

# Statutes of Limitations: Illinois

TIMOTHY R. LAVENDER AND MICHAEL R. DOVER, KELLEY DRYE & WARREN LLP,  
WITH PRACTICAL LAW LITIGATION

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A Q&A guide to the statutes of limitations in Illinois for several commercial claims. Answers to questions can be compared across a number of jurisdictions (see Statutes of Limitations: State Q&A Tool).

## ACCOUNT STATED

1. What is the statute of limitations for an account stated claim in your jurisdiction?

### LIMITATIONS PERIOD

The statute of limitations is five years (735 ILCS 5/13-205; see *Portfolio Acquisitions, LLC v. Feltman*, 391 Ill.App.3d 642, 652 (2009)).

### ACCRUAL DATE

The limitations period starts to run when one party sends the first statement of account to another who retains it without objection for an unreasonable amount of time (see *Toth v. Mansell*, 207 Ill.App.3d 665, 672 (1990)).

## ANTITRUST

2. What is the statute of limitations for an antitrust claim in your jurisdiction?

### LIMITATIONS PERIOD

The statute of limitations is four years (740 ILCS 10/7(2), (4)).

### ACCRUAL DATE

The limitations period starts to run when the market conduct prohibited by 740 ILCS 10/3 is committed. Where multiple antitrust acts are alleged to have occurred as part of an ongoing antitrust conspiracy, courts have held that the claim accrues on the date of the last overt act committed to further the conspiracy (see *People ex rel. Hartigan v. Moore*, 143 Ill.App.3d 410, 412-13 (1986)).

## BREACH OF CONTRACT

3. What is the statute of limitations for a breach of contract claim in your jurisdiction?

### LIMITATIONS PERIOD

The statute of limitations for a breach of written contract claim is ten years (735 ILCS 5/13-206; *Clark v. Robert W. Baird Co., Inc.*, 142 F.Supp.2d 1065, 1075 (N.D. Ill. 2001)). The statute of limitations for a breach of oral contract claim is five years (735 ILCS 5/13-205; *Clark*, 142 F.Supp.2d at 1075).

### ACCRUAL DATE

The limitations period starts to run from the date of the breach (*Clark*, 142 F.Supp.2d at 1075).

## BREACH OF FIDUCIARY DUTY

4. What is the statute of limitations for a breach of fiduciary duty claim in your jurisdiction?

### LIMITATIONS PERIOD

The statute of limitations is five years (*Clark*, 142 F.Supp.2d at 1074-75).

### ACCRUAL DATE

The limitations period starts to run when the plaintiff suffers an injury caused by the breach (*Clark*, 142 F.Supp.2d at 1074-75).

## BREACH OF WARRANTY

5. What is the statute of limitations for a breach of warranty claim in your jurisdiction?

### LIMITATIONS PERIOD

The statute of limitations is four years for breach of warranty claims generally (810 ILCS 5/2-725(1)). For a claim involving a negotiable instrument (such as checks, bearer bonds, and promissory notes), the statute of limitations is three years (810 ILCS 5/3-118(g)).

**ACCRUAL DATE**

The limitations period starts to run typically when the goods are delivered. However, where a warranty expressly extends to future performance of the goods and discovery of the breach must await the time of that future performance, the cause of action accrues when the breach is or should have been discovered with reasonable diligence (810 ILCS 5/2-725(2); *Cosman v. Ford Motor Co.*, 285 Ill. App.3d 250, 255-57 (1996)).

**CONSUMER PROTECTION STATUTES****6. What is the statute of limitations for a consumer protection claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is three years under the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/10a(e); *McCready v. Ill. Sec'y of State*, 382 Ill.App.3d 789, 798 (2008)).

**ACCRUAL DATE**

The limitations period starts to run when an injury caused by the deceptive conduct occurs (see *Gredell v. Wyeth Labs., Inc.*, 346 Ill. App.3d 51, 57 (2004)).

**CONVERSION****7. What is the statute of limitations for a conversion claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is five years for a claim involving personal property (735 ILCS 5/13-205). For a claim involving a negotiable instrument (such as checks, bearer bonds, and promissory notes), it is the earlier of either:

- Three years after it was due for payment and went unpaid.
- Ten years after the date it was drafted.

(810 ILCS 5/3-118(c), (g) and 5/4-111.)

**ACCRUAL DATE**

The limitations period starts to run on the date of the conversion for a claim involving personal property (*Nelson v. Sotheby's Inc.*, 115 F.Supp.2d 925, 929 (N.D. Ill. 2000)).

For a claim involving a negotiable instrument, it begins on either:

- The date it was due for payment and went unpaid.
- The date it was drafted.

(810 ILCS 5/3-118(c), (g).)

**EMPLOYMENT MATTERS****8. What is the statute of limitations for employment matters in your jurisdiction?****LIMITATIONS PERIOD**

The statutes of limitation are:

- 300 calendar days for claims filed under the Illinois Human Rights Act, including discrimination and civil rights violations, which must be filed with the Illinois Department of Human Rights (775 ILCS 5/7a-102(A)(1)).
- Six months for claims filed under the Equal Wage Act (820 ILCS 110/2).
- One year for claims filed under the Equal Pay Act, which must be filed with the Illinois Department of Labor (820 ILCS 112/15(b)).

**ACCRUAL DATE**

The limitations period starts to run, for a claim filed under the:

- Illinois Human Rights Act, when the discrimination or civil rights violation occurred (775 ILCS 5/7a-102(A)(1)).
- Equal Wage Act, when the alleged violation occurred (820 ILCS 110/2).
- Equal Pay Act, when the underpayment occurred (820 ILCS 112/15(b)).

**ENFORCEMENT OF JUDGMENTS****9. What is the statute of limitations for enforcing a judgment in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is seven years (735 ILCS 5/12-108(a)). However, Illinois law allows a judgment-creditor to revive an enforcement action within 20 years of the date the judgment was entered (735 ILCS 5/2-1602(a) and 5/13-218).

**ACCRUAL DATE**

The limitations period starts to run on the date the judgment is rendered (735 ILCS 5/12-108(a)). The limitations period to revive a judgment begins to run on the date the judgment was entered (735 ILCS 5/13-218).

**FRAUD****10. What is the statute of limitations for a fraud claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is five years (735 ILCS 5/13-205; *McCarter v. State Farm Mut. Auto. Ins. Co.*, 130 Ill.App.3d 97, 100 (1985)). For fraud claims brought under the Consumer Fraud and Deceptive Business Practices Act, see Consumer Protection Statutes.

**ACCRUAL DATE**

The limitations period starts to run on the date the plaintiff becomes aware or with reasonable diligence should be aware of its injury (see

*Joyce v. Morgan Stanley & Co.*, 538 F.3d 797, 803 (7th Cir. 2008) and *In re Gaslight Club, Inc.*, 167 B.R. 507, 518 (Bankr. N.D. Ill. 1994).

## FRAUDULENT CONCEALMENT

### 11. What is the statute of limitations for a fraudulent concealment claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years (735 ILCS 5/13-215).

#### ACCRUAL DATE

The limitations period starts to run on the date the fraudulent concealment was or should have been discovered through ordinary diligence (735 ILCS 5/13-215).

## INSURANCE BAD FAITH

### 12. What is the statute of limitations for an insurance bad faith claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is two years (735 ILCS 5/13-214.4).

#### ACCRUAL DATE

The limitations period starts to run either:

- On the date the insurer's breach occurred.
- When the plaintiff learns that coverage was denied.

(See *State Farm Fire & Cas. Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill.App.3d 548, 565-67 (2009) and *Ind. Ins. Co. v. Machon & Machon, Inc.*, 324 Ill.App.3d 300, 304 (2001).)

## NEGLIGENCE

### 13. What is the statute of limitations for a negligence claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statutes of limitations are:

- Two years for personal injury claims (735 ILCS 5/13-202).
- Five years for property claims (735 ILCS 5/13-205).

#### ACCRUAL DATE

The limitations period starts to run on the date the injury occurs (*Del Bianco v. Am. Motorists Ins. Co.*, 73 Ill.App.3d 743, 747-48 (1979)).

## PRODUCTS LIABILITY

### 14. What is the statute of limitations for a products liability claim in your jurisdiction?

## LIMITATIONS PERIOD

The statutes of limitations are:

- Five years for claims related to property damage (735 ILCS 5/13-205).
- Two years for personal injury claims (735 ILCS 5/13-202).

Where the discovery rule is invoked, the plaintiff must commence her action within two years after the date she first knew or should have known through reasonable diligence of the existence of the personal injury, death, or property damage alleged, but not more than eight years after the personal injury, death, or property damage occurred (735 ILCS 5/13-213(d)). Typically, the discovery rule applies in cases where the plaintiff is exposed to a harmful substance, but does not experience any ill effects until many years later. However, even if a products liability claim is started within the applicable two- or five-year limitations period, it may still be untimely if it is not started within the outermost time limit allowed under Illinois's statute of repose (see Special Rules and Exceptions: Products Liability Statute of Repose).

#### ACCRUAL DATE

The limitations period starts to run on the date the property damage or personal injury occurs (*Golla v. Gen. Motors Corp.*, 167 Ill.2d 353, 360-61 (1995)). However, Illinois's discovery rule provides that the limitations period for certain product-related claims does not accrue until the date the plaintiff first knew or should have known of the injury (735 ILCS 5/13-213(d)).

## SHAREHOLDER DERIVATIVE SUITS

### 15. What is the statute of limitations for a shareholder derivative suit in your jurisdiction?

#### LIMITATIONS PERIOD

Shareholder derivative suits are equitable in nature (see *Mann v. Kemper Fin. Cos.*, 247 Ill.App.3d 966, 974 (1992)). Therefore, there is no statute of limitations that applies to them (see *Conway v. Connors*, 101 Ill.App.3d 121, 128-30 (1981)). However, a defendant may invoke the affirmative defense of laches to prevent a claimant from pursuing a claim she unreasonably neglected or delayed to pursue to the disadvantage of the defendant.

#### ACCRUAL DATE

There is no statute of limitations that applies to shareholder derivative suits.

## THIRD-PARTY CONTRIBUTION

### 16. What is the statute of limitations for a third-party contribution claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is two years (735 ILCS 5/13-204(a), (b) and (e); *Lukey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill.App.3d 349, 361 (1998)).

**ACCRUAL DATE**

The limitations period starts to run:

- On the date of payment on the claim where the underlying action is not for an injury or death to a person or property (735 ILCS 5/13-204(a)).
- Whichever occurs later:
  - the service of process in the underlying lawsuit; or
  - when the party knew or should reasonably have known of the claim.

(735 ILCS 5/13-204(b).)

- For medical malpractice lawsuits, when the claimant knew or should have known of the malpractice, but in no event more than four years after the occurrence (735 ILCS 5/13-212(a)).

**TORTIOUS INTERFERENCE WITH CONTRACT RIGHTS**

**17. What is the statute of limitations for a claim of tortious interference with contract rights or a business relationship in your jurisdiction?**

**LIMITATIONS PERIOD**

The statute of limitations is five years (735 ILCS 5/13-205; *Fed. Signal Corp. v. Thorn Automated Sys., Inc.*, 295 Ill.App.3d 762, 765 (1998)).

**ACCRUAL DATE**

The limitations period starts to run on the date the contract was breached (*Fed. Signal Corp.*, 295 Ill.App.3d at 766).

**TRADE SECRET MISAPPROPRIATION**

**18. What is the statute of limitations for a trade secret misappropriation claim in your jurisdiction?**

**LIMITATIONS PERIOD**

The statute of limitations is five years (765 ILCS 1065/7).

**ACCRUAL DATE**

The limitations period starts to run when the misappropriation is discovered or should have been discovered through reasonable diligence. Under Illinois law, a continuing misappropriation constitutes a single claim. (765 ILCS 1065/7.)

**TRADEMARK INFRINGEMENT**

**19. What is the statute of limitations for a trademark infringement claim in your jurisdiction?**

**LIMITATIONS PERIOD**

No statute of limitations directly applies to claims brought under Illinois's Trademark Registration and Protection Act (Trademark Act) (see *Superior Paintless Dent Removal, Inc. v. Superior Dent Removal,*

*Inc.*, 454 F.Supp.2d 769, 772 (N.D. Ill. 2006)). However, Illinois courts look to the Lanham Trademark Act to determine whether Trademark Act claims are timely (765 ILCS 1036/90; *Superior Paintless Dent Removal, Inc.*, 454 F.Supp.2d at 772). The timeliness of Lanham Act claims is governed by the doctrine of laches (see *Flentye v. Kathrein*, 485 F.Supp.2d 903, 916 (N.D. Ill. 2007)). To determine whether Lanham Act claims are barred by laches, Illinois courts generally consider the three-year statute of limitations applicable to claims brought under the Illinois Consumer Fraud and Deceptive Business Practices Act (see *Chattanooga Mfg., Inc. v. Nike, Inc.*, 301 F.3d 789, 793-95 (7th Cir. 2002); *Flentye*, 485 F.Supp.2d at 916; *Superior Paintless Dent Removal, Inc.*, 454 F.Supp.2d at 772; *Nissan Motor Co., Ltd. v. BMW (US) Holding Corp.*, 2002 WL 31426654, at \*2 (N.D. Ill. Oct. 28, 2002)).

**ACCRUAL DATE**

No statute of limitations directly applies to claims brought under the Trademark Act (but see Consumer Protection Statutes).

**UNFAIR COMPETITION**

**20. What is the statute of limitations for an unfair competition claim in your jurisdiction?**

**LIMITATIONS PERIOD**

Under Illinois's Consumer Fraud and Deceptive Business Practices Act, which has largely replaced common law unfair competition claims, the limitations period is three years (815 ILCS 505/10a(e)).

**ACCRUAL DATE**

The limitations period starts to run when the plaintiff suffers an injury for claims under the Consumer Fraud and Deceptive Business Practices Act (*Gredell*, 346 Ill.App.3d at 57).

**UNJUST ENRICHMENT**

**21. What is the statute of limitations for an unjust enrichment claim in your jurisdiction?**

**LIMITATIONS PERIOD**

The statute of limitations is five years (735 ILCS 5/13-205; *Frederickson v. Blumenthal*, 271 Ill.App.3d 738, 742 (1995)).

**ACCRUAL DATE**

The limitations period starts to run typically on the date when the injury could have been discovered through appropriate diligence (see *Burns Philp Food, Inc. v. Cavalea Cont'l Freight, Inc.*, 135 F.3d 526, 528 (7th Cir. 1998)).

**WRONGFUL DEATH & SURVIVAL**

**22. What is the statute of limitations for a wrongful death and survival claim in your jurisdiction?**

## LIMITATIONS PERIOD

The statute of limitations for wrongful death claims is

- Five years after the date of death, if the death is the result of violent intentional conduct.
- One year after the final disposition of a criminal case against a defendant that is charged with certain kinds of murder, homicide, or manslaughter.
- Two years after the establishment of an escrow account under the Criminal Victims' Asset Discovery Act (725 ILCS 145/1) as a result of certain kinds of murder or kidnapping, unless covered by the two above bullet points.
- Two years after the date of death, in all other situations.

(740 ILCS 180/2(d), (e)).

For survival actions brought on behalf of a decedent, the limitations period is the later of:

- The expiration of the limitations period for the underlying claim.
- One year from the date of the decedent's death.

(735 ILCS 5/13-209(a)(1)).

## ACCRUAL DATE

The limitations period for wrongful death starts to run generally on the date of the decedent's death, or the date of the final disposition of the criminal case against the defendant, as specified above (740 ILCS 180/2). The one-year time period for the decedent's personal representative to start a survival claim accrues on the date of the decedent's death (735 ILCS 5/13-209(a)(1); *Wolfe v. Westlake Cmty. Hosp.*, 173 Ill.App.3d 608, 611 (1988)).

## OTHER COMMERCIAL CAUSES OF ACTION

**23. Please describe any other statutes of limitations for commercial causes of action in your jurisdiction of which practitioners should be aware.**

There are no other statutes of limitations for commercial causes of action in Illinois.

## SPECIAL RULES AND EXCEPTIONS

**24. Please list any special rules and exceptions that may toll or otherwise affect any of the statutes of limitations in the previous questions.**

Illinois has special rules and exceptions that may toll or otherwise affect any of the statutes of limitations described previously. Depending on the cause of action and facts of the case, one or more of the following rules may affect the running of the statute of limitations.

### DISCOVERY RULE

Certain limitations periods may be extended by a common law or statutory discovery rule, under which a plaintiff's cause of action does not accrue until she knows or should have known through reasonable

diligence of an injury and that the injury was wrongfully caused (see *Clay v. Kuhl*, 727 N.E.2d 217, 223 (Ill. 2000) and *Prignano v. Prignano*, 934 N.E.2d 89, 103 (Ill. Ct. App. 2010)).

The discovery rule generally applies to the following types of actions:

- Breach of contract.
- Tort.
- Tort arising from contract.

(*Prignano*, 934 N.E.2d at 103.)

### FRAUDULENT CONCEALMENT RULE

If the defendant fraudulently conceals a cause of action from the plaintiff, the plaintiff may begin her action at any time within five years after she discovers that she has a cause of action (735 ILCS 5/13-215).

### EQUITABLE TOLLING

Equitable tolling stops a statute of limitations from running under certain unfair circumstances, such as when the:

- Defendant has actively misled the plaintiff.
- Plaintiff has been prevented from asserting her rights in some extraordinary way.
- Plaintiff has mistakenly asserted her rights in the wrong forum.

(*Clay*, 727 N.E.2d at 223.)

### CLASS ACTION TOLLING

The start of a class action in Illinois state court may toll the applicable statute of limitations during the pendency of the class action for all asserted members of the class who would have been parties had the suit continued as a class action (see *Steinberg v. Chicago Med. Sch.*, 371 N.E.2d 634, 645 (Ill. 1977)). However, Illinois courts do not toll the limitations period where the previous class action began in a federal court (see *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102, 1104-05 (Ill. 1998)).

### PENDING OR RECENTLY TERMINATED GOVERNMENT LAWSUIT

Whenever the Illinois Attorney General brings a lawsuit under the Illinois Antitrust Act or the Consumer Fraud and Deceptive Business Practices Act, the running of the statute of limitations for private lawsuits based on any matter complained of in the Attorney General's suit must be suspended while the Attorney General's lawsuit is ongoing and for one year after that lawsuit is terminated (740 ILCS 10/7(2); 815 ILCS 505/10a(e)).

### WARRANTY

If an action for breach of warranty not reduced in the parties' agreement is commenced within four years after the breach, but is terminated in a way that leaves available a remedy by another action for the same breach, that other action may start after the expiration of the initial limitations period, within six months after the first action was terminated. A party may not commence the second action if the termination of the first action resulted from voluntary discontinuance or dismissal for failure to prosecute. (810 ILCS 5/2-725(3).)

### DEFENDANT'S ABSENCE FROM THE STATE

The running of the statute of limitations may be tolled for the time after the cause of action accrues that the defendant:

- Resides outside of Illinois.
- Is not subject to jurisdiction in Illinois.

(735 ILCS 5/13-208.)

### MINORITY AND LEGAL DISABILITY

If a plaintiff is either under the age of 18 years or under a legal disability at the time the cause of action accrues, the plaintiff 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(a)).

If a person is not under a legal disability at the time the action accrues, but becomes under a legal disability before the statute of limitations runs, the statute of limitations is tolled until the disability is removed. However, if the cause of action falls under Section 5/13-205 or 5/13-206 of Chapter 735 of the Illinois Compiled Statutes, the statute of limitations may never be tolled longer than ten years from the date of onset of the disability. (735 ILCS 5/13-211(b).)

### PRODUCTS LIABILITY STATUTE OF REPOSE

Even if a products liability claim is brought within the applicable two- or five-year limitations period (see Products Liability), it still may be time-barred under Illinois's statute of repose. Under the statute of repose, a products liability action may not be brought after the earliest of:

- 12 years from the date the defective product was first sold, leased, or delivered by a seller.
- Ten years from the date the defective product was first sold, leased, or delivered to its initial user, consumer, or other non-seller.

(735 ILCS 5/13-213(b).) If the plaintiff's injury was caused by a product alteration subsequent to the date of first sale, lease, or delivery, the suit may not be brought after ten years from the date the product was altered (735 ILCS 5/13-213(c)(2)).

A products liability claim may be brought after this time if the seller expressly warranted the product for a longer period and the action is brought within that period (735 ILCS 5/13-213(b), (c)(2)).

For example, if a plaintiff purchased a new car in 1995, was injured in a car accident in 2010 when her car accelerated unexpectedly, and sued the car manufacturer in 2011 to recover damages for her

personal injuries, her claim would be timely under Illinois's two-year statute of limitations. However, the plaintiff's claim would be barred by Illinois's statute of repose (assuming the manufacturer did not offer a 16-year warranty) because she purchased her car more than ten to 12 years before filing suit.

The statute of repose applies differently where the limitations period is governed by the discovery rule (735 ILCS 5/13-213(d); see also Products Liability (discussing the discovery rule)). In these situations, the plaintiff may file suit within two years of discovering her injury if both the:

- Injury occurred sometime within the ten to 12 years set out by 735 ILCS 5/13-213(b), (c)(2).
- Suit is filed no later than eight years after the date on which the injury occurred.

(735 ILCS 5/13-213(d).)

For example, consider a situation where the plaintiff purchases an over-the-counter (OTC) drug in 2002 and takes the drug as directed for several years. In 2010, the plaintiff begins feeling ill and is diagnosed later that year with a disease that has just been linked to usage of the OTC drug. The plaintiff sues the drug manufacturer in Illinois in 2011. The plaintiff's claim may be timely under the discovery rule because it was brought within two years of the date she discovered her injury. In addition, the suit was brought within ten to 12 years of the drug's first sale or purchase, or both. However, depending on when her injury occurred, her suit may nevertheless be barred by the statute of repose. If the manufacturer proves that the plaintiff contracted the disease in 2002 even though she did not experience any symptoms until 2010, her suit would be untimely because it was started more than eight years after the injury occurred.

### EXTENSION OWING TO DISMISSAL OF PREVIOUS SUIT

Where a plaintiff starts an action, but her claims are dismissed ultimately, the plaintiff may begin a new action within the greater of:

- One year of dismissal.
- The remaining period of limitation.

This rule applies whether or not the time limitation for bringing a later action has expired during the pendency of the first action. (735 ILCS 5/13-217.)

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