

# Exhibit F

**F. Discussion of Codification of Arkansas Code § 16-56-106.**

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021

As Engrossed: S4/19/21

# A Bill

SENATE BILL 640

4  
5 By: Senator K. Hammer  
6 By: Representative Penzo

## For An Act To Be Entitled

9 AN ACT TO EXTEND THE STATUTE OF LIMITATIONS FOR  
10 MEDICAL DEBT IN CERTAIN CIRCUMSTANCES; AND FOR OTHER  
11 PURPOSES.

### Subtitle

15 TO EXTEND THE STATUTE OF LIMITATIONS FOR  
16 MEDICAL DEBT IN CERTAIN CIRCUMSTANCES.

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18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20  
21 SECTION 1. Arkansas Code § 16-56-106(b), concerning the statute of  
22 limitations for collection of a debt for medical services, is amended to read  
23 as follows:

24 (b) ~~No~~ An action shall not be brought to recover charges for medical  
25 services performed or provided after March 31, 1985, by a physician or other  
26 medical service provider after the expiration of a period of ~~two~~ ~~(2)~~ five (5)  
27 years from the date the services were performed or provided or from the date  
28 of the most recent partial payment for the services, whichever is later.

29  
30 SECTION 2. DO NOT CODIFY. Contingent effectiveness.

31 (a) Section 1 of this act becomes effective only if the Consumer  
32 Protection for Medical Debt Collections Practices Act, H.R. 5330, 116th Cong.  
33 becomes law on or before January 1, 2026.

34 (b) This act shall not be effective if the Consumer Protection for  
35 Medical Debt Collections Practices Act, H.R. 5330, 116th Cong. (2019), does  
36 not become law on or before January 1, 2026.



suited counterclaims for negligence and interference with business expectancies, which were untimely under this section because they were filed more than three years after the lender refused further funding of the loan and were not saved by § 16-56-126 because they were filed more than two years after the voluntary non-suit. *Grand Valley Ridge, LLC v. Metro. Nat'l Bank*, 2012 Ark. 121, 388 S.W.3d 24 (2012).

In a creditor's breach of contract suit arising from cross-defaulted loan agreements, counterclaims asserting causes of action for fraud, breach of fiduciary duty, negligence, breach of contract, and deceptive trade practices were time-barred. *Bank of Am., N.A. v. JB Hanna, LLC*, 766 F.3d 841 (8th Cir. 2014).

In a dispute over family burial plots, appellants' cause of action accrued in 2006 at the time the headstone was placed by appellee, signifying appellee's and her husband's intention to claim the property for their burial plot, because, at that moment, the injury to appellants' claim to the property had occurred and the three-year statute of limitations in subdivision (4) of this section began to run; however, because the cause of action was not filed within three years of that date and Arkansas did not recognize the tort theory of continuing trespass for limitations purposes, the trial court did not err in holding that the statute of limitations barred appellants' claim and in granting summary

judgment in favor of appellee. *Cason v. Lambert*, 2015 Ark. App. 213, 462 S.W.3d 681 (2015).

#### **Trespass.**

Estate administrator's amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under subdivisions (4) and (6) of this section, the three-year statute of limitations for trespass and conversion, and § 16-56-108, the two-year statute of limitations applicable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to § 18-60-102. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. *Travis Lumber Co. v. Deichman*, 2009 Ark. 299, 319 S.W.3d 239 (2009).

#### **Trusts.**

Although the beneficiary's claims nominally sounded in tort, they were predominantly assertions of a breach of trust; therefore, the statute of limitations in the Arkansas Trust Code in § 28-73-1005 controlled, rather than the more general three-year tort limitations period in this section. The beneficiary's allegations clearly involved claims that the trustee breached her duties as trustee in her administration of the trusts. *Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137 (2019).

**Cited:** *Moody v. Tarvin*, 2016 Ark. App. 169, 486 S.W.3d 242 (2016).

### ✓ 16-56-106. Recovery of charges for medical services. [Effective if contingency in Acts 2021, No. 1032, § 2, is met.]

(a) No action shall be brought to recover charges for medical services performed or provided prior to April 1, 1985, by a physician or other medical service provider after the expiration of a period of eighteen (18) months from the date the services were performed or provided.

(b) An action shall not be brought to recover charges for medical services performed or provided after March 31, 1985, by a physician or other medical service provider after the expiration of a period of five (5) years from the date the services were performed or provided or from the date of the most recent partial payment for the services, whichever is later.

**History.** Acts 1983, No. 638, § 1; 1985, No. 894, § 1; A.S.A. 1947, § 37-245; Acts 2021, No. 1032, § 1.

**Publisher's Notes.** For text of section

effective until the contingency is met, see the bound volume.

**Amendments.** The 2021 amendment, in (b), substituted "An action shall not" for

“No action shall” and “five (5) years” for “two (2) years”.

**Effective Dates.** Acts 2021, No. 1032, § 2. Contingent effective date clause provided: “(a) Section 1 of this act becomes effective only if the Consumer Protection for Medical Debt Collections Practices Act,

H.R. 5330, 116th Cong. becomes law on or before January 1, 2026. (b) This act shall not be effective if the Consumer Protection for Medical Debt Collections Practices Act, H.R. 5330, 116th Cong. (2019), does not become law on or before January 1, 2026.”

**CASE NOTES**

**Applicability.**

Where Chapter 13 debtors filed a complaint alleging that a creditor violated the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., by filing a proof of claim in an attempt to collect a medical services debt that was potentially time-barred under this section, the court dismissed their complaint, as they could have simply objected to the proof of claim under one of the exceptions provided in the Bankruptcy Code or could have proceeded under the Bankruptcy Rules, arguing that the claim was not warranted by existing law. The FDCPA was not the controlling statute after debt-

ors filed a voluntary petition, and debtors could not bypass procedural safeguards in the Bankruptcy Code in favor of asserting a potentially more lucrative claim under the FDCPA. *Gatewood v. CP Medical LLC* (In re Gatewood), No. 5:13-bk-73363, 2015 Bankr. LEXIS 2906 (Bankr. W.D. Ark. Feb. 6, 2015), *aff'd*, *Gatewood v. CP Med., LLC* (In re Gatewood), 533 B.R. 905 (B.A.P. 8th Cir. 2015) (“[f]iling in a bankruptcy case an accurate proof of claim containing all the required information, including the timing of the debt, standing alone, is not a prohibited debt collection practice”).

✓ **16-56-108. Recovery of statutory penalties.**

**CASE NOTES**

**Applicability.**

Estate administrator’s amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under § 16-56-105(4) and (6), the three-year statute of limitations for trespass and conversion, and this section, the two-year statute of limitations appli-

cable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to § 18-60-102. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. *Travis Lumber Co. v. Deichman*, 2009 Ark. 299, 319 S.W.3d 239 (2009).

✓ **16-56-111. Notes and instruments in writing and other writings.**

**CASE NOTES**

ANALYSIS

Applicability.  
Attorneys.  
Choice of Law.  
Date of Accrual.  
Debts.  
—Acceleration Clauses.  
—Credit Card Debt.  
Insurance.  
Lease.  
Property Settlement Agreement.

Real Estate Interests.  
Written Acknowledgement of Oral Contract.  
Written Instruments.

**Applicability.**

Employee’s ERISA claims for benefits under 29 U.S.C.S. § 1132(a), (e)(1), and (f); penalties under § 1132(c)(1); and breach of fiduciary duty under 29 U.S.C.S. § 1105(a) and (b), were dismissed because (1) the three-year statute of limitations set forth in § 16-56-105(3) applied to the

**16-56-106. Recovery of charges for medical services.**

(a) No action shall be brought to recover charges for medical services performed or provided prior to April 1, 1985, by a physician or other medical service provider after the expiration of a period of eighteen (18) months from the date the services were performed or provided.

(b) No action shall be brought to recover charges for medical services performed or provided after March 31, 1985, by a physician or other medical service provider after the expiration of a period of two (2) years from the date the services were performed or provided or from the date of the most recent partial payment for the services, whichever is later.

**History.** Acts 1983, No. 638, § 1; 1985, No. 894, § 1; A.S.A. 1947, § 37-245.

**CASE NOTES****ANALYSIS**

Constitutionality.  
Applicability.  
Fraud.  
Ignorance of right.  
Medical service provider.  
Partial payment.  
Revival of debt.

**Constitutionality.**

Limitation period in this section is both reasonable and constitutional. *Ballheimer v. Service Fin. Corp.*, 292 Ark. 92, 728 S.W.2d 178 (1987); *HCA Medical Servs. of Midwest, Inc. v. Rodgers*, 292 Ark. 359, 730 S.W.2d 229 (1987).

Applying this section to debt for hospital services incurred prior to the enactment of this section was not unconstitutional. *Thomas v. Service Fin. Corp.*, 293 Ark. 190, 736 S.W.2d 3 (1987).

**Applicability.**

This section, and not § 16-56-111, covers all actions brought to recover charges for medical services. *Ballheimer v. Service Fin. Corp.*, 292 Ark. 92, 728 S.W.2d 178 (1987).

Limitations period contained in this section, and not that of § 16-56-111, is applicable to a debt for hospital services. *Thomas v. Service Fin. Corp.*, 293 Ark. 190, 736 S.W.2d 3 (1987).

**Fraud.**

No mere ignorance on the part of the plaintiff of his rights, nor the mere silence of one who is under no obligation to speak, will prevent the statute bar; there must be

some positive act of fraud, something so furtively planned and secretly executed as to keep the plaintiff's cause of action concealed, or perpetrated in a way that it conceals itself. And if the plaintiff, by reasonable diligence, might have detected the fraud, he is presumed to have had reasonable knowledge of it. *Miles v. A.O. Smith Harvestore Prods., Inc.*, 992 F.2d 813 (8th Cir. 1993).

Representations in a seller's promotional magazine which did not contain information regarding problems with a product did not rise to the level of affirmative conduct concealing buyer's cause of action sufficient to toll the statute of limitations. *Miles v. A.O. Smith Harvestore Prods., Inc.*, 992 F.2d 813 (8th Cir. 1993).

**Ignorance of Right.**

A plaintiff's ignorance of his or her right to sue does not toll the running of the statute of limitations. *Miles v. A.O. Smith Harvestore Prods., Inc.*, 992 F.2d 813 (8th Cir. 1993).

**Medical Service Provider.**

A psychologist is not a medical service provider within the meaning of this section. *Southwestern Human Servs. Inst., Inc. v. Mitchell*, 287 Ark. 59, 696 S.W.2d 722 (1985).

Hospital held medical service provider. *Ballheimer v. Service Fin. Corp.*, 292 Ark. 92, 728 S.W.2d 178 (1987).

**Partial Payment.**

A partial payment begins the running of the statute of limitations; a five-dollar payment was sufficient. *Jones v. Hempel*, 316 Ark. 647, 873 S.W.2d 540 (1994).