



SENATE BILL 393: Constructive Fraud/Limitations Period

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Sen. Clodfelter
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SUMMARY: *Senate Bill 393 establishes a three year statute of limitations for claims alleging constructive fraud other than claims seeking relief against a fraudulent transfer or an unfair and deceptive trade practice.*

CURRENT LAW: A statute of limitations establishes the period of time within which a civil action must be commenced. Under G.S. 1-52(9), a claim for relief based on fraud or mistake is subject to a three year limitations period, which begins to run when the aggrieved party discovers the facts constituting the fraud or mistake, or when, in the exercise of reasonable diligence, such facts should have been discovered.¹

The limitations period for a claim based on constructive fraud² has been held to be subject to the ten year statute of limitations under G.S. 1-56 applicable to all actions for which a limitations period has not been provided elsewhere.³

BILL ANALYSIS: Senate Bill 393 would amend G.S. 1-52(9) to make constructive fraud claims subject to the three year limitations period applicable to claims based on actual fraud, except for claims alleging constructive fraud that seek relief against an unfair and deceptive trade practice⁴ or a fraudulent transfer.⁵

The bill also clarifies that a claim alleging actual fraud under G.S. 75-1.1 is not subject to the three-year limitations period under G.S. 1-52(9).⁶

As with claims based on actual fraud or mistake, the bill would provide that the limitations period for a claim based on constructive fraud does not begin to run until the discovery by the aggrieved party of the facts constituting the constructive fraud.

EFFECTIVE DATE: This act is effective when it becomes law and applies to claims arising on or after that date.

¹ G.S. 1-52(9); Vail v. Vail, 233 N.C. 109, 116, 63 S.E.2d 202, 207 (1951) (citations omitted).

² Constructive fraud is committed when a person having a fiduciary relationship with another takes advantage of his or her position of trust for his or her own gain to the detriment of the other. State ex rel. Long v. Petree Stockton, L.L.P., 129 N.C. App. 432, 445, 499 S.E.2d 790, 798 (1998).

³ NationsBank of N. Carolina, N.A. v. Parker, 140 N.C. App. 106, 113, 535 S.E.2d 597, 602 (2000).

⁴ G.S. 75-1.1 makes it unlawful to engage in "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

⁵ Article 3A of Chapter 39 of the General Statutes provides relief to creditors against a debtor's transfer of assets under specified circumstances, including transfers made with the intent to hinder, delay or defraud any creditor of the debtor.

⁶ A civil action brought under Chapter 75 must be brought within four years after the cause of action accrues. G.S. 75-16.2.

