

AMENDED IN SENATE AUGUST 8, 2006

AMENDED IN SENATE JUNE 26, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2864

Introduced by Assembly Member Harman

February 24, 2006

An act to amend Sections 366.2 and 366.3 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2864, as amended, Harman. Civil actions: time of commencing.

Existing law establishes a time limitation for commencing an action for liability against a person after that person's death, if the cause of action survives, and sets that time limitation within one year after the date of death. This limitations period may not be tolled or extended for any reason, except for certain claims, including creditor claims, payment of claims, debts, and expenses from revocable trusts, and no contest clauses.

~~This bill would include actions for assault, battery, or injury to, or for the death of, an individual caused by a wrongful act or neglect among those claims for which the limitations period is tolled. This bill would also specify that the limitations period may be extended if the last day of the period falls on a holiday, as specified.~~

Under existing law, if a person has a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust or under ~~other~~ *another* instrument, whether the promise or agreement was made orally or in writing, an action to enforce the

claim to distribution may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply. This limitations period may not be tolled or extended for any reason, except as provided in relation to a no contest clause.

This bill would clarify that these limitations periods may be extended if the last day of the period falls on a holiday, as specified.

This bill would incorporate additional changes in Section 366.2 of the Code of Civil Procedure, proposed by AB 2303, to be operative only if AB 2303 and this bill are both chaptered and become effective on or before January 1, 2007, and this bill is chaptered last.

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 366.2 of the Code of Civil Procedure is
2 amended to read:
3 366.2. (a) If a person against whom an action may be
4 brought on a liability of the person, whether arising in contract,
5 tort, or otherwise, and whether accrued or not accrued, dies
6 before the expiration of the applicable limitations period, and the
7 cause of action survives, an action may be commenced within
8 one year after the date of death, and the limitations period that
9 would have been applicable does not apply.
10 (b) The limitations period provided in this section for
11 commencement of an action shall not be tolled or extended for
12 any reason except as provided in any of the following, where
13 applicable:
14 (1) Sections 12, 12a, and 12b of this code.
15 ~~(2) Section 335.1 of this code.~~
16 ~~(3)~~
17 (2) Part 4 (commencing with Section 9000) of Division 7 of
18 the Probate Code (creditor claims in administration of estates of
19 decedents).
20 ~~(4)~~
21 (3) Part 8 (commencing with Section 19000) of Division 9 of
22 the Probate Code (payment of claims, debts, and expenses from
23 revocable trust of deceased settlor).
24 ~~(5)~~

1 (4) Part 3 (commencing with Section 21300) of Division 11 of
2 the Probate Code (no contest clauses).

3 (c) This section applies to actions brought on liabilities of
4 persons dying on or after January 1, 1993.

5 SEC. 1.5. Section 366.2 of the Code of Civil Procedure is
6 amended to read:

7 366.2. (a) If a person against whom an action may be
8 brought on a liability of the person, whether arising in contract,
9 tort, or otherwise, and whether accrued or not accrued, dies
10 before the expiration of the applicable limitations period, and the
11 cause of action survives, an action may be commenced within
12 ~~one year~~ two years after the date of death, and the limitations
13 period that would have been applicable does not apply.

14 (b) The limitations period provided in this section for
15 commencement of an action shall not be tolled or extended for
16 any reason except as provided in any of the following, where
17 applicable:

18 (1) Sections 12, 12a, and 12b of this code.

19 (2) Part 4 (commencing with Section 9000) of Division 7 of
20 the Probate Code (creditor claims in administration of estates of
21 decedents).

22 ~~(2)~~

23 (3) Part 8 (commencing with Section 19000) of Division 9 of
24 the Probate Code (payment of claims, debts, and expenses from
25 revocable trust of deceased settlor).

26 ~~(3)~~

27 (4) Part 3 (commencing with Section 21300) of Division 11 of
28 the Probate Code (no contest clauses).

29 (c) This section applies to actions brought on liabilities of
30 persons dying on or after January 1, 1993.

31 SEC. 2. Section 366.3 of the Code of Civil Procedure is
32 amended to read:

33 366.3. (a) If a person has a claim that arises from a promise
34 or agreement with a decedent to distribution from an estate or
35 trust or under another instrument, whether the promise or
36 agreement was made orally or in writing, an action to enforce the
37 claim to distribution may be commenced within one year after
38 the date of death, and the limitations period that would have been
39 applicable does not apply.

1 (b) The limitations period provided in this section for
2 commencement of an action shall not be tolled or extended for
3 any reason except as provided in Sections 12, 12a, and 12b of
4 this code, and Part 3 (commencing with Section 21300) of
5 Division 11 of the Probate Code.

6 (c) This section applies to actions brought on claims
7 concerning persons dying on or after the effective date of this
8 section.

9 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
10 *Section 366.2 of the Code of Civil Procedure proposed by both*
11 *this bill and AB 2303. It shall only become operative if (1) both*
12 *bills are enacted and become effective on or before January 1,*
13 *2007, (2) each bill amends Section 366.2 of the Code of Civil*
14 *Procedure, and (3) this bill is enacted after AB 2303, in which*
15 *case Section 1 of this bill shall not become operative.*