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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 13

134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the Senate

**Primary Sponsor:** Sen. Lang

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### SUMMARY

#### Statute of limitations of actions on a contract

- Shortens from eight to six years the period of limitations of actions on a contract in writing, and expands current law's exceptions to that period of limitations.
- Shortens from six to four years the period of limitations of actions on a contract not in writing.
- Generally requires an action arising out of a consumer transaction primarily incurred for personal, family, or household purposes, based upon an express or implied agreement, be commenced within six years after the cause of action accrues, and provides the circumstances when such cause of action accrues.
- Excludes from the applicability of the period of limitations described in the preceding dot point the limitation periods under Ohio's Commercial Paper Law, of an action to recover title to or possession of real property, or violations of the Consumer Sales Practices Act.
- Provides that the limitation period of an action arising out of a consumer transaction as described in the 2<sup>nd</sup> preceding dot point is notwithstanding certain other periods of limitation.

#### Changes to the "borrowing statute"

- Narrows current law by providing that no *tort action*, instead of civil action under current law, based upon a cause of action that accrued in another state or foreign jurisdiction may be commenced in Ohio if the limitation period under that other state's or jurisdiction's law or under Ohio law has expired.
- Generally prevents an action on a contract in writing that seeks post-default interest at a rate governed by another state's or foreign jurisdiction's law and in excess of the

federal short-term rate from being commenced in Ohio if the limitation period of such action under that other state's or jurisdiction's law or under Ohio law has expired.

- Prevents an action arising out of a consumer transaction as described above, that seeks post charge-off interest at a rate governed by another state's or foreign jurisdiction's law and in excess of the federal short-term rate from being commenced in Ohio if the limitation period of such action under that other state's or jurisdiction's law or under Ohio law has expired.

## Application

- Generally provides that the limitation periods that apply in actions described above under "**Statute of limitations of actions on a contract**," apply to actions in which the cause of action accrues on or after the bill's effective date.
- Specifies the limitation periods that apply in any of the actions under the preceding dot point if the cause of action accrues prior to the bill's effective date.

## Statutes of limitation and repose for legal malpractice action

- Provides that a legal malpractice action against an attorney or a law firm or legal professional association must be commenced within one year after the cause of action accrues.
- Generally provides that a legal malpractice action against an attorney or a law firm or legal professional association cannot be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.
- Provides that if a legal malpractice action is not commenced within four years after the occurrence of the act or omission constituting the basis of the claim, then, any action upon that claim is barred.
- Allows a person seeking a legal malpractice claim to commence an action upon the claim not later than one year after the person discovers the injury resulting from an act or omission if certain requirements are met.

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## DETAILED ANALYSIS

### Actions on a contract in writing

Under the bill, an action on a specialty (a contract under seal) or an agreement, contract, or promise *in writing* generally must be brought within six years after the cause of action accrued, rather than eight years as provided under current law.<sup>1</sup> It expands the

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<sup>1</sup> R.C. 2305.06; *Black's Law Dictionary*, Fifth Edition (1979).

exceptions under current law to the above period of limitation on a contract in writing to include the following:<sup>2</sup>

- Generally, the periods of limitations of actions under Ohio's Commercial Paper Law;
- Generally, an action to recover title to or possession of real property that must be brought within 21 years after the cause of action accrued;
- Violations of the Consumer Sales Practices Act.

Current law's exceptions to the above period of limitation on a contract in writing are as follows:<sup>3</sup>

- Generally, an action against the state or a state agency for failure to make any distribution or other payment that must be brought within five years after the cause of action accrued;
- Generally, an action for breach of any contract for sale that must be commenced within four years after the cause of action has accrued.

### **Application**

Generally, under the bill, the period of limitation of an action on a contract in writing as described above applies to an action in which the cause of action accrues on or after the bill's effective date.<sup>4</sup> For causes of action that accrued prior to that effective date, the period of limitation will be six years from that effective date or the expiration of the period of limitation in effect prior to the effective date, whichever occurs first.<sup>5</sup>

### **Actions on an unwritten contract**

Under the bill, an action on a contract *not in writing*, express or implied, generally must be brought within four years after the cause of action accrued, rather than six years as currently required.<sup>6</sup>

### **Application**

Generally, under the bill, the period of limitation of an action on a contract not in writing as described above applies to an action in which the cause of action accrues on or after the bill's effective date.<sup>7</sup> For causes of action that accrued prior to that effective date, the

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<sup>2</sup> R.C. 2305.06, and by reference to R.C. 1303.16, 1345.10, and 2305.04.

<sup>3</sup> R.C. 2305.06, and by reference to R.C. 126.301 and 1302.98.

<sup>4</sup> Section 3(A).

<sup>5</sup> Section 4.

<sup>6</sup> R.C. 2305.07(A).

<sup>7</sup> Section 3(A).

period of limitation will be four years from that effective date or the expiration of the period of limitation in effect prior to the effective date, whichever occurs first.<sup>8</sup>

## **Actions arising out of a consumer transaction**

With the exceptions described below and notwithstanding certain actions described below, the bill provides that an action arising out of a consumer transaction incurred primarily for personal, family, or household purposes, based upon any contract, agreement, obligation, liability, or promise, express or implied, including an account stated, whether or not reduced to writing or signed by the party to be charged by that transaction, must be brought within six years after the cause of action accrued. A cause of action of this type accrues 30 calendar days after the date of the last charge or payment by, or on behalf of, the consumer, whichever is later.<sup>9</sup> The bill provides the following *exceptions* to the period of limitation described in this paragraph:<sup>10</sup>

- Generally, the periods of limitations of actions under Ohio’s Commercial Paper Law;
- Generally, an action to recover title to or possession of real property that must be brought within 21 years after the cause of action accrued;
- Violations of the Consumer Sales Practices Act.

The bill further provides that the period of limitation of an action arising out of a consumer transaction as described above is *notwithstanding* the following limitation periods:<sup>11</sup>

- The four-year limitation period of an action on a contract not in writing or the six-year limitation period of an action upon a liability created by statute other than a forfeiture or penalty;
- The four-year limitation period of an action for breach of a contract of sale;
- The period of limitation of a tort action under “**Changes to the ‘borrowing statute,’**” below.

## **Application**

Generally, under the bill, the period of limitation of an action on a contract arising out of a consumer transaction as described above applies to an action in which the cause of action accrues on or after the bill’s effective date.<sup>12</sup> For causes of action that accrued prior to that effective date, the period of limitation will be six years from that effective date or the

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<sup>8</sup> Section 5(A).

<sup>9</sup> R.C. 2305.07(C).

<sup>10</sup> R.C. 2305.07(C), and by reference to R.C. 1303.16, 1345.10, and 2305.04.

<sup>11</sup> R.C. 2305.07(C), and by reference to R.C. 1302.98, 2305.03(B), and 2305.07(A) and (B).

<sup>12</sup> Section 3(A).

expiration of the period of limitation in effect prior to the effective date, whichever occurs first.<sup>13</sup>

## Changes to the “borrowing statute”

Under the current so-called borrowing statute, no civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction (other jurisdiction) may be commenced and maintained in Ohio if the period of limitation that applies to that action under the laws of that other jurisdiction, or under Ohio law, has expired.<sup>14</sup> The bill limits the above provision to a “*tort action*” which it defines as a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.<sup>15</sup> The bill provides that the preceding provision applies retroactively to April 7, 2005, the effective date of S.B. 80 (Tort Reform Act) of the 125<sup>th</sup> General Assembly.<sup>16</sup>

### Contract-related actions

The bill provides that no action upon a specialty or an agreement, contract, or promise in writing, other than an action described above under “**Actions arising out of a consumer transaction,**” that seeks post-default interest at a rate governed by or provided in the substantive laws of any other jurisdiction, and in excess of the federal short-term rate as determined by the Ohio Tax Commissioner, may be commenced and maintained in Ohio if the period of limitation that applies to that action under the laws of that other jurisdiction, or under Ohio law, has expired.<sup>17</sup>

### Consumer transaction-related actions

Under the bill, no action arising out of a consumer transaction described above under “**Actions arising out of a consumer transaction,**” that seeks post charge-off interest at a rate governed by or provided in the substantive laws of any other jurisdiction, and in excess of the federal short-term rate as determined by the Ohio Tax Commissioner, may be commenced and maintained in Ohio if the period of limitation that applies to that action under the laws of that other jurisdiction, or under Ohio law, has expired.<sup>18</sup>

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<sup>13</sup> Section 5(B).

<sup>14</sup> R.C. 2305.03(B).

<sup>15</sup> R.C. 2305.03(B), and by reference to R.C. 2305.236.

<sup>16</sup> Section 3(B).

<sup>17</sup> R.C. 2305.03(C), and by reference to R.C. 5703.47.

<sup>18</sup> R.C. 2305.03(D), and by reference to R.C. 5703.47.

## **Statute of limitation for legal malpractice action**

The bill provides that a legal malpractice action against an attorney or a law firm or legal professional association must be commenced within one year after the cause of action accrues.<sup>19</sup>

## **Statute of repose for legal malpractice action**

The bill generally specifies that an action upon a legal malpractice claim against an attorney or a law firm or legal professional association must be commenced within one year after the cause of action accrued.<sup>20</sup>

Except as to persons within the age of minority or of unsound mind, generally both of the following apply:<sup>21</sup>

- No action upon a legal malpractice claim against an attorney or a law firm or legal professional association may be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.
- If an action upon a legal malpractice claim against an attorney or a law firm or legal professional association is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the claim, then, any action upon that claim is barred.

Under the bill, if a person making a legal malpractice claim against an attorney or a law firm or legal professional association, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period described above, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from that act or omission.<sup>22</sup>

A person who commences an action upon a legal malpractice claim under the circumstances described in the previous paragraph has the affirmative burden of proving, by clear and convincing evidence, that the person, with reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within that three-year period.<sup>23</sup>

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<sup>19</sup> R.C. 2305.11(A).

<sup>20</sup> R.C. 2305.117(A).

<sup>21</sup> R.C. 2305.117(B).

<sup>22</sup> R.C. 2305.117(C)(1).

<sup>23</sup> R.C. 2305.117(C)(2).

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## HISTORY

Action	Date
Introduced	01-21-21
Reported, S. Judiciary	02-03-21
Passed Senate (32-0)	02-03-21

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