

Duplicates/Conflicts with/Companion to/Relates to:

n/a

Duplicates/Relates to Appropriation in the General Appropriation Act

n/a

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 73 amends Section 37-1-30 – “Action for Damages Due to Childhood Sexual Abuse – Limitations on Actions” – to eliminate a statute of limitations to bring such a lawsuit “for [a]n action for damages based on personal injury caused by childhood sexual abuse[.]”

Currently, Section 37-1-30 provides that an action must be brought by the latest of two dates: (1) the person’s twenty-fourth birthday or (2) three years from the date that the person disclosed the sexual abuse to a licensed medical or mental health care provider in the context of receiving health care. These subsections are deleted and the bill provides that the cause of action “**may be commenced at any time.**”

Section 37-1-30 currently provides that the causes of action are for conduct that would, if prosecuted as a criminal matter, be a violation of Section 30-9-11 (criminal sexual penetration of a minor), Section 30-9-13 (criminal sexual contact of a minor), or the Sexual Exploitation of Children Act.

HB further amends Section 37-1-30 to add a Subsection D which makes the change of eliminating a statute of limitations retroactive. That is, it will apply to “all actions not currently pending based on childhood sexual abuse regardless of the date of the childhood sexual abuse and regardless of whether any statute of limitations on such actions expired prior to the effective date of this 2025 act.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None for this agency.

SIGNIFICANT ISSUES

The retroactive portion – the new Subsection D – expresses legislative intent to apply to all cases not yet filed, regardless of the date of the childhood sexual abuse and regardless of whether any existing statute of limitations would have expired before the effective date of this new proposed bill. Therefore, the existing statute of limitations applies only to pending cases which have

already been filed. Any instance of childhood sexual abuse, which qualifies under Section 37-1-30, can therefore potentially be brought as a lawsuit at any time.

“Generally, a statute is applied prospectively unless the legislature has made clear its intention to apply it retroactively.” *State v. Perea*, 2001-NMSC-026, ¶ 4, 130 N.M. 732; *see also* NMSA 1978, § 12-2A-8 (1997) (“A statute or rule operates prospectively only unless the statute or rule expressly provides otherwise or its context requires that it operate retrospectively.”). *See also In re Estate of Salopek*, 2005-NMCA-016, ¶ 5, 137 N.M. 47 (recognizing the New Mexico rule of statutory construction that “statutes, except those dealing with remedial procedures, are presumed to operate prospectively unless there is clear legislative intent to give the statute retroactive effect”).

In *State v. Morales*, 148 N.M. 305, the Supreme Court considered whether the 1997 amendment to the criminal statute of limitations (Section 30-1-8) which abolished a statute of limitations for capital crimes and first-degree violent felonies applied retroactively to crimes committed before the amendment’s effective date. The Court concluded that amendment to unexpired statutes of limitation generally do not affect vested substantive rights and can apply to actions filed after their effective dates, even if the events giving rise to the actions occurred prior to the effective dates. Therefore, if the statute of limitations is extended *before* the original period has expired, then it can be applied to existing causes of actions without being considered retroactive.

Under the *Morales* reasoning, this new extension of the statute would only apply to actions in which the existing statute of limitations had not expired. That is, if the person has not yet reached their twenty-fourth birthday or three years has not yet elapsed from the person’s disclosure to a licensed medical health care provider. However, the explicit language in the bill – “regardless of whether any statute of limitations on such actions expired prior to the effective date of this 2025 act” - obviates this limitation and provides for retroactivity.

Moreover, in *Gryorwicz v. Trujillo*, 2006-NMCA-089, 140 N.M. 129, the Court of Appeals held that the statute of limitations established in Section 37-1-30 applied to the plaintiff’s cause of action because it had not yet been filed when the section became applicable. That is, the defendant can have no vested right if the lawsuit is not pending when the new statute of limitations becomes effective. The proposed language that the elimination of the statute of limitations will apply “all actions not currently pending based on childhood sexual abuse regardless of the date of the childhood sexual abuse” follows this reasoning. Even without this language, this enlargement of the statute of limitations could apply to cases not filed.

PERFORMANCE IMPLICATIONS

n/a

ADMINISTRATIVE IMPLICATIONS

n/a

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

n/a

OTHER SUBSTANTIVE ISSUES

n/a

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The statute of limitations for such causes of actions will remain.

AMENDMENTS

n/a