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ILLINOIS LAW MANUAL

CHAPTER I

CIVIL PROCEDURE

C. STATUTES OF LIMITATIONS

A statute of limitations is a “statute establishing a time limit for suing in a civil case, based on the date when the claim accrued...”. BLACK'S LAW DICTIONARY (8th Ed. 2004). A lawsuit filed after the time period set forth in the statute of limitations is forever barred and may be dismissed by the defendant if the defendant asserts the statute of limitations as a defense. This defense, however, may be waived. A statute of limitations must be distinguished from a statute of repose. A statute of repose sets forth a specific time period which, once it has elapsed, terminates any right of action regardless of when the injury occurred. For example, while a product liability suit must be filed within 2 years from the date of injury, no product liability suit may be filed more than 12 years after the date of first sale of that product. See 735 ILCS 5/13213(b) and Chapter VI, Section B of this manual.

Statutes of limitation and repose are computed by simply adding the period stated in the statute to the date of the incident in question, with some exceptions. One exception is the computation of the last day of a limitations period. Illinois law provides that, when the last day of the limitations period is a Saturday, Sunday or court holiday, that day is excluded from

computation, and the statute of limitations period elapses on the next day that is not a Saturday, Sunday, or court holiday. 5 ILCS 70/1.11. Additionally, if an injured person dies before the statute runs and before filing a case, the estate will have one year from their death to bring the action. 735 ILCS 5/13-209. Another exception regarding computation of the limitations period relates to minors. The limitations period for the claim of an injured minor begins to run from the date that the injured minor reaches majority, age 18. 735 ILCS 5/13-211 (2 years after they attain majority). Other statutes that toll the statute of limitations include those relating to the legal disability of the injured person and the absence of the injured person from Illinois due to military service. In each instance, the injured party will be allowed to toll the running of the limitations period until the disability (minority, mental incompetence, military duty away from Illinois) is removed. 735 ILCS 5/13-208; 735 ILCS 5/13-211. Lastly, if a perpetrator of sexual misconduct threatens or intimidates a victim, the statute of limitations is stayed until the victim is no longer subject to such tactics. 735 ILCS 5/13 202.3. Some of the more prevalent statutes of limitation for casualty claims are noted below. However, the reader is cautioned to consult counsel where any issue arises in this area, since there are many nuances unique to particular fact patterns. Limitations issues unique to certain types of cases are also addressed elsewhere in this manual under the applicable subject areas.

1. One-Year Statute of Limitations

A civil action for personal injury against any local public entity or any of its employees must be filed within one year from the date the cause of action accrued. 745 ILCS 10/8-101. Actions for slander, libel, or for publication of matter violating the right of privacy, must be commenced within one year. 735 ILCS 5/13-201.

2. Two-Year Statute of Limitations

“Actions for damages for an injury to the person, or for false imprisonment, or for malicious prosecution, or for a statutory penalty, or for abduction, or for seduction, or for criminal conversion, except damages resulting from first degree murder or the commission of a Class X felony and the perpetrator thereof is convicted of such crime, shall be commenced within two years next after the cause of action accrued, but such an action against the defendant arising from a crime committed by the defendant in whose name an escrow account was established under the “Criminal Victim’s Escrow Account Act” shall be commenced within two years after the establishment of such an account.” 735 ILCS 5/13-202.

3. Contribution and Indemnity

- (a) In instances where no underlying action seeking recovery for injury to or death of a person or injury or damage to property has been filed by a claimant, no action for contribution or indemnity may be commenced with respect to any payment made to that claimant more than 2 years after the party seeking contribution or indemnity has made the payment in discharge of his or her liability to the claimant. 735 ILCS 5/13-204(a).
- (b) In instances where an underlying action has been filed by a claimant, no action for contribution or indemnity may be commenced more than two years after the party seeking contribution or indemnity has been served with process in the underlying action or more than two years from the time the party, or his or her privy, knew or should reasonably have known of an act or omission giving rise to the action for contribution or indemnity, whichever period expires later. 735 ILCS 5/13-204(b).
- (c) The applicable limitations period contained in subsection (a) or (b) shall apply to all actions for contribution and indemnity and shall preempt, as to contribution and indemnity actions only, all other statutes of limitation or repose, but only to the extent that the claimant in an underlying action could have timely sued the party from whom contribution or indemnity is sought at the time such claimant filed the underlying action, or in instances where no underlying action has been filed, the payment in discharge of the obligation of the party seeking contribution or indemnity is made before any such underlying action would have been barred by lapse of time. 735 ILCS 5/13204(c).

- (d) The provisions of this Section, as amended by Public Act 88-538, shall be applied retroactively when substantively applicable, including all pending actions without regard to when the cause of action accrued; provided, however, that this amendatory Act of 1994 shall not operate to affect statutory limitations or repose rights of any party which have fully vested prior to its effective date. 735 ILCS 5/13204(d).
- (e) The provisions of this Section shall not apply to any action for damages in which contribution or indemnification is sought from a party who is alleged to have been negligent and whose negligence has been alleged to have resulted in injuries or death by reason of medical or other healing art malpractice. 735 ILCS 5/13-204(e).

4. Four-Year Statute of Limitations

“Actions based upon tort, contract or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission.” 735 ILCS 5/13-214.

5. Five-Year Statute of Limitations

“[A]ctions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for shall be commenced within 5 years next after the cause of action accrued.” 735 ILCS 5/13-205.

6. Ten-Year Statute of Limitations

“Actions for damages for an injury described in Section 13-202 or Section 13-203 arising out of first-degree murder or the commission of a Class X felony by the person against whom the

action is brought may be commenced no later than 10 years after the person who inflicted such injury has completed his or her sentence therefor.” 735 ILCS 5/13-214.1.

7. Loss of Consortium Statute of Limitations

“Actions for damages for loss of consortium or other actions... deriving from injury to the person of another, except damages resulting from first degree murder or the commission of a Class X felony, shall be commenced within the same period of time as actions for damages for injury to such other person. Where the time in which the cause of action of the injured person whose injuries give rise to the cause of action brought under this section is tolled or otherwise extended by any other section of this Act, including sections 13-211, 13-212, and 13-215, the time in which the cause of action must be brought under this section is also tolled or extended to coincide with the period of time in which the injured person must commence his or her cause of action.” 735 ILCS 5/13-203.

8. No Statute of Limitations in Certain Cases

“Notwithstanding any other provision of law, any action for damages against a person, however the action may be designated, may be brought at any time if -

- (1) the action is based upon the conduct of a person which constituted the commission of a first degree murder, a Class X felony, or a Class I felony as these terms are utilized at the time of filing of the action; and
- (2) the person was convicted of the first degree murder, Class X felony, or Class I felony.”

735 ILCS 5/13-202.1(a).

9. Actions Against Physicians or Hospitals

(a) Except as provided in Section 13-215 of this Act, (citation omitted)... no actions for damages for injury or death against any physician, dentist, registered nurse, or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than four years after the dates on which the act or omission or occurrence alleged in such action to have been the cause of such injury or death.

735 ILCS 5/13-212(a).

(b) Except as provided in Section 13-215 of this Act, (citation omitted)... no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than eight years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death where the person entitled to bring the action was, at the time the cause of action accrued, under the age of 18 years; provided, however, that in no event may the cause of action be brought after the person's 22nd birthday. If the person was under the age of 18 years when the cause of action accrued and, as a result of this amendatory Act of 1987, the action is either barred or there remains less than three years to bring such action, then he or she may bring the action within three years of the effective date of this amendatory Act of 1987.

735 ILCS 5/13-212(b).

(c) If the person entitled to bring an action described in this Section is, at the time the cause of action accrued, under legal disability other than being under the age of 18 years, then the period of limitations does not begin to run until the disability is removed.

735 ILCS 5/13-212(c). (*emphasis added in 735 ILCS 5/13-212(a)*)

10. Minors

“If the person entitled to bring an action, specified in Sections 13-201 through 13210 of this Act, at the time the cause of the action accrued, is under the age of 18 years or is under a legal disability, then he or she may bring the action within two years after the person attains the age of 18 years or the disability is removed.” 735 ILCS 5/13-211. As of 2019, there is no longer a statute of limitations for child sex abuse causes of action in Illinois. 735 ILCS 5/13 202.2(f). However, the Illinois Supreme Court has ruled it unconstitutional to revive any expired claims. Doe v. Diocese of Dall., 234 Ill. 2d 393 (2009). Therefore, any cause of action which expired before the statute of limitations was expanded is to remain expired.

11. Attorneys

An action for damages based on tort, contract, or otherwise against an attorney arising out of an act or omission in the performance of professional services must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. 735 ILCS 5/13-214.3(b). This section applies to causes of action filed on or after its effective date. 735 ILCS 5/13-214.3(f).