



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB5312

Introduced 1/31/2022, by Rep. Joyce Mason

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/13-213

from Ch. 110, par. 13-213

Amends the Limitations Article of the Code of Civil Procedure. Extends the statute of repose for a product liability action based on the doctrine of strict liability in tort for any medical joint replacement product that is claimed to have injured or damaged the plaintiff to 15 years from the date of first installation (instead of 12 years from the date of first sale in any case or 10 years from the date of first sale to its initial user, whichever is shorter).

LRB102 25460 LNS 34746 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by  
5 changing Section 13-213 as follows:

6 (735 ILCS 5/13-213) (from Ch. 110, par. 13-213)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,  
8 which has been held unconstitutional)

9 Sec. 13-213. Product liability.

10 (a) As used in this Section, the term:

11 (1) "Alteration, modification or change" or "altered,  
12 modified, or changed" means an alteration, modification or  
13 change that was made in the original makeup  
14 characteristics, function or design of a product or in the  
15 original recommendations, instructions and warnings given  
16 with respect to a product including the failure properly  
17 to maintain and care for a product.

18 (2) "Product" means any tangible object or goods  
19 distributed in commerce, including any service provided in  
20 connection with the product. Where the term "product unit"  
21 is used, it refers to a single item or unit of a product.

22 (3) "Product liability action" means any action based  
23 on the doctrine of strict liability in tort brought

1 against the seller of a product on account of personal  
2 injury, (including illness, disease, disability and death)  
3 or property, economic or other damage allegedly caused by  
4 or resulting from the manufacture, construction,  
5 preparation, assembly, installation, testing, makeup,  
6 characteristics, functions, design, formula, plan,  
7 recommendation, specification, prescription, advertising,  
8 sale, marketing, packaging, labeling, repair, maintenance  
9 or disposal of, or warning or instruction regarding any  
10 product. This definition excludes actions brought by State  
11 or federal regulatory agencies pursuant to statute.

12 (4) "Seller" means one who, in the course of a  
13 business conducted for the purpose, sells, distributes,  
14 leases, assembles, installs, produces, manufactures,  
15 fabricates, prepares, constructs, packages, labels,  
16 markets, repairs, maintains, or otherwise is involved in  
17 placing a product in the stream of commerce.

18 (b) Subject to the provisions of subsections (c) and (d)  
19 no product liability action based on the doctrine of strict  
20 liability in tort shall be commenced except within the  
21 applicable limitations period and, in any event, within 12  
22 years from the date of first sale, lease or delivery of  
23 possession by a seller or, except as provided in subsection  
24 (b-5), 10 years from the date of first sale, lease or delivery  
25 of possession to its initial user, consumer, or other  
26 non-seller, whichever period expires earlier, of any product

1 unit that is claimed to have injured or damaged the plaintiff,  
2 unless the defendant expressly has warranted or promised the  
3 product for a longer period and the action is brought within  
4 that period.

5 (b-5) Subject to the provisions of subsections (c) and  
6 (d), no product liability action based on the doctrine of  
7 strict liability in tort shall be commenced except within the  
8 applicable limitations period and within 15 years from the  
9 date of first installation of any medical joint replacement  
10 product that is claimed to have injured or damaged the  
11 plaintiff, unless the defendant expressly has warranted or  
12 promised the product for a longer period and the action is  
13 brought within that period.

14 (c) No product liability action based on the doctrine of  
15 strict liability in tort to recover for injury or damage  
16 claimed to have resulted from an alteration, modification or  
17 change of the product unit subsequent to the date of first  
18 sale, lease or delivery of possession of the product unit to  
19 its initial user, consumer or other non-seller shall be  
20 limited or barred by subsection (b) hereof if:

21 (1) the action is brought against a seller making,  
22 authorizing, or furnishing materials for the  
23 accomplishment of such alteration, modification or change  
24 (or against a seller furnishing specifications or  
25 instructions for the accomplishment of such alteration,  
26 modification or change when the injury is claimed to have

1           resulted from failure to provide adequate specifications  
2           or instructions), and

3           (2) the action commenced within the applicable  
4           limitation period and, in any event, within 10 years from  
5           the date such alteration, modification or change was made,  
6           unless defendant expressly has warranted or promised the  
7           product for a longer period and the action is brought  
8           within that period, and

9           (3) when the injury or damage is claimed to have  
10          resulted from an alteration, modification or change of a  
11          product unit, there is proof that such alteration,  
12          modification or change had the effect of introducing into  
13          the use of the product unit, by reason of defective  
14          materials or workmanship, a hazard not existing prior to  
15          such alteration, modification or change.

16          (d) Notwithstanding the provisions of subsection (b) and  
17          paragraph (2) of subsection (c) if the injury complained of  
18          occurs within any of the periods provided by subsection (b)  
19          and paragraph (2) of subsection (c), the plaintiff may bring  
20          an action within 2 years after the date on which the claimant  
21          knew, or through the use of reasonable diligence should have  
22          known, of the existence of the personal injury, death or  
23          property damage, but in no event shall such action be brought  
24          more than 8 years after the date on which such personal injury,  
25          death or property damage occurred. In any such case, if the  
26          person entitled to bring the action was, at the time the

1 personal injury, death or property damage occurred, under the  
2 age of 18 years, or under a legal disability, then the period  
3 of limitations does not begin to run until the person attains  
4 the age of 18 years, or the disability is removed.

5 (e) Replacement of a component part of a product unit with  
6 a substitute part having the same formula or design as the  
7 original part shall not be deemed a sale, lease or delivery of  
8 possession or an alteration, modification or change for the  
9 purpose of permitting commencement of a product liability  
10 action based on the doctrine of strict liability in tort to  
11 recover for injury or damage claimed to have resulted from the  
12 formula or design of such product unit or of the substitute  
13 part when such action would otherwise be barred according to  
14 the provisions of subsection (b) of this Section.

15 (f) Nothing in this Section shall be construed to create a  
16 cause of action or to affect the right of any person to seek  
17 and obtain indemnity or contribution.

18 (g) The provisions of this Section 13-213 of this Act  
19 apply to any cause of action accruing on or after January 1,  
20 1979, involving any product which was in or entered the stream  
21 of commerce prior to, on, or after January 1, 1979.

22 (Source: P.A. 85-907; 86-1329.)