

AMENDED IN SENATE AUGUST 18, 2016
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

Introduced by Assembly Member Gatto

February 19, 2016

An act to add Section 1544 to the Civil Code, and to add Sections 340.85 and 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.

(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 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.

(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, 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.

(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,~~ *damages caused by an environmental disaster that occurred at Southern California Gas Company’s Aliso Canyon gas storage facility, as specified,* 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
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.

1 (c) A temporary or final settlement of any kind made in
 2 connection with an environmental disaster by the responsible
 3 polluter or any agent or entity related to the responsible polluter,
 4 to any claimant, shall release the responsible polluter, agent, or
 5 entity from liability to the claimant only for acts, omissions, or
 6 injuries that are believed by the claimant to have occurred prior
 7 to the date of the settlement, and shall not release any claim that
 8 is unknown to the claimant at the time of the settlement, occurs
 9 subsequent to the settlement, or that is unrelated to the
 10 environmental disaster.

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

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

18 (f) ~~(1)~~ The provisions of this section shall only apply to an
 19 agreement relating to ~~the Porter Ranch area acts, omissions, or~~
 20 ~~injuries in connection with an environmental disaster that occurred~~
 21 ~~at Southern California Gas Company’s Aliso Canyon gas storage~~
 22 ~~facility or contamination surrounding the Exide Technologies~~
 23 ~~facility in the City of Vernon.~~

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

34 SEC. 2. Section 340.85 is added to the Code of Civil Procedure,
 35 immediately following Section 340.8, to read:

36 340.85. (a) Notwithstanding ~~Section 340.8 and consistent with~~
 37 ~~subdivision (e);~~ 340.8, in any civil action for injury or illness based
 38 upon exposure to a hazardous material or toxic substance, the time
 39 for commencement of the action shall be no later than either three
 40 years from the date of injury, or three years after the plaintiff

1 becomes aware of, or reasonably should have become aware of,
2 (1) an injury, (2) the physical cause of the injury, and (3) sufficient
3 facts to put a reasonable person on inquiry notice that the injury
4 was caused or contributed to by the wrongful act of another,
5 whichever occurs later.

6 (b) Notwithstanding ~~Section 340.8 and consistent with~~
7 ~~subdivision (e), 340.8~~, in an action for the wrongful death of any
8 plaintiff's decedent, based upon exposure to a hazardous material
9 or toxic substance, the time for commencement of an action shall
10 be no later than either (1) three years from the date of the death of
11 the plaintiff's decedent, or (2) three years from the first date on
12 which the plaintiff is aware of, or reasonably should have become
13 aware of, the physical cause of the death and sufficient facts to put
14 a reasonable person on inquiry notice that the death was caused
15 or contributed to by the wrongful act of another, whichever occurs
16 later.

17 (c) For purposes of this section:

18 (1) A "civil action for injury or illness based upon exposure to
19 a hazardous material or toxic substance" does not include an action
20 subject to Section 340.2 or 340.5.

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

26 (d) ~~(1)~~ The provisions of this section shall only apply to an
27 action relating to ~~the Porter Ranch area~~ *exposure to a hazardous*
28 *material or toxic substance in connection with an environmental*
29 *disaster that occurred at Southern California Gas Company's*
30 *Aliso Canyon gas storage facility* or contamination surrounding
31 the Exide Technologies facility in the City of Vernon.

32 ~~(2)~~ ~~As used in paragraph (1), the term "Porter Ranch area" has~~
33 ~~the same meaning as defined in the document titled "SS-25 Incident~~
34 ~~Aliso Canyon Gas Leak Odorous Emissions Mitigation Plan and~~
35 ~~Temporary Relocation Plan," dated December 15, 2015, included~~
36 ~~as Exhibit A in the stipulation and order, filed December 24, 2015,~~
37 ~~with the superior court of the County of Los Angeles in the People~~
38 ~~of the State of California v. Southern California Gas Company,~~
39 ~~Case No. BC602973, and, including, but not limited to, the map~~

1 titled “SoCalGas Complaints and SCAQMD Air Sampling
2 Locations” located in Attachment B of the plan document.

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

5 1021.3. (a) In any action for private nuisance against an
6 environmental polluter defendant arising out of an environmental
7 disaster for which the defendant has been adjudged civilly liable,
8 the court, upon motion, may award reasonable attorneys’ fees to
9 a prevailing plaintiff against the defendant.

10 (b) ~~(1)~~ The provisions of this section shall only apply to ~~an~~
11 ~~action relating to the Porter Ranch area~~ *an environmental disaster*
12 *that occurred at Southern California Gas Company’s Aliso Canyon*
13 *gas storage facility* or contamination surrounding the Exide
14 Technologies facility in the City of Vernon.

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

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