

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2867 (Gabriel)
Version: April 25, 2024
Hearing Date: June 25, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Recovery of artwork and personal property lost due to persecution

DIGEST

This bill retroactively requires that California substantive law be applied in causes of action to recover works of art, including actions under the federal Holocaust Expropriated Art Recovery Act of 2016, and allows a California resident or representative of the estate of a California resident to bring a cause of action for damages or recovery of artwork or personal property stolen or lost as a result of political persecution, as provided.

EXECUTIVE SUMMARY

During World War II, the Nazi regime in Germany confiscated and stole hundreds of thousands of works of art throughout Europe. Much of this theft was part of the Nazis' persecution of Jewish people. After the end of the war, many survivors of Nazi persecution went about trying to find or recover some of this art. To help address issues with statutes of limitations encountered in many cases brought to recover such art, Congress passed the Holocaust Expropriated Art Recovery Act of 2016. In a long-running case, the Cassirer family sought to recover an impressionist painting from a Spanish museum that obtained it after it had passed through multiple owners since being stolen by the Nazis. However, in January 2024, the Ninth Circuit Court of Appeals ruled that, under California's "choice of laws" rule, Spanish property law must be applied, and awarded possession of the painting to the Spanish museum. This bill aims to undo the law as applied by the Ninth Circuit by requiring that California substantive law apply in causes of action to recover works of art, including under the federal law, and it applies its provisions to all cases pending as of the date of the enactment of this bill. Additionally, this bill creates a new cause of action to recover artwork stolen or lost as a result of political persecution. This bill is sponsored by the Lieutenant Governor of California, and is supported by numerous Holocaust Survivors and Jewish organizations. The Committee has received no timely opposition.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes, under the federal Holocaust Expropriated Art Recovery Act of 2016, a civil claim or cause of action against a defendant to recover any artwork or other property that was misappropriated by Germany's Nazi Government between 1933 and 1945 may be commenced not later than six years after the claimant's actual discovery of the identity and location of the artwork or other property and a possessory interest of the claimant in the artwork or the property. Provides that this provision and the HEAR Act is repealed on January 1, 2027, except with regard to any civil claim or cause of action that is pending on that date. (P.L. No. 114-308 (2016).)

Existing state law:

- 2) Provides that in the case of a theft of any article of historical, interpretive, scientific, cultural, or artistic significance, a cause of action is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, the aggrieved party's agent, or a law enforcement agency. (Civ. Proc. Code § 338 (c)(2).)
- 3) Requires a civil action against a museum, gallery, auctioneer, or dealer for the recovery of works of fine art that were unlawfully taken or stolen, including a taking or theft by means of fraud or duress, to be commenced within six years of the actual discovery by the claimant or their agent of the identity and whereabouts of the work of fine art and information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art. (Civ. Proc. Code § 338 (c)(3)(A).)
- 4) Specifies for purposes of 2) above that "actual discovery" does not include constructive knowledge imputed by law. (Civ. Proc. Code § 338 (c)(3)(C).)
- 5) Specifies for purposes of 2) above that a party in an action may raise all equitable and legal affirmative defenses and doctrines, including, without limitations, laches and unclean hands. (Civ. Proc. Code § 338 (c)(5).)

This bill:

- 1) Declares that this bill effectuates California's established laws and public policies against theft and trafficking in stolen property and protecting the rights of true owners to recover stolen artwork and other items of cultural property. Declares further that this bill aligns California law with specified federal laws and international agreements.

- 2) Provides, notwithstanding any other law or prior judicial decision, that any action brought by a California resident, or by an heir, trustee, assignee, or representative of the estate of a California resident, involving claims relating to title, ownership, or recovery of personal property, including personal property covered by the HEAR Act, that California substantive law shall apply.
 - a) Specifies that this provision shall apply to all actions pending on the date the bill's provisions become operative, including any action in which judgment is not yet final or the time for filing an appeal has not expired, or, if filed, has not been decided, and to all actions that are commenced on the enactment of this bill.
- 3) Provides a cause of action by a California resident, or an heir, trustee, assignee, or representative of the estate of a California resident, for damages, other financial recovery, title, recovery, or ownership, of artwork or other personal property that was taken or otherwise lost as a result of political persecution.
- 4) Provides, notwithstanding any other law, that actions brought pursuant to (3), above, shall be commenced within six years of the plaintiff's actual discovery of both:
 - a) the identity and the whereabouts of the artwork or other personal property; and
 - b) facts sufficient to indicate that the claimant has a possessory interest in the artwork or other personal property.
- 5) For the purposes for the cause of action in (3), above, provides the following definitions:
 - a) "artwork or other personal" property to include the following:
 - i. pictures, paintings, and drawings;
 - ii. statuary art and sculpture;
 - iii. engravings, prints lithographs, and other works of graphic art;
 - iv. applied art and original artistic assemblages and montages;
 - v. books, archives, musical instruments, musical objects, and manuscripts, including musical manuscripts and sheets, and sound, photographic, and cinematographic archives and mediums;
 - vi. sacred and ceremonial objects; and
 - vii. objects of cultural significance.
 - b) "political persecution" to mean persecution of a specific group of individuals based on their membership in a protected class under the state's Unruh Civil Rights Act.
- 6) Provides that, notwithstanding any other provision of law or prior judicial decision, in any action brought pursuant to this section or in the Holocaust Expropriated Art Recovery Act of 2016, California substantive law shall apply.

- 7) Provides that, in an action brought pursuant to (3), above, defenses that the defendant acquired the title in good faith, by acquisitive prescription, or by adverse possession, and the defense of laches shall not apply.
- 8) Provides that, if a claimant had actual discovery prior to the enactment of this bill, any action must be commenced within of six years of actual discovery, or two years from the enactment of this bill, whichever is later.
- 9) Provides that, in an action brought pursuant to (3), above, where the art is taken or lost as a result of political persecution, clear title is not conveyed to any subsequent purchaser or owner, and that the defenses that the defendant acquired the title in good faith, by acquisitive prescription, or by adverse possession, and the defense of laches do not apply.
- 10) Provides that an action may be brought by a claimant who, prior to the enactment of this bill, brought a claim to recover personal property that was stolen or lost due to political persecution, and the case was dismissed by a court based on any of the defenses in (9), above, or based on any procedural basis such as standing, personal jurisdiction, or subject matter jurisdiction. Provides that any such actions must be commenced within two years of the effective date of this bill or the entry of a final judgment and the termination of all appeals, including any petition for a writ of certiorari, whichever is later.
- 11) Provides that a prevailing plaintiff in a cause of action under (3), above, shall be entitled to reasonable attorney's costs and fees.
- 12) Specifies that the provisions of this bill are severable, and that, if any provision is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Author's statement

According to the author:

This bill will ensure that Holocaust survivors and other victims of persecution can secure justice through our legal system and recover property that rightfully belongs to them and their families. Our effort will make it crystal clear that California law must triumph over foreign law, that California stands with Holocaust survivors, and that cases must be decided based on morality and justice, not the misapplication of legal technicalities.

AB 2867 provides a multipronged approach: (1) mandating application of California substantive law as the rule of decision in cases to recover stolen art from a museum, gallery, auctioneer, or dealer; and (2) creating a new private right of action for recovery of art of other personal property taken or lost as a result of political persecution, which can be brought within six years of the owners' actual discovery of their rights in, and the location of, the property.

2. The HEAR Act and lost or stolen art due to Nazi persecution

During World War II, Nazis stole or appropriated hundreds of thousands of works of art throughout Europe. According to the Assembly Judiciary Committee Analysis of this bill:

According to the Congressional findings that accompanied the Holocaust Expropriated Art Recovery (HEAR) Act of 2016 (Public Law 114-308), it is estimated that the Nazis stole or fraudulently appropriated hundreds of thousands of works of art throughout Europe. As the Nazi's art theft campaign was part and parcel of its larger genocidal campaign, European Jews were disproportionately victimized by Nazi looting. Following World War II, the Western allies collectively committed to returning the artworks to the country of origin and, eventually, to their rightful owners. Despite the creation of international agreements to pursue these ends, the Congressional findings concluded that "many works were never reunited with their owners." Those unreturned [artworks] apparently circulated underground for several years before appearing in museums around the world. After the breakup of the Soviet Union in the late 1980s and early 1990s, and the corresponding opening up of archives in East Germany and Eastern Europe, it became possible (although not easy) to trace the history and movement of these works. Of course, by the time it became possible for victims of Nazi art theft to identify the location of these works, and to prove their title, statutes of limitation (SOL) had long since expired, and the works themselves were by this time in the hands of bona fide purchasers who may not have known that the works had ever been stolen. The peculiar facts of war and postwar crisis, political persecution, and the massive scale of theft called for a reconsideration of the usual rules that governed conflicts between victims of theft and bona fide purchasers.¹

After the war and later, survivors and descendants of survivors of Nazi persecution began to try to obtain possession of this lost or stolen art again. However, a common issue became whether the theft victims could actually bring claims, as it often had been decades since the art went missing or was stolen and many claims were precluded by statutes of limitations. Statutes of limitations may limit the amount of time that a plaintiff has to bring a claim for a particular injury, and usually run from the time of the

¹ Assembly Judiciary Committee, Analysis: AB 2867 (Apr. 25, 2024).

injury. However, in cases of stolen or lost art, the victim may not know of the whereabouts of the art or who has the work of art for many years, thus are effectively foreclosed from bringing any legal action to recover the art by the statute of limitations. In light of this issue, California enacted a change to its statute of limitations to provide for a six year statute of limitations for a case against a museum, gallery, auctioneer, or dealer, to run upon the theft victim's "actual discovery" of the whereabouts of the work of art. (Civ. Proc. Code § 338(c).)

In 2016, Congress passed the HEAR Act (P.L. 114-308, § 3). The purpose of the HEAR Act, as stated in its Legislative findings, were to: ensure that laws governing claims to Nazi-confiscated art and other property further United States policy, as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration; and ensure that claims to artwork stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations, but are instead resolved in a just and fair manner. (P.L. 114-308, § 3.) The HEAR Act provides that, notwithstanding any other federal law or state law or any time-based legal defense, a civil claim or cause of action to recover artwork or other property that was lost between January 1, 1933 and December 31, 1945 because of Nazi persecution, can be commenced within six years of the actual discovery by the plaintiff or their agent of the identity and location of the artwork and the possessory interest of the plaintiff in the artwork. (*Id.*, § 5.) Notably, the HEAR Act made its provisions applicable to civil actions pending on the date of enactment, as well as to claims filed between the date of enactment and December 31, 2026. (*Id.*) It also deemed some claims, for the purposes of its statute of limitations, to be actually discovered as of the date of enactment. (*Id.*)

3. *Cassirer v. Thyssen-Bornemisza Collection Foundation*

This bill arises from a recent Ninth Circuit decision regarding a work of art that was confiscated by the Nazis. The suit related to an Impressionist painting by Camille Pissarro, which was originally owned by the Cassirer family prior to the Nazi regime's rise to power. Lilly Cassirer was required to surrender the painting to the Nazis in order to obtain an exit visa from Germany. In around the 1990's, Lilly Cassirer's grandson, Claude Cassirer, learned that the painting had made its way through various owners to the Thyssen-Bornemisza Collection Foundation, an entity created and controlled by the Kingdom of Spain. Claude sued the Foundation for the painting's return. Because the case involved a claim being raised in California regarding a defendant and property in Spain, a primary question in the case was which jurisdiction's property laws would apply, a question that is decided by a "choice of laws" test. However, because the suit involved both California state property law claims and federal law regarding suits against foreign states or instrumentalities, the Court first had to determine which "choice of laws" rule applied, the California or the federal "choice of laws" rules. (*Cassirer v. Thyssen-Bornemisza Collection Foundation* (2022), 596 U.S. 107.) The Ninth Circuit initially applied the federal rule, which it determined required the application of Spanish property law. Under Spanish property law, the Ninth Circuit determined that

the Spanish Foundation had rightful ownership of the painting. On appeal to the United States Supreme Court, the Court ruled that California's "choice of laws" rule should apply in determining whether California property law or the property law of Spain apply. (*Id.*, 117.)

In applying California's "choice of laws" rule on remand, the Ninth Circuit again found that Spanish property law should apply, and that thus the painting should remain in possession of the Foundation. (*Cassirer v. Thyssen-Bornemisza Collection Foundation* (Jan. 9, 2024) 89 F.4th 1226.) The Ninth Circuit issued this latest ruling on January 9, 2024, and the case is still currently pending on a petition for rehearing.

4. AB 2867 reverses the "choice of laws" analysis relied upon in the *Cassirer* decision and creates a new cause of action

AB 2867 would require that California courts apply California substantive law in any dispute involving theft of a work of art under California law or the HEAR Act. It specifies that this shall apply to all actions pending on the date of enactment of its provisions, including actions in which the judgement is not yet final or the time for filing appeal or a writ of certiorari has not yet expired or been decided.

In addition, AB 2867 creates a new cause of action in which a California resident or related person to an estate of a California resident may bring an action for damages, title, recovery, or ownership of artwork or other personal property that was taken or otherwise lost as a result of political persecution. This new cause of action is similar to the cause of action provided under the HEAR Act in some respects: it provides for a six-year statute of limitations of actual discovery. However, it is also different in some respects. It includes slightly different definitions of actual discovery. It also applies not just to Nazi persecution, but to any political persecution. Moreover, it specifies both that California substantive law must apply in any action brought under its provisions or under the HEAR Act, and it specifies that, where an item was taken or lost due to political persecution, clear title is not conveyed to any subsequent purchaser or owner. It prohibits any defenses relating to adverse possession, acquisitive prescription, or laches. It also specifies that an action may be brought by a claimant who, prior to its enactment, had brought a claim to recover lost or stolen property due to political persecution in which the case was dismissed based on the prohibited defenses, or on any procedural basis. In such a case, the cause of action must be brought within two years of the effective date of the final judgement or the enactment of this bill. If a claimant had actual discovery of the identity and whereabouts of the art prior to the enactment of this bill, AB 2867 also provides for an additional window of two years from the date of AB 2867's enactment in which to file a claim under the new cause of action.

5. Additional considerations

Considering the provisions of this bill apply to pending cases, this bill would likely directly affect the pending *Cassirer* case. Moreover, the bill explicitly rejects the Ninth Circuit's January 2024 ruling in *Cassirer*, as it mandates that California substantive law always apply, and eliminates the use of a choice of laws rule entirely. Choice of laws rules exist primarily for cases in which there are parties of two jurisdictions, both of which have a claim as to why the substantive law of their jurisdiction should apply. Where the Ninth Circuit determined that Spanish substantive law apply under California's choice of laws rule, AB 2867 would require courts to always apply California substantive law.

Additionally, in creating a new cause of action that is similar to the one created in the HEAR Act, AB 2867 raises a potential question of "foreign policy field preemption" and conflict preemption. In 2002, California enacted Code of Civil Procedure Section 354.3, which created a cause of action for recovery of art taken as a result of Nazi persecution that was substantially similar to the cause of action provided for by the HEAR Act. The cause of action under Code of Civil Procedure Section 354.3 could be brought against any museum or gallery to recover the stolen art, including museums or galleries outside the United States. However, the Ninth Circuit struck down Code of Civil Procedure Section 354.3, reasoning that the law infringed on the federal government's exclusive power to conduct foreign affairs, even though it did not directly conflict with federal law or policy. (*Von Saher v. Norton Simon Museum of Art at Pasadena* (3009) 578 F.3d 1016.) Here, AB 2867 also could allow suits to be brought against foreign entities, as it does not specify such a suit would be prohibited. Thus, a Court may well find it to be prohibited under the same reasoning as *Von Saher*. Moreover, the provisions of AB 2867's cause of action differ from that of the HEAR Act, such that there is an actual conflict in their provisions. Although AB 2867's cause of action does not specifically apply to Nazi persecution, it can encompass Nazi persecution along with a variety of other instances of political persecution. Thus, if not preempted under the foreign policy field preemption doctrine, AB 2867's provisions may be subject to conflict preemption for directly conflicting with federal law.

6. Amendments

Amendments to add Legislative findings, include an urgency clause, and move the bill's severability clause into a new section are attached at the end of this analysis.²

SUPPORT

Lieutenant Governor of California Eleni Kounalakis (sponsor)
30years After

² Amendments may be subject to non-substantive, technical changes required by Legislative Counsel.

Ajc San Francisco
American Jewish Committee (AJC) San Diego
American Jewish Committee - Los Angeles
Art Ashes
Democrats for Israel - CA
Democrats for Israel Los Angeles
Etta
Hadassah
Hias
Hillel of San Diego
Hillel of Silicon Valley
Holocaust Museum LA
Holocaust Survivors Foundation USA
Jcrc Bay Area
Jewish Big Brothers Big Sisters of Los Angeles
Jewish Center for Justice
Jewish Community Federation and Endowment Fund
Jewish Community Relations Council (SACRAMENTO)
Jewish Community Relations Council, Santa Barbara
Jewish Democratic Club of Marin
Jewish Democratic Club of Solano County
Jewish Democratic Coalition of The Bay Area
Jewish Democrats of San Diego County
Jewish Family & Community Services East Bay
Jewish Family and Children's Service of Long Beach and Orange County
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Jewish Family Service of Los Angeles
Jewish Family Service of San Diego
Jewish Family Service of The Desert
Jewish Family Services of Silicon Valley
Jewish Federation of Greater Los Angeles, the
Jewish Federation of Greater Santa Barbara
Jewish Federation of The Greater San Gabriel and Pomona Valleys
Jewish Federation of The Sacramento Region
Jewish Free Loan Association
Jewish Long Beach
Jewish Public Affairs Committee
Jewish Silicon Valley
Jewish War Veterans of The USA
Jvs Social
Monuments Men and Women Foundation
Office of Lieutenant Governor Eleni Kounalakis
Progressive Zionists of California

Raoul Wallenberg Jewish Democratic Club
Standwithus

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2765 (Assembly Committee on Judiciary, Ch. 691, Stats. 2010) authorized a civil action against a museum, gallery, auctioneer, or dealer for the recovery of works of fine art that were unlawfully taken or stolen, and provided a six year statute of limitations to run after actual discover, as provided.

AB 1758 (Nakano, Ch. 332, Stats. 2002) authorized any owner, heir, or beneficiary of the owner of Holocaust-era artwork, as defined, to bring an action in superior court to recover that artwork from any museum or gallery. Provided that such a claim may not be dismissed for failing to meet an applicable statute of limitation if the action commenced on or before December 31, 2010.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)

Mock-up of Proposed Amendments for AB 2867 (Gabriel)

(subject to any technical or corrective changes made by legislative counsel)

SECTION 1. The Legislature finds and declares the following:

(a) Under California law, a thief cannot convey good title to stolen works of art, and the true owner cannot be divested of ownership without actual discovery of their rights in, and the location and possessor of, the artwork.

(b) In 2010, the Legislature affirmed these principles when it rejected the holding of the Ninth Circuit Court of Appeals in Von Saher v. Norton Simon Museum (9th Cir. 2010) 592 F.3d 954, 969, that California law allowed theft victims' claims to be defeated based on "constructive" rather than actual discovery; amended Section 338 of the Code of Civil Procedure to allow an action to recover stolen art from a museum, gallery, auctioneer, or dealer to be filed within six years of actual discovery, and specifically defined "actual discovery" to exclude "any constructive knowledge imputed by law."

(c) The legislative history of paragraph (3) of subdivision (c) of Section 338 of the Code of Civil Procedure explained that the "imputation of 'constructive' discovery . . . does not lead to equitable results when works may be displayed anywhere in the world and traffickers engage in purposeful concealment;" approved judicial decisions that applied actual discovery and rejected constructive discovery in stolen property cases, such as Naftzger v. American Numismatic Soc'y, (1996) 42 Cal. App. 4th, 421; and stated that the amendments reaffirmed the State's commitment "to the rule that a thief cannot convey good title, and that stolen art should be returned to its rightful, original owner."

(d) In a recent Ninth Circuit decision, the court refused to credit California's laws and interests supporting owners of stolen art, including its rejection of "constructive discovery." The court in Cassirer v. Thyssen-Bornemisza Collection Foundation (9th Cir. 2024) 89 F.4th 1226, held that California's "governmental interests" test for choice of law required Spanish substantive law, not California law, to apply in a case by Claude Cassirer, a Holocaust survivor and long-time California resident, to recover an Impressionist masterpiece looted by the Nazis from his grandmother, and now held by a Spanish government-owned museum.

(e) The Cassirer court held under Spanish law that the museum acquired "good title" after three years of possession, even though Mr. Cassirer did not know the museum had the painting. In so doing, the court applied Spain's law of acquisitive prescription or adverse possession, which is based on the principle of constructive notice that the California courts and Legislature have rejected.

(f) Mandating California substantive law in stolen art cases will discourage art theft and trafficking in stolen art, and will encourage integrity and diligence in the art

market. Further, mandating California substantive law will draw a clear line of liability in litigation, eliminate costly defense tactics, and encourage settlements.

(g) It is the intent of the Legislature to align California law with federal laws, policies, and international agreements, which prohibit pillage and seizure of works of art and cultural property, and call for restitution of seized property.

(h) In 2016, the United States Congress cited and followed California law in enacting a national six-year statute of limitations based on actual discovery for claims for Nazi-looted art, in the Holocaust Expropriated Art Recovery (HEAR) Act. The HEAR Act's six-year discovery rule applies "notwithstanding . . . any defense at law relating to the passage of time." The provisions of this act mandating application of California substantive law will reinforce the HEAR Act's preclusion of defenses at law "relating to the passage of time."

(i) It is the intent of the Legislature that California families (or heirs of Californians) whose art was looted based on persecution, including Holocaust survivors and heirs, who did not have an opportunity to bring those claims with the certainty that California law would supply the rule of decision, to be able to do so, and that the law apply retroactively for families who would be eligible to use the new law, but for whom the six-year limitations period would have already passed, or whose prior cases were rejected based on the defenses proscribed in Section 338.2 of the Code of Civil Procedure, to be added by Section 3 of this act.

(j) The Legislature has the authority to mandate California substantive law as the rule of decision in specified matters, as indicated in California case law and Section 6(1), Restatement (Second), Conflict of Laws: "A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law." (k)

SECTION 1.

(k) This law effectuates California's established laws and public policies against theft and trafficking in stolen property; precluding a thief from passing good title to any subsequent purchaser of stolen property; protecting the rights of true owners to recover stolen artwork and other items of cultural property; and precluding the true owners of stolen property from being divested of title without actual knowledge of their rights in and the location of the property. This law aligns California law with federal laws, federal policies, and international agreements prohibiting pillage and seizure of works of art and cultural property and calling for restitution of seized property, as embodied in the Hague Convention of 1907 (and 1899), the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the National Stolen Property Act of 1934, the Holocaust Victims Redress Act, the Holocaust Expropriated Art Recovery Act of 2016, and related federal executive branch policies and international agreements.

SEC. 2.

Section 338 of the Code of Civil Procedure is amended to read:

338.

Within three years:

- (a) An action upon a liability created by statute, other than a penalty or forfeiture.
- (b) An action for trespass upon or injury to real property.
- (c) (1) An action for taking, detaining, or injuring goods or chattels, including an action for the specific recovery of personal property.
(2) The cause of action in the case of theft, as described in Section 484 of the Penal Code, of an article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, the aggrieved party's agent, or the law enforcement agency that originally investigated the theft.
- (3) (A) Notwithstanding paragraphs (1) and (2), an action for the specific recovery of a work of fine art brought against a museum, gallery, auctioneer, or dealer, in the case of an unlawful taking or theft, as described in Section 484 of the Penal Code, of a work of fine art, including a taking or theft by means of fraud or duress, shall be commenced within six years of the actual discovery by the claimant or the claimant's agent, of both of the following:
 - (i) The identity and the whereabouts of the work of fine art. In the case where there is a possibility of misidentification of the object of fine art in question, the identity can be satisfied by the identification of facts sufficient to determine that the work of fine art is likely to be the work of fine art that was unlawfully taken or stolen.
 - (ii) Information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art that was unlawfully taken or stolen.
- (B) This paragraph shall apply to all pending and future actions commenced on or before December 31, 2017, including an action dismissed based on the expiration of statutes of limitations in effect prior to the date of enactment of this statute if the judgment in that action is not yet final or if the time for filing an appeal from a decision on that action has not expired, provided that the action concerns a work of fine art that was taken within 100 years prior to the date of enactment of this statute.
- (C) For purposes of this paragraph:
 - (i) "Actual discovery," notwithstanding Section 19 of the Civil Code, does not include constructive knowledge imputed by law.
 - (ii) "Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds the individual out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction as defined in subdivision (b) of Section 1812.601 of the Civil Code.
 - (iii) "Dealer" means a person who holds a valid seller's permit and who is actively and principally engaged in, or conducting the business of, selling works of fine art.

(iv) "Duress" means a threat of force, violence, danger, or retribution against an owner of the work of fine art in question, or the owner's family member, sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act that otherwise would not have been performed or to acquiesce to an act to which the person would otherwise not have acquiesced.

(v) "Fine art" has the same meaning as defined in paragraph (1) of subdivision (d) of Section 982 of the Civil Code.

(vi) "Museum or gallery" shall include any public or private organization or foundation operating as a museum or gallery.

(4) Section 361 shall not apply to an action brought pursuant to paragraph (3).

(5) A party in an action to which paragraph (3) applies may raise all equitable and legal affirmative defenses and doctrines, including, without limitation, laches and unclean hands.

(6) Notwithstanding any other law or prior judicial decision, in any action brought by a California resident, or by an heir, trustee, assignee, or representative of the estate of a California resident, involving claims relating to title, ownership, or recovery of personal property as described in paragraph (2) or (3), or in the Holocaust Expropriated Art Recovery Act of 2016 (HEAR) (Pub. L. No. 114-308), including claims for money damages, California substantive law shall apply. This paragraph shall apply to all actions pending on the date this paragraph becomes operative or that are commenced thereafter, including any action in which the judgment is not yet final or the time for filing any appeal, including a petition for a writ of certiorari in the United States Supreme Court, has not expired, or, if filed, has not been decided.

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

(e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not deemed to have accrued until the discovery, by the aggrieved party or the aggrieved party's agent, of the facts constituting the cause of action upon the bond.

(f) (1) An action against a notary public on the notary public's bond or in the notary public's official capacity except that a cause of action based on malfeasance or misfeasance is not deemed to have accrued until discovery, by the aggrieved party or the aggrieved party's agent, of the facts constituting the cause of action.

(2) Notwithstanding paragraph (1), an action based on malfeasance or misfeasance shall be commenced within one year from discovery, by the aggrieved party or the aggrieved party's agent, of the facts constituting the cause of action or within three years from the performance of the notarial act giving rise to the action, whichever is later.

(3) Notwithstanding paragraph (1), an action against a notary public on the notary public's bond or in the notary public's official capacity shall be commenced within six years.

(g) An action for slander of title to real property.

(h) An action commenced under Section 17536 of the Business and Professions Code. The cause of action in that case shall not be deemed to have accrued until the discovery

by the aggrieved party, the Attorney General, the district attorney, the county counsel, the city prosecutor, or the city attorney of the facts constituting grounds for commencing the action.

(i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.

(j) An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution.

(k) An action commenced under Division 26 (commencing with Section 39000) of the Health and Safety Code. These causes of action shall not be deemed to have accrued until the discovery by the State Air Resources Board or by a district, as defined in Section 39025 of the Health and Safety Code, of the facts constituting grounds for commencing the action under its jurisdiction.

(l) An action commenced under Section 1602, 1615, or 5650.1 of the Fish and Game Code. These causes of action shall not be deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

(m) An action challenging the validity of the levy upon a parcel of a special tax levied by a local agency on a per parcel basis.

(n) An action commencing under Section 51.7 of the Civil Code.

(o) An action commenced under Section 4601.1 of the Public Resources Code, if the underlying violation is of Section 4571, 4581, or 4621 of the Public Resources Code, or of Section 1103.1 of Title 14 of the California Code of Regulations, and the underlying violation is related to the conversion of timberland to nonforestry-related agricultural uses. These causes of action shall not be deemed to have accrued until discovery by the Department of Forestry and Fire Protection.

(p) An action for civil penalties commenced under Section 26038 of the Business and Professions Code.

SEC. 3.

Section 338.2 is added to the Code of Civil Procedure, to read:

338.2.

(a) A California resident, or an heir, trustee, assignee, or representative of the estate of a California resident, may bring an action for damages, other financial recovery, title, recovery, or ownership, of artwork or other personal property that was taken or otherwise lost as a result of political persecution.

(b) Notwithstanding any other law, actions brought pursuant to this section shall be commenced within six years of the actual discovery by the claimant or the claimant's agent, of both of the following:

(1) The identity and the whereabouts of the artwork or other personal property. Where there is a possibility of misidentification of the object in question, the identity can be satisfied by the identification of facts sufficient to determine that the artwork or other personal property is likely to be the artwork or other personal property that was unlawfully taken or stolen.

(2) Information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the artwork or other personal property that was unlawfully taken or stolen.

(c) If a claimant had actual knowledge of the facts described in subdivision (b) prior to the enactment of this section, any action brought pursuant to this section shall be commenced within of six years of actual discovery or two years from the enactment of this section, whichever is later.

(d) For purposes of this section the following definitions shall apply:

(1) "Artwork or other personal property" means any of the following:

(A) Pictures, paintings, and drawings.

(B) Statuary art and sculpture.

(C) Engravings, prints lithographs, and other works of graphic art.

(D) Applied art and original artistic assemblages and montages.

(E) Books, archives, musical instruments, musical objects, and manuscripts, including musical manuscripts and sheets, and sound, photographic, and cinematographic archives and mediums.

(F) Sacred and ceremonial objects.

(G) Objects of cultural significance.

(2) "Political persecution" means persecution of a specific group of individuals based on their membership in a protected class under the state's Unruh Civil Rights Act (Section 51 of the Civil Code).

(e) Notwithstanding any other provision of law or prior judicial decision, in any action brought pursuant to this section or in the Holocaust Expropriated Art Recovery Act of 2016 (HEAR) (Pub. L. No. 114-308), California substantive law shall apply.

(f) In an action brought pursuant to this section, where an item specified in subdivision (d) is taken or lost as a result of political persecution, clear title is not conveyed to any subsequent purchaser or owner. Defenses that the defendant acquired the title in good faith, by acquisitive prescription, or by adverse possession, and the defense of laches do not apply to cases brought under this section.

(g) An action may be brought by a claimant who, prior to the enactment of this section, brought a claim to recover personal property that was stolen or lost due to political persecution, and the case was dismissed by a court based on any of the defenses listed in subdivision (f), or based on any procedural basis such as standing, personal jurisdiction, or subject matter jurisdiction. Any such actions shall be commenced within two years of the effective date of this section or the entry of a final judgment and the termination of all appeals, including any petition for a writ of certiorari, whichever is later.

(h) A prevailing plaintiff shall be entitled to reasonable attorney's costs and fees.

(~~4~~)SEC. 4. The provisions of this ~~section~~ Act are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that California law is applied as specified herein in any pending or future cases brought by California residents, it is necessary that this act take effect immediately.