

AMENDED IN ASSEMBLY JUNE 2, 2016  
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

**ASSEMBLY BILL**

**No. 2748**

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**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 Sections 340.85 and 1021.3 to,~~ 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**

(1) *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.~~

*Under the bill, a temporary or 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 claimant, would release the responsible polluter, agent, or entity from liability to the claimant only for acts, omissions, or injuries that are believed by the claimant to have occurred prior to the date of the settlement, and would not release any claim that is unknown to the claimant at the time of the settlement, occurs subsequent to the settlement, or that is unrelated to the environmental disaster.*

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

**Existing**

(2) *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. would, notwithstanding the above provision, establish a statute of limitations of 3 years for specified civil actions for injury, illness, or wrongful death based upon exposure to a hazardous material or toxic substance other than asbestos.*

**Under**

(3) *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.

(4) *This bill would limit the application of its provisions to the Porter Ranch area, as defined, or contamination surrounding the Exide Technologies facility in the City of Vernon.*

*This bill would make legislative findings and declarations as to the necessity of a special statute for these regions.*

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

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

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

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

19 *(c) A temporary or final settlement of any kind made in  
20 connection with an environmental disaster by the responsible  
21 polluter or any agent or entity related to the responsible polluter,  
22 to any claimant, shall release the responsible polluter, agent, or  
23 entity from liability to the claimant only for acts, omissions, or  
24 injuries that are believed by the claimant to have occurred prior  
25 to the date of the settlement, and shall not release any claim that  
26 is unknown to the claimant at the time of the settlement, occurs  
27 subsequent to the settlement, or that is unrelated to the  
28 environmental disaster.*

29 (d) Any agreement in violation of subdivision (a) or (c) that is  
30 entered into on or after February 1, 2017, is void as a matter of  
31 law and against public policy.

32 (e) For purposes of this section, a "partial or interim payment  
33 or reimbursement" is a payment of the recipient's immediate  
34 out-of-pocket expenses, including, but not limited to, food,  
35 clothing, and shelter.

36 *(f) (1) The provisions of this section shall only apply to an  
37 agreement relating to the Porter Ranch area or contamination  
38 surrounding the Exide Technologies facility in the City of Vernon.*

39 *(2) As used in paragraph (1), the term "Porter Ranch area"*  
40 *has the same meaning as defined in the document titled "SS-25*

1 *Incident Aliso Canyon Gas Leak Odorous Emissions Mitigation*  
2 *Plan and Temporary Relocation Plan,” dated December 15, 2015,*  
3 *included as Exhibit A in the stipulation and order, filed December*  
4 *24, 2015, with the superior court of the County of Los Angeles in*  
5 *the People of the State of California v. Southern California Gas*  
6 *Company, Case No. BC602973, and, including, but not limited to,*  
7 *the map titled “SoCalGas Complaints and SCAQMD Air Sampling*  
8 *Locations” located in Attachment B of the plan document.*

9 ~~SEC. 2. Section 340.8 of the Code of Civil Procedure is~~  
10 ~~amended to read:~~

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

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

30 ~~(c) For purposes of this section:~~

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

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

39 ~~(d) Nothing in this section shall be construed to limit, abrogate,~~  
40 ~~or change the law in effect on January 1, 2004, with respect to~~

1 ~~actions not based upon exposure to a hazardous material or toxic~~  
2 ~~substance.~~

3 *SEC. 2. Section 340.85 is added to the Code of Civil Procedure,*  
4 *immediately following Section 340.8, to read:*

5 *340.85. (a) Notwithstanding Section 340.8 and consistent with*  
6 *subdivision (e), in any civil action for injury or illness based upon*  
7 *exposure to a hazardous material or toxic substance, the time for*  
8 *commencement of the action shall be no later than either three*  
9 *years from the date of injury, or three years after the plaintiff*  
10 *becomes aware of, or reasonably should have become aware of,*  
11 *(1) an injury, (2) the physical cause of the injury, and (3) sufficient*  
12 *facts to put a reasonable person on inquiry notice that the injury*  
13 *was caused or contributed to by the wrongful act of another,*  
14 *whichever occurs later.*

15 *(b) Notwithstanding Section 340.8 and consistent with*  
16 *subdivision (e), 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*  
29 *action 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) (1) The provisions of this section shall only apply to an*  
36 *action relating to the Porter Ranch area or contamination*  
37 *surrounding the Exide Technologies facility in the City of Vernon.*

38 *(2) As used in paragraph (1), the term “Porter Ranch area”*  
39 *has the same meaning as defined in the document titled “SS-25*  
40 *Incident Aliso Canyon Gas Leak Odorous Emissions Mitigation*

1 *Plan and Temporary Relocation Plan,” dated December 15, 2015,*  
2 *included as Exhibit A in the stipulation and order, filed December*  
3 *24, 2015, with the superior court of the County of Los Angeles in*  
4 *the People of the State of California v. Southern California Gas*  
5 *Company, Case No. BC602973, and, including, but not limited to,*  
6 *the map titled “SoCalGas Complaints and SCAQMD Air Sampling*  
7 *Locations” located in Attachment B of the plan document.*

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

10 1021.3. (a) In any action for private nuisance against an  
11 environmental polluter defendant arising out of an environmental  
12 disaster for which the defendant has been adjudged civilly liable,  
13 the court, upon motion, may award reasonable attorneys’ fees to  
14 a prevailing plaintiff against the defendant.

15 (b) (1) *The provisions of this section shall only apply to an*  
16 *action relating to the Porter Ranch area or contamination*  
17 *surrounding the Exide Technologies facility in the City of Vernon.*

18 (2) *As used in paragraph (1), the term “Porter Ranch area”*  
19 *has the same meaning as defined in the document titled “SS-25*  
20 *Incident Aliso Canyon Gas Leak Odorous Emissions Mitigation*  
21 *Plan and Temporary Relocation Plan,” dated December 15, 2015,*  
22 *included as Exhibit A in the stipulation and order, filed December*  
23 *24, 2015, with the superior court of the County of Los Angeles in*  
24 *the People of the State of California v. Southern California Gas*  
25 *Company, Case No. BC602973, and, including, but not limited to,*  
26 *the map titled “SoCalGas Complaints and SCAQMD Air Sampling*  
27 *Locations” located in Attachment B of the plan document.*

28 SEC. 4. *The Legislature finds and declares that a special law*  
29 *is necessary and that a general law cannot be made applicable*  
30 *within the meaning of Section 16 of Article IV of the California*  
31 *Constitution to achieve just and efficient results in civil litigation*  
32 *involving the unique circumstances of damages resulting from*  
33 *specific environmental disasters within the state.*

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