



Sen. Michael E. Hastings

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LRB104 06446 JRC 24721 a

1 AMENDMENT TO SENATE BILL 328

2 AMENDMENT NO. _____. Amend Senate Bill 328 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-616 as follows:

6 (735 ILCS 5/2-616) (from Ch. 110, par. 2-616)

7 Sec. 2-616. Amendments.

8 (a) At any time before final judgment amendments may be
9 allowed on just and reasonable terms, introducing any party
10 who ought to have been joined as plaintiff or defendant,
11 dismissing any party, changing the cause of action or defense
12 or adding new causes of action or defenses, and in any matter,
13 either of form or substance, in any process, pleading, bill of
14 particulars or proceedings, which may enable the plaintiff to
15 sustain the claim for which it was intended to be brought or
16 the defendant to make a defense or assert a cross claim.

1 (b) The cause of action, cross claim or defense set up in
2 any amended pleading shall not be barred by lapse of time under
3 any statute or contract prescribing or limiting the time
4 within which an action may be brought or right asserted, if the
5 time prescribed or limited had not expired when the original
6 pleading was filed, and if it shall appear from the original
7 and amended pleadings that the cause of action asserted, or
8 the defense or cross claim interposed in the amended pleading
9 grew out of the same transaction or occurrence set up in the
10 original pleading, even though the original pleading was
11 defective in that it failed to allege the performance of some
12 act or the existence of some fact or some other matter which is
13 a necessary condition precedent to the right of recovery or
14 defense asserted, if the condition precedent has in fact been
15 performed, and for the purpose of preserving the cause of
16 action, cross claim or defense set up in the amended pleading,
17 and for that purpose only, an amendment to any pleading shall
18 be held to relate back to the date of the filing of the
19 original pleading so amended.

20 (b-5) If a clerk's office rejects an electronically
21 submitted document for any of the reasons stated in the
22 Electronic Filing Rejection Standards as provided by the
23 Supreme Court Rules, the later filing of the original document
24 with the error or errors corrected relates back to the earlier
25 date of the electronic submission of the original document.
26 Any submission of a corrected original document as set forth

1 in this subsection must be made within 7 business days of the
2 date that the clerk's office served notice upon the party that
3 it has rejected the submitted document.

4 (b-10) If a clerk's office does not file an electronically
5 submitted document because of a technical failure of any
6 court-approved electronic filing system, the later filing of
7 that document relates back to the date the original document
8 was electronically submitted.

9 (c) A pleading may be amended at any time, before or after
10 judgment, to conform the pleadings to the proofs, upon terms
11 as to costs and continuance that may be just.

12 (d) A cause of action against a person not originally
13 named a defendant is not barred by lapse of time under any
14 statute or contract prescribing or limiting the time within
15 which an action may be brought or right asserted, if all the
16 following terms and conditions are met: (1) the time
17 prescribed or limited had not expired when the original action
18 was commenced; (2) the person, within the time that the action
19 might have been brought or the right asserted against him or
20 her plus the time for service permitted under Supreme Court
21 Rule 103(b), received such notice of the commencement of the
22 action that the person will not be prejudiced in maintaining a
23 defense on the merits and knew or should have known that, but
24 for a mistake concerning the identity of the proper party, the
25 action would have been brought against him or her; and (3) it
26 appears from the original and amended pleadings that the cause

1 of action asserted in the amended pleading grew out of the same
2 transaction or occurrence set up in the original pleading,
3 even though the original pleading was defective in that it
4 failed to allege the performance of some act or the existence
5 of some fact or some other matter which is a necessary
6 condition precedent to the right of recovery when the
7 condition precedent has in fact been performed, and even
8 though the person was not named originally as a defendant. For
9 the purpose of preserving the cause of action under those
10 conditions, an amendment adding the person as a defendant
11 relates back to the date of the filing of the original pleading
12 so amended.

13 (e) A cause of action against a beneficiary of a land trust
14 not originally named a defendant is not barred by lapse of time
15 under any statute or contract prescribing or limiting the time
16 within which an action may be brought or right asserted, if all
17 the following terms and conditions are met: (1) the cause of
18 action arises from the ownership, use or possession of real
19 estate, record title whereto is held by a land trustee; (2) the
20 time prescribed or limited had not expired when the original
21 action was commenced; (3) the land trustee of record is named
22 as a defendant; and (4) the plaintiff proceeds with reasonable
23 diligence subsequent to the commencement of the action to
24 serve process upon the land trustee, to determine the identity
25 of the beneficiary, and to amend the complaint to name the
26 beneficiary as a defendant.

1 (f) The changes made by this amendatory Act of the 92nd
2 General Assembly apply to all complaints filed on or after the
3 effective date of this amendatory Act, and to complaints filed
4 before the effective date of this amendatory Act if the
5 limitation period has not ended before the effective date.

6 (g) The changes made by this amendatory Act of the 104th
7 General Assembly apply to actions commenced or pending on or
8 after the effective date of this amendatory Act.

9 (Source: P.A. 92-116, eff. 1-1-02.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."