff's decedent, or (2) three years from the first date on which
34 the plaintiff is aware of, or reasonably should have become aware
35 of, the physical cause of the death and sufficient facts to put a
36 reasonable person on inquiry notice that the death was caused or
37 contributed to by the wrongful act of another, whichever occurs
38 later.

39 (c) For purposes of this section:

1 (1) A “civil action for injury or illness based upon exposure to
2 a hazardous material or toxic substance” does not include an action
3 subject to Section 340.2 or 340.5.

4 (2) Media reports regarding the hazardous material or toxic
5 substance contamination do not, in and of themselves, constitute
6 sufficient facts to put a reasonable person on inquiry notice that
7 the injury or death was caused or contributed to by the wrongful
8 act of another.

9 (d) Nothing in this section shall be construed to limit, abrogate,
10 or change the law in effect on January 1, 2004, with respect to
11 actions not based upon exposure to a hazardous material or toxic
12 substance.

13 ~~SEC. 4.~~

14 *SEC. 3.* Section 1021.3 is added to the Code of Civil Procedure,
15 to read:

16 1021.3. In any action for private nuisance against an
17 environmental polluter defendant arising out of an environmental
18 disaster for which the defendant has been adjudged civilly liable,
19 the court, upon motion, may award reasonable attorneys’ fees to
20 a prevailing plaintiff against the defendant.

21 ~~SEC. 5. The Legislature finds and declares that a special law
22 is necessary and that a general law cannot be made applicable
23 within the meaning of Section 16 of Article IV of the California
24 Constitution in order to achieve just results while reducing court
25 congestion as a result of the unique circumstances involving a
26 major leak of natural gas from the Aliso Canyon Gas Storage
27 Facility during 2015 and 2016.~~