

AMENDED IN SENATE AUGUST 19, 2016
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 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. *The bill would specify that its provisions do not apply to any action against a public entity, as defined.*

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

1 liability of the polluter, agent, or entity to the recipient for any
2 current or future claim that is related to the environmental disaster.

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

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

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

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

25 (g) *This section shall not apply to any action against a public
26 entity as defined in Section 811.2 of the Government Code.*

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

29 340.85. (a) Notwithstanding Section 340.8, in any civil action
30 for injury or illness based upon exposure to a hazardous material
31 or toxic substance, the time for commencement of the action shall
32 be no later than either three years from the date of injury, or three
33 years after the plaintiff becomes aware of, or reasonably should
34 have become aware of, (1) an injury, (2) the physical cause of the
35 injury, and (3) sufficient facts to put a reasonable person on inquiry
36 notice that the injury was caused or contributed to by the wrongful
37 act of another, whichever occurs later.

38 (b) Notwithstanding Section 340.8, in an action for the wrongful
39 death of any plaintiff’s decedent, based upon exposure to a
40 hazardous material or toxic substance, the time for commencement

1 of an action shall be no later than either (1) three years from the
2 date of the death of the plaintiff’s decedent, or (2) three years from
3 the first date on which the plaintiff is aware of, or reasonably
4 should have become aware of, the physical cause of the death and
5 sufficient facts to put a reasonable person on inquiry notice that
6 the death was caused or contributed to by the wrongful act of
7 another, whichever occurs later.

8 (c) For purposes of this section:

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

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

17 (d) The provisions of this section shall only apply to an action
18 relating to exposure to a hazardous material or toxic substance in
19 connection with an environmental disaster that occurred at Southern
20 California Gas Company’s Aliso Canyon gas storage facility or
21 contamination surrounding the Exide Technologies facility in the
22 City of Vernon.

23 (e) *This section shall not apply to any action against a public*
24 *entity as defined in Section 811.2 of the Government Code.*

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

27 1021.3. (a) In any action for private nuisance against an
28 environmental polluter defendant arising out of an environmental
29 disaster for which the defendant has been adjudged civilly liable,
30 the court, upon motion, may award reasonable attorneys’ fees to
31 a prevailing plaintiff against the defendant.

32 (b) The provisions of this section shall only apply to an
33 environmental disaster that occurred at Southern California Gas
34 Company’s Aliso Canyon gas storage facility or contamination
35 surrounding the Exide Technologies facility in the City of Vernon.

36 (c) *This section shall not apply to any action against a public*
37 *entity as defined in Section 811.2 of the Government Code.*

38 SEC. 4. The Legislature finds and declares that a special law
39 is necessary and that a general law cannot be made applicable
40 within the meaning of Section 16 of Article IV of the California

- 1 Constitution to achieve just and efficient results in civil litigation
- 2 involving the unique circumstances of damages resulting from
- 3 specific environmental disasters within the state.