



OHIO STATE BAR
ASSOCIATION
Connect. Advance. Succeed.

**STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN SUPPORT OF SENATE BILL 13**

Before the Senate Judiciary Committee
Senator Nathan Manning, Chair
Scott Lundregan, Esq.
February 2, 2021

Chairman Manning, Vice-Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee. On behalf of the Ohio State Bar Association, I am pleased to offer proponent testimony in support of the provisions in Senate Bill 13 that would provide for a statute of repose for legal malpractice claims.

Senate Bill 13 would generally require that an action for legal malpractice be brought within four years of the legal act. Current law allows for a claim of legal malpractice to be made against a lawyer any time after he or she retires for the rest of his or her life, and up to one year after he or she dies. A statute of repose puts an absolute end to a lawyer's exposure to a legal malpractice claim.

Other Ohio professionals have a statute of repose – architects, engineers, doctors, podiatrists, registered nurses, dentists, orthodontists, optometrists, chiropractors, among others. Lawyers in other states have a statute of repose, especially other states with the discovery rule, where statute of limitations for malpractice are based on discovery of a problem.

A statute of repose did exist for lawyers but the omnibus tort reform bill it was enacted in was found to be unconstitutional for violating the single-subject rule in 1999. The reasons for finding that bill unconstitutional had nothing to do with the statute of repose, nevertheless, a statute of repose has not been reenacted for lawyers even though it has been reenacted and found constitutional for other professionals.

Thank you for the opportunity to submit testimony and for the committee's consideration of this legislation.

As Reported by the Senate Judiciary Committee

134th General Assembly

Regular Session

2021-2022

S. B. No. 13

Senator Lang

Cosponsors: Senators Cirino, Reineke, Romanchuk, Wilson, Manning, Schuring

A BILL

To amend sections 2305.03, 2305.06, 2305.07, and 1
2305.11 and to enact section 2305.117 of the 2
Revised Code to shorten the period of 3
limitations for actions upon a contract; to make 4
changes to the borrowing statute pertaining to 5
applicable periods of limitations; and to 6
establish a statute of repose for a legal 7
malpractice action. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2305.03, 2305.06, 2305.07, and 9
2305.11 be amended and section 2305.117 of the Revised Code be 10
enacted to read as follows: 11

Sec. 2305.03. (A) Except as provided in division (B) of 12
this section and unless a different limitation is prescribed by 13
statute, a civil action may be commenced only within the period 14
prescribed in sections 2305.04 to 2305.22 of the Revised Code. 15
If interposed by proper plea by a party to an action mentioned 16
in any of those sections, lapse of time shall be a bar to the 17
action. 18

(B) No ~~civil-tort~~ action, as defined in section 2305.236 19
of the Revised Code, that is based upon a cause of action that 20
accrued in any other state, territory, district, or foreign 21
jurisdiction may be commenced and maintained in this state if 22
the period of limitation that applies to that action under the 23
laws of that other state, territory, district, or foreign 24
jurisdiction has expired or the period of limitation that 25
applies to that action under the laws of this state has expired. 26

(C) No action upon a specialty or an agreement, contract, 27
or promise in writing, other than an action described in 28
division (C) of section 2305.07 of the Revised Code, that seeks 29
post-default interest at a rate governed by or provided in the 30
substantive laws of any other state, territory, district, or 31
foreign jurisdiction, and in excess of the rate of interest 32
provided by section 5703.47 of the Revised Code, may be 33
commenced and maintained in this state if the period of 34
limitation that applies to that action under the laws of that 35
other state, territory, district, or foreign jurisdiction has 36
expired or the period of limitation that applies to that action 37
under the laws of this state has expired. 38

(D) No action described in division (C) of section 2305.07 39
of the Revised Code that seeks post charge-off interest at a 40
rate governed by or provided in the substantive laws of any 41
other state, territory, district, or foreign jurisdiction, and 42
in excess of the rate of interest provided by section 5703.47 of 43
the Revised Code, may be commenced and maintained in this state 44
if the period of limitation that applies to that action under 45
the laws of that other state, territory, district, or foreign 46
jurisdiction has expired or the period of limitation that 47
applies to that action under the laws of this state has expired. 48

Sec. 2305.06. Except as provided in sections 126.301 ~~and,~~ 49
1302.98, 1303.16, 1345.10, and 2305.04 of the Revised Code, an 50
action upon a specialty or an agreement, contract, or promise in 51
writing shall be brought within ~~eight-six~~ years after the cause 52
of action accrued. 53

Sec. 2305.07. (A) Except as provided in sections 126.301 54
and 1302.98 of the Revised Code, an action upon a contract not 55
in writing, express or implied, ~~or shall be brought within four~~ 56
years after the cause of action accrued. 57

(B) An action upon a liability created by statute other 58
than a forfeiture or penalty~~7~~ shall be brought within six years 59
after the cause ~~thereof of action~~ accrued. 60

(C) Except as provided in sections 1303.16, 1345.10, and 61
2305.04 of the Revised Code, and notwithstanding divisions (A) 62
and (B) of this section, section 1302.98, and division (B) of 63
section 2305.03 of the Revised Code, an action arising out of a 64
consumer transaction incurred primarily for personal, family, or 65
household purposes, based upon any contract, agreement, 66
obligation, liability, or promise, express or implied, including 67
an account stated, whether or not reduced to writing or signed 68
by the party to be charged by that transaction, shall be 69
commenced within six years after the cause of action accrued. 70
For purposes of this division, a cause of action accrues thirty 71
calendar days after the date of the last charge or payment by, 72
or on behalf of, the consumer, whichever is later. 73

Sec. 2305.11. (A) An action for libel, slander, malicious 74
prosecution, or false imprisonment, an action for malpractice 75
other than an action upon a medical, dental, optometric, or 76
chiropractic claim, an action for legal malpractice against an 77
attorney or a law firm or legal professional association, or an 78

action upon a statute for a penalty or forfeiture shall be 79
commenced within one year after the cause of action accrued, 80
provided that an action by an employee for the payment of unpaid 81
minimum wages, unpaid overtime compensation, or liquidated 82
damages by reason of the nonpayment of minimum wages or overtime 83
compensation shall be commenced within two years after the cause 84
of action accrued. 85

(B) A civil action for unlawful abortion pursuant to 86
section 2919.12 of the Revised Code, a civil action authorized 87
by division (H) of section 2317.56 of the Revised Code, a civil 88
action pursuant to division (B) of section 2307.52 of the 89
Revised Code for terminating or attempting to terminate a human 90
pregnancy after viability in violation of division (A) of 91
section 2919.17 of the Revised Code, and a civil action for 92
terminating or attempting to terminate a human pregnancy of a 93
pain-capable unborn child in violation of division (E) of 94
section 2919.201 of the Revised Code shall be commenced within 95
one year after the performance or inducement of the abortion or 96
within one year after the attempt to perform or induce the 97
abortion in violation of division (A) of section 2919.17 of the 98
Revised Code or division (E) of section 2919.201 of the Revised 99
Code. 100

(C) As used in this section, "medical claim," "dental 101
claim," "optometric claim," and "chiropractic claim" have the 102
same meanings as in section 2305.113 of the Revised Code. 103

Sec. 2305.117. (A) Except as otherwise provided in this 104
section, an action upon a legal malpractice claim against an 105
attorney or a law firm or legal professional association shall 106
be commenced within one year after the cause of action accrued. 107

(B) Except as to persons within the age of minority or of 108

unsound mind as provided by section 2305.16 of the Revised Code, 109
and except as provided in division (C) of this section, both of 110
the following apply: 111

(1) No action upon a legal malpractice claim against an 112
attorney or a law firm or legal professional association shall 113
be commenced more than four years after the occurrence of the 114
act or omission constituting the alleged basis of the legal 115
malpractice claim. 116

(2) If an action upon a legal malpractice claim against an 117
attorney or a law firm or legal professional association is not 118
commenced within four years after the occurrence of the act or 119
omission constituting the alleged basis of the claim, then, any 120
action upon that claim is barred. 121

(C) (1) If a person making a legal malpractice claim 122
against an attorney or a law firm or legal professional 123
association, in the exercise of reasonable care and diligence, 124
could not have discovered the injury resulting from the act or 125
omission constituting the alleged basis of the claim within 126
three years after the occurrence of the act or omission, but, in 127
the exercise of reasonable care and diligence, discovers the 128
injury resulting from that act or omission before the expiration 129
of the four-year period specified in division (B) (1) of this 130
section, the person may commence an action upon the claim not 131
later than one year after the person discovers the injury 132
resulting from that act or omission. 133

(2) A person who commences an action upon a legal 134
malpractice claim under the circumstances described in division 135
(C) (1) of this section has the affirmative burden of proving, by 136
clear and convincing evidence, that the person, with reasonable 137
care and diligence, could not have discovered the injury. 138

resulting from the act or omission constituting the alleged 139
basis of the claim within the three-year period described in 140
that division. 141

Section 2. That existing sections 2305.03, 2305.06, 142
2305.07, and 2305.11 of the Revised Code are hereby repealed. 143

Section 3. (A) Subject to Sections 4 and 5 of this act, 144
sections 2305.06 and 2305.07 of the Revised Code, as amended by 145
this act, apply to an action in which the cause of action 146
accrues on or after the effective date of this act. 147

(B) Division (B) of section 2305.03 of the Revised Code, 148
as amended by this act, applies retroactively to April 7, 2005, 149
the effective date of S.B. 80 of the 125th General Assembly. 150

Section 4. For causes of action that are governed by 151
section 2305.06 of the Revised Code and that accrued prior to 152
the effective date of this act, the period of limitations shall 153
be six years from the effective date of this act or the 154
expiration of the period of limitations in effect prior to the 155
effective date of this act, whichever occurs first. 156

Section 5. (A) For causes of action that are governed by 157
division (A) of section 2305.07 of the Revised Code that accrued 158
prior to the effective date of this act, the period of 159
limitations shall be four years from the effective date of this 160
act or the expiration of the period of limitations in effect 161
prior to the effective date of this act, whichever occurs first. 162

(B) For causes of action that are governed by division (C) 163
of section 2305.07 of the Revised Code that accrued prior to the 164
effective date of this act, the period of limitations shall be 165
six years from the effective date of this act or the expiration 166
of the period of limitations in effect prior to the effective 167

date of this act, whichever occurs first.