

AMENDED IN ASSEMBLY JUNE 1, 2016

AMENDED IN ASSEMBLY MAY 2, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 2748**

**Introduced by Assembly Member Gatto**

February 19, 2016

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An act to add Section 1544 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. 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.

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, 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~~ *February* 1, 2017, void as a matter of law and against public policy.

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 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 release the polluter  
6 from liability to the recipient for any claim related to the  
7 environmental disaster or for any future claim by the recipient  
8 against the polluter, or for both current and future claims. Any  
9 such partial or interim payment or reimbursement shall not be  
10 conditioned upon the recipient's agreement to release the polluter  
11 from liability for any current or future claim.  
12 (b) Notwithstanding subdivision (a), a payment or  
13 reimbursement made in connection with an environmental disaster  
14 by the responsible polluter or any agent or entity related to the  
15 responsible polluter to any recipient may be credited against the  
16 liability of the polluter, agent, or entity to the recipient for any  
17 current or future claim that is related to the environmental disaster.  
18 (c) A final settlement of any kind made in connection with an  
19 environmental disaster by the responsible polluter or any agent or  
20 entity related to the responsible polluter to any recipient shall  
21 release the responsible polluter from liability to the recipient only  
22 for a claim related to the environmental disaster and shall not  
23 release any future claim by the recipient against the polluter, or  
24 any claim unconnected to the environmental disaster. Any such  
25 payment shall not be conditioned upon the recipient's agreement  
26 to release the polluter from liability for any current or future claim.  
27 (d) Any agreement in violation of subdivision (a) or (c) that is  
28 entered into on or after ~~January~~ February 1, 2017, is void as a  
29 matter of law and against public policy.

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

5 SEC. 2. Section 340.8 of the Code of Civil Procedure is  
6 amended to read:

7 340.8. (a) In any civil action for injury or illness based upon  
8 exposure to a hazardous material or toxic substance, the time for  
9 commencement of the action shall be no later than either three  
10 years from the date of injury, or three years after the plaintiff  
11 becomes aware of, or reasonably should have become aware of,  
12 (1) an injury, (2) the physical cause of the injury, and (3) sufficient  
13 facts to put a reasonable person on inquiry notice that the injury  
14 was caused or contributed to by the wrongful act of another,  
15 whichever occurs later.

16 (b) In an action for the wrongful death of any plaintiff’s  
17 decedent, based upon exposure to a hazardous material or toxic  
18 substance, the time for commencement of an action shall be no  
19 later than either (1) three years from the date of the death of the  
20 plaintiff’s decedent, or (2) three years from the first date on which  
21 the plaintiff is aware of, or reasonably should have become aware  
22 of, the physical cause of the death and sufficient facts to put a  
23 reasonable person on inquiry notice that the death was caused or  
24 contributed to by the wrongful act of another, whichever occurs  
25 later.

26 (c) For purposes of this section:

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

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

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

39 SEC. 3. Section 1021.3 is added to the Code of Civil Procedure,  
40 to read:

1 1021.3. In any action for private nuisance against an  
2 environmental polluter defendant arising out of an environmental  
3 disaster for which the defendant has been adjudged civilly liable,  
4 the court, upon motion, may award reasonable attorneys' fees to  
5 a prevailing plaintiff against the defendant.

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