

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2797/P1dn

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July 9, 2003

You will notice that I have made this new statute of limitations first apply to actions not barred on the effective date. This is different from the provision that Dan Rossmiller and I discussed. After I had included the two-part applicability provision that treated independent actions and actions brought in the underlying action in the manner that Dan and I had discussed, I asked Bob Nelson, who drafts in the area of "Courts and Procedure," to review the draft. He suggested the initial applicability provision that is included in the draft as a way of getting around the problem of not knowing exactly what statute of limitations currently applies to actions brought in the underlying action. As drafted, if an action is not barred when the bill passes, the new statute of limitations applies to it. For independent actions, the ones not barred are the ones that are based on a judgment or order that was entered less than 20 years before the effective date of the bill. For an action brought in the underlying action, the petitioner may have to make the case that the action was not barred on the effective date of the bill, but that is the safest way for the legislation as a whole. A recent U.S Supreme Court case makes it clear that a penalty may not be increased or extended with respect to matters for which the statute of limitations has already run. Let me know if you have any questions.

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