

**H.B. 1382
REVIVING TIME-BARRED CIVIL CLAIMS**

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**ON BEHALF OF THE
AMERICAN TORT REFORM ASSOCIATION**

**BEFORE THE NORTH DAKOTA
HOUSE JUDICIARY COMMITTEE**

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On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to express our concerns regarding H.B. 1382, which would revive time-barred civil claims.

I am a partner in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. I have written extensively on liability law and civil justice issues. I received my law degree and a Master of Public Administration from George Washington University, where I serve as an adjunct law professor. I have testified across the country on bills similar to H.B. 1382. I serve as co-counsel to ATRA, a broad-based coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation.

Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims. I commend the Committee for considering steps to protect children and help survivors of abuse. My testimony today focuses on general principles underlying statutes of limitations, as well as the reasons why retroactive changes to these laws, and particularly reviving time-barred claims, are often viewed as unsound policy by legislatures and unconstitutional by courts.

Changes to any statute of limitations should be examined objectively based on core principles. ATRA believes that for statutes of limitations to serve their purpose of encouraging prompt and accurate resolution of lawsuits and to provide the predictability and certainty for which they are intended, they must be, at minimum: (1) finite; and (2) any changes must be prospective. ATRA is concerned that the two-year reviver window contained in H.B. 1382 strays from these principles and may set a troubling precedent for other types of civil cases.

Statutes of Limitations: An Overview

Why do we have statutes of limitations? By encouraging claims to be filed promptly, statutes of limitations help judges and juries decide cases based on the best evidence available. They allow court to evaluate liability (in negligence cases, what a person or organization should have done to fulfill its duty of care) when witnesses can

testify, when records and other evidence is available, and when memories are fresh. As the U.S. Supreme Court has recognized, “the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.”¹

Tort law, by its very nature, often deals with horrible situations that have a dramatic impact on a person’s life and the lives of others. No matter how tragic or appalling the conduct, or serious injury, North Dakota law requires a plaintiff to file a lawsuit within a certain time. For example, in North Dakota:

- When a person is seriously injured due to a drunk driver, he or she must file a civil lawsuit within six years, which is the general period that applies to personal injury claims.²
- A lawsuit alleging that a parent or child died because of someone’s wrongful conduct must be filed within two years of the person’s death.³
- Lawsuits alleging harm due to a doctor’s lack of due care must be filed within two years of the injury or discovery of the injury, but not more than six years from when treatment occurred.⁴

What these examples show is that the length of a statute of limitations is not typically based on the severity of the injury or the heinousness of the conduct at issue. The length of time to file a claim typically reflects the nature of the evidence. Claims involving hard evidence such as written contracts or land tend to have longer statutes of limitations. Cases involving standards of care and that rely on witness testimony to determine what was done or not done tend to have shorter periods to file a claim.

In addition to helping courts and juries reach accurate decisions, and safeguarding due process, statutes of limitations also allow businesses and nonprofit organizations to accurately gauge their potential liability and make financial, insurance coverage, and document retention decisions accordingly.

North Dakota’s statutes of limitations reflect a legislative judgment that a two to six-year period typically provides claimants with adequate time to pursue a claim while giving defendants a fair opportunity to contest complaints made against them. In addition, North Dakota law recognizes that when the injury is to a child, he or she must

¹ *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

² N.D. Code § 28-01-16(5).

³ N.D. Code § 28-01-18(4).

⁴ N.D. Code § 28-01-18(3), (4).

have additional time to bring a claim. When a child is harmed, the clock generally does not begin until he or she becomes an adult (18).⁵

North Dakota's Current Statute of Limitations for Lawsuits Alleging Injuries Resulting from Childhood Sexual Abuse

Over the past decade, North Dakota has twice extended its statute of limitation for civil actions alleging injuries resulting from childhood sexual abuse twice. Before 2011, the general statute of limitations for personal injury claims applied, providing six years of turning 18 to file a claim. That year, the legislature enacted a statute of limitations specifically for childhood sexual abuse claims that provided survivors with significantly more time to file a claim. Rather than provide a hard number of years to file a claim from the abuse or turning 18, the legislature enacted a law that allows lawsuits to be filed within seven years of discovery of the abuse and the resulting injury.⁶ In 2015, the legislature further extended that law to provide ten years rather than seven years of knowing of the abuse to file a claim.⁷ Those periods applied prospectively and did not open the door to claims alleging conduct that occurred decades ago. H.B. 1382 amends this statute.

The Proposed Legislation

H.B. 1382 would open a two-year “window” during which the statute of limitations – any past statute of limitations – is completely set aside. Those claims, whether they occurred in 2009 or 1929, are “revived.” During this window, there is no time limit at all. To my knowledge, North Dakota has never taken such an extraordinary approach for any type of civil claim.

It is critical to recognize that the legislation does not distinguish between lawsuits filed against perpetrators and organizations. In many cases, the perpetrator will be dead. The lawsuits will claim that an organization failed to take adequate steps in the 1940, 1950s, or 1960s to protect the safety of the victim. The bill would allow claims against organizations based purely on negligence, meaning that a lawsuit only needs to assert that an organization should have taken additional steps to detect, avoid, or stop abuse many years ago, or should have had better practices for hiring or supervising employees or volunteers. These lawsuits do not need to show that an organization knew of abuse and allowed, enabled, or concealed it.

The legislation will result in a surge of decades-old claims that, if they go to trial, will place a jury face-to-face with a plaintiff who has no doubt experienced a horrible crime. On the other side will be an organization in the position of showing what it knew

⁵ See, e.g., N.D. Code § 28-01-25.

⁶ S.L. 2011, ch. 231, § 1 (eff. Aug. 1, 2011).

⁷ S.L. 2015, ch. 234 (eff. Aug. 1, 2015) (S.B. 2331).

or didn't know, or what it did or didn't do, when the perpetrator is dead, those who worked at the organization at the time are long gone, and any records have long been discarded. In fact, the defendant – whether it is a day camp or doctor's office – may have been sold to a new owner, who will inherit the former entity's liabilities, including these lawsuits. With no ability to defend itself, an organization will have only one choice regardless of its level of responsibility; settle. That liability will be imposed on the current owner and affect those who the organization serves today. That is what occurs when a statute of limitations is abandoned.

Reviving Time-Barred Claims Sets a Troubling Precedent

Discarding a statute of limitations and reviving-time barred claims, even temporarily, also sets a troubling precedent. As discussed earlier, tort claims often address horrible, tragic situations. Whether the claim involves an illness from exposure to a toxic substance, a birth defect associated with a drug, or a death resulting from wrongful conduct, North Dakota law sets a finite period to bring a claim to protect the ability of the judicial system to reach accurate decisions on liability based on reliable evidence.

H.B. 1382 may open the door to reviving any other claim in which the statute of limitations, when applied in an individual case or particular situation, is viewed as unfair. Why not take the same approach in other cases where there are allegations of wrongful conduct and that occurred decades ago? Product liability, asbestos litigation, climate change – there are many possibilities.⁸ As discussed earlier, however, taking this approach makes the civil justice system unpredictable, unreliable, and unfair.

Questionable Constitutionality

Reviving time-barred claims may also be unconstitutional. I have not had an opportunity to study North Dakota's constitutional law, but several state supreme courts have observed, "The weight of American authority holds that the [statute of limitations] bar does create a vested right in the defense" that does not allow the

⁸ These concerns are not hypothetical. Such bills are occasionally introduced and typically do not gain traction, but making an exception here may open the door to more of these proposals. *See, e.g.*, Maine LD 250 (2019) (proposing retroactive expansion of the statute of limitations for product liability claims from six to fifteen years; reported "ought not to pass"); Cal. SB 1161 (2016) (proposing revival of time-barred actions under the state's unfair competition law against businesses alleging that they deceived, confused, or misled the public on the risks of climate change or financially supported activities that did so; reported from committee but died without floor vote); Cal. AB 15 (2015) (proposing a ten-year statute of limitations for torts involving certain human rights abuses that would have applied retroactively to revive time-barred claims that occurred up to 115 years earlier; provision removed and made prospective); Oregon S.B. 623 (2011) (proposing revival of time-barred asbestos claim during two-year window; died in committee).

legislature to revive a time-barred claim.⁹ States reach this result through applying due process safeguards, a remedies clause, a specific state constitutional provision prohibiting retroactive legislation, or another state constitutional provision.¹⁰ These cases generally recognize that a legislature cannot take away vested rights. It is a principle that is equally important to plaintiffs and defendants. These courts generally find that the legislature cannot retroactively shorten a statute of limitations and take away an accrued claim (such as by reducing a three-year period to one year, when a plaintiff is two years from accrual of the claim). Nor can it extend a statute of limitations after the claim has expired. Courts have applied these constitutional principles to not allow revival of time-barred claims in a wide range of cases—negligence claims, product liability actions, asbestos claims, and workers’ compensation claims, among others.

Last summer, the Utah Supreme Court was the latest to find similar reviver legislation (a three-year window that revived claims only against perpetrators) unconstitutional. While the court “appreciated the moral impulse and substantial public policy justifications” for the reviver, the court unanimous held that the principle that the legislature violates due process by retroactively reviving a time-barred claim is “well-rooted in our precedent,” “confirmed by the extensive historical material,” and has been repeatedly reaffirmed for “over a century.”¹¹

⁹ *Johnson v. Garlock, Inc.*, 682 So.2d 25, 27-28 (Ala. 1996); see also *Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) (“[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred.”); *Frideres v. Schiltz*, 540 N.W.2d 261, 266-67 (Iowa 1995) (“[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action.”); *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816-17 (Me. 1980) (“The authorities from other jurisdictions are generally in accord with our conclusion” that running of the statute of limitations creates a vested right); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341-42 (Mo. 1993) (recognizing constitutional prohibition of legislative revival of a time-barred claim “appears to be the majority view among jurisdictions with constitutional provisions”); *State of Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 369-71 (S.D. 1993) (“Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.”); *Roark v. Crabtree*, 893 P.2d 1058, 1062-63 (Utah 1995) (“In refusing to allow the revival of time-barred claims through retroactive application of extended statutes of limitations, this court has chosen to follow the majority rule.”).

¹⁰ See, e.g., *Garlock*, 682 So.2d at 27-28; *Lilly*, 823 S.W.2d at 885; *Jefferson County Dept. of Social Services v. D.A.G.*, 607 P.2d 1004 (Colo. 1980); *Wiley v. Roof*, 641 So.2d 66, 68-69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 484-85 (Ill. 2009); *Skolak v. Skolak*, 895 N.E.2d 1241, 1243 (Ind. Ct. App. 2008); *Frideres*, 540 N.W.2d at 266-67; *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854-55 (Ky. 2003); *Henry v. SBA Shipyard, Inc.*, 24 So.3d 956, 960-61 (La. Ct. App. 2009), writ denied, 27 So.3d 853 (La. 2010); *Dua v. Comcast Cable*, 805 A.2d 1061, 1072 (Md. 2002); *Dobson*, 415 A.2d at 816-17; *Doe*, 862 S.W.2d at 341-42; *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773-75 (Neb. 1991); *Gould v. Concord Hosp.*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Colony Hill Condominium Assn. v. Colony Co.*, 320 S.E.2d 273 (N.C. 1984); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Doese*, 501 N.W.2d at 369-71; *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn. 1974); *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Roark*, 893 P.2d at 1062-63; *Murray v. Luzenac Corp.*, 830 A.2d 1, 2-3 (Vt. 2003); *Starnes v. Cayouette*, 419 S.E.2d 669, 674-75 (Va. 1992).

¹¹ *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020).

A minority of states find that reviving time-barred claims is permissible or appear likely to reach that result. These states generally follow the approach taken under the U.S. Constitution, which contains an “Ex Post Facto” clause that prohibits retroactive *criminal* laws,¹² including retroactive revival of time-barred criminal prosecutions,¹³ but does not provide a similar prohibition against retroactive laws affecting *civil* claims.¹⁴ For that reason, under federal constitutional law, there is no vested right in a statute of limitations defense that prohibits reviving an otherwise time-barred claim.¹⁵ The U.S. Supreme Court has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution.¹⁶

Two Thirds of States Have Not Taken the Extreme Approach of Reviving Time-Barred Claims

Despite significant and understandable pressure, state legislatures have repeatedly rejected proposals to revive time-barred claims given the importance of statutes of limitations to assessing liability, protecting due process, and maintaining a stable and predictable civil justice system. Instead, most states, like North Dakota, have adopted a finite, but longer, statute of limitations for childhood sexual abuse claims than other claims and applied the longer period to future claims.

Just one-third of states have revived time-barred civil claims alleging injuries from childhood sexual abuse. It is important to recognize, however, that most of these laws place significant constraints on the types of claims that are revived in terms of the timing, application to perpetrators versus entities, and standard of proof. H.B. 1382 has none of these constraints.

No state enacted legislation address this issue in 2020 that I am aware of, but there was a significant amount of legislative activity in 2019. That year, four states enacted legislation that extended the statute of limitations prospectively only.

¹² U.S. Const. art. I, § 9, cl. 3 (“No bill of attainder or ex post facto Law shall be passed.”).

¹³ See *Stogner v. California*, 539 U.S. 607 (2003) (holding that “a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution”).

¹⁴ While the U.S. Supreme Court has provided Congress with more of a free hand to enact retroactive legislation, it has also expressed strong concern with this long “disfavored” approach. See *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994) (“[R]etroactive statutes raise particular concerns. The Legislature’s unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.”).

¹⁵ See *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); *Campbell v. Holt*, 115 U.S. 620, 628 (1885).

¹⁶ See *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

- **Alabama**, one of the few states that had no special statute of limitations for childhood sexual abuse claims, prospectively established a statute of limitation for childhood sexual abuse requiring claims to be filed by age 25.¹⁷
- **Pennsylvania** extended its statute of limitations for childhood sexual abuse claims from 12 years to 37 years of reaching majority.¹⁸ The legislature did not revive time-barred claims because it is constitutionally prohibited from doing so, but began a process for amending its constitution to permit such an approach.¹⁹
- **Tennessee** prospectively changed its law from requiring an action to be filed within 3 years of discovery to 15 years of turning 18 or 3 years of discovery of the abuse.²⁰
- **Texas** prospectively extended the statute of limitations from 15 years to 30 years of majority.²¹

Eight states and the District of Columbia revived time-barred claims in 2019. Some of these states enacted very narrow revivers. For example:

- **Arizona** extended its statute of limitations to 12 years of age 18. It adopted a window that is about 1 1/2 years long that revives claims only where there is clear and convincing evidence that an entity knew an employee or volunteer engaged in sexual abuse.²²
- **Montana's** legislation requires filing a claim within 3 years of abuse or discovery of the abuse. It enacted a 1-year window for claims against perpetrators who are alive and admitted or were convicted of abuse, and claims against entities before the plaintiff is age 27 or not later than 3 years of when a person discovers or should have discovered the injury caused by the abuse.²³
- **Rhode Island** passed a bill extending the statute of limitations for childhood sexual abuse cases from just 7 years to 35 years of turning 18, and providing a 7-year period to bring a claim from when a victim discovers or reasonably

¹⁷ S.B. 11 (Ala. 2019) (to be codified at Ala. Code Ann. § 6-2-8(b)).

¹⁸ H.B. 962 (Pa. 2019).

¹⁹ H.B. 963 (Pa. 2019).

²⁰ H.B. 565 (Tenn. 2019).

²¹ H.B. 3809 (Tex. 2019).

²² H.B. 2466 (Ariz. 2019).

²³ H.B. 640 (Mont. 2019).

should have discovered the injury caused by the abuse. Before enacting this law, the General Assembly removed a 3-year window that would have permitted time-barred claims. Instead, the enacted legislation applies the extended period retroactively for claims brought against perpetrators only and explicitly does not revive time-barred claims against entities.²⁴

Other states adopted somewhat broader revivers with constraints.

- The **District of Columbia** law generally requires a lawsuit to be filed before **age 40** and included a 2-year window reviving claims within that period that will close in May 2021.²⁵
- **North Carolina** extended its statute of limitations from 3 years of age 18 (the period for personal injury lawsuits) to **age 28**. The legislation included a 2-year window for time-barred claims that will close on December 31, 2021.²⁶

California, New York, New Jersey, Vermont, and, earlier, Minnesota adopted the broadest revivers:

- **California** extended its statute of limitations to require filing a claim from 8 years of majority (age 26) to 22 years of majority. The California law includes a second window (3 years) that will not only apply to private entities (as the state's first reviver did in 2003) but also apply to local public schools and government entities.
 - California's one-year window in 2003 led to over 1,000 lawsuits and over \$1.2 billion in liability.²⁷ California Governor Jerry Brown subsequently vetoed two additional revivers that followed, based on this experience.²⁸
 - Within days of enactment of the 2019 law, the *Press Democrat* reported, "the floodgates already are opening."²⁹ The window began in January 2020.

²⁴ S.B. 315 Sub. A (R.I. 2019).

²⁵ D.C. Act 22-593.

²⁶ S.B. 199 (N.C. 2019).

²⁷ See Bart Jones, *Church Pushed to Financial Brink*, *Newsday*, Mar. 22, 2009, at A15; see also David Bailey, *Minnesota Catholic Archdiocese Files for Bankruptcy Protection*, *Reuters*, Jan. 16, 2015.

²⁸ Cal. Office of the Governor, Veto Message, AB 3120 (Sept. 30, 2018), https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB3120; Cal. Office of the Governor, Veto Message, S.B. 131 (Oct. 12, 2013), at http://gov.ca.gov/docs/SB_131_2013_Veto_Message.pdf.

²⁹ Mary Callahan, *New Law Opens Window for Child Sex Abuse Lawsuits in California*, *The Press Democrat*, Oct. 15, 2019.

- **New York** extended its time to file civil claims from 5 years of age 18 (age 23) against a perpetrator and 3 years of age 18 (age 21) for negligence claims against organizations to age 55.³⁰ The New York law included a reviver window that opened on August 14, 2019 and will close on August 14, 2021.³¹
 - Immediately upon enactment of the New York law, plaintiffs' law firms flooded televisions and the internet with advertisements to file a lawsuit. Before the window even opened, a few firms signaled they had 300 to 400 cases ready to be filed.³²
 - The *New York Times* reported that, as the window approached, "major institutions across New York State . . . are preparing for a deluge of lawsuits."³³ *USA Today* described the day the window opened as "a legal free-for-all."³⁴ By the end of the day, 427 revived claims had been filed.³⁵
 - Within five weeks of the window opening, the number of lawsuits had grown to over 700. While about 550 of these lawsuits targeted Catholic churches, the others name public schools, hospitals, summer camps, youth groups, baseball leagues, music schools, after-school clubs, and a martial arts association as defendants.³⁶
 - By the end of the first year of the reviver window, the number of lawsuits filed had climbed to 4,000, with claims dating back to the 1950s. Many of the lawsuits do not even name the perpetrator as a defendant, but allege only that organizations such as the Boy Scouts, Fresh Air Fund, and school districts should have prevented the abuse.³⁷
 - Each of the five judicial districts in New York City has designated a special section to hear revived childhood sexual abuse cases. Statewide, 45 judges have been designated to hear these cases, including 12 in New York City

³⁰ S. 2440 / A. 2683 (N.Y. 2019).

³¹ The period to file revived claims was extended from one to two years. S. 7082 / A. 9036 (N.Y. 2020).

³² Jon Campbell, *Child Victims Act: Why Thousands of New York Sex Abuse Victims Will be Seeking Justice*, Democrat & Chron., Aug. 8, 2019.

³³ Rick Rojas, *He Says a Priest Abused Him. 60 Years Later, He Can Now Sue*, N.Y. Times, Aug. 13, 2019.

³⁴ Steve Orr, *Hundreds of Child Sex Abuse Claims Filed on First Day of New York's Child Victims Act*, USA Today, Aug. 14, 2019.

³⁵ Matthew Laviertes & Jonathan Allen, *As New York Legal Window Opens, Child Sex Abuse Victims Sue Catholic Church, Others*, Reuters, Aug. 14, 2019.

³⁶ Corinne Ramey & Tom McGinty, *New York Sex-Abuse Law Brings Forth Hundreds of New Cases*, Wall St. J., Sept, 29, 2019.

³⁷ Saba Ali, *3,797 and Counting: Child Victims Act Suits in NY Add Up, With More Expected*, Poughkeepsie Journal, Aug. 11, 2020.

- alone. Judges, hearing officers, and mediators will undergo special training and the court system has developed new procedures to handle these cases.³⁸
- Already, at least four New York diocese – Buffalo, Rochester, Rockville Centre (Long Island), Syracuse – have filed for bankruptcy.³⁹ More are expected to follow.
 - **New Jersey** extended its period to file claims to age 55 or 7 years of discovery and adopted broad 2-year revive window, which opened on December 1, 2019.
 - **Vermont** eliminated its statute of limitations and indefinitely revived time-barred claims, though it requires a showing of gross negligence for revived claims against organizations.
 - I was in Vermont when an organization called Sunrise Family Resource Center testified on that bill.⁴⁰ Sunrise testified that for 50 years it has provided youth development, housing, and educational services to Vermont families, serving 1,500 families annually. The nonprofit organization, it said, receives 95% of its funding through state grants. After a former employee was accused of sexual abuse in 1988, the state’s Department of Social and Rehabilitative Services conducted a thorough investigation and found the accusations unfounded. Sunrise testified, however, that the evidence supporting that decision was destroyed in a fire in the late 1990s. Nearly 30 years later, those individuals filed lawsuits against Sunrise. Sunrise testified that reviving time-barred claims is a “zero-sum issue for Sunrise, and for many other organizations like it.” According to the organization, allowing these claims to proceed despite the statute of limitations may lead it to close its doors and hurt the “vulnerable populations who benefit from those programs.”⁴¹
 - **Minnesota** prospectively eliminated its statute of limitations and adopted a 3-year window reviving time-barred claims in 2013. About 850 lawsuits were filed during this period. Five hundred of these lawsuits were against the

³⁸ Dan M. Clark, *NY State Courts Prepared for Flood of Lawsuits Under New Child Victims Act, Officials Say*, Law.com, Aug. 13, 2019.

³⁹ *NY Diocese Files for Bankruptcy Amid Clergy Abuse Lawsuits*, Claims Journal, Oct. 2, 2020.

⁴⁰ See Sunrise Family Resource Center, [Testimony](#) regarding H330, Before the Vermont Senate Jud. Comm., Apr. 18, 2019.

⁴¹ Colin Meyn, *Family Center ‘Muddied The Waters’ on Eliminating Child Abuse Statute of Limitations*, VT Digger, Apr. 19, 2019.

Catholic Church, leading five of the six dioceses in the state to declare bankruptcy.⁴²

Most states that adopted revivers in earlier years did so in very limited ways:

- **Massachusetts** extended its statute of limitations from 3 years of becoming an adult (the general period for personal injury claims) to 35 years of age 18 or 7 years of discovery of the injury in 2014. The new period applied retroactively to revive time-barred claims against perpetrators only.⁴³ Massachusetts also has a low cap on damages in civil claims against charitable organizations.
- **Georgia** extended its statute of limitation to age 23 or 2 years of discovery and enacted a 2-year window reviving time-barred claims against perpetrators only in 2015.⁴⁴
- **Utah** adopted a statute of limitation that allows claims to be filed within 35 years of turning 18 and enacted a 3-year window for claims against perpetrators and those who would be criminally responsible in 2016.⁴⁵ As discussed early, the Utah Supreme Court found that reviver unconstitutional in 2020.
- **Michigan** prospectively extended its statute of limitations to age 28 or 3 years of discovery, and adopted a 90-day reviver window tailored for victims of a convicted criminal, Dr. Larry Nasser in 2018.⁴⁶
- In 2009, **Oregon** extended its statute of limitation to permit claims until age 40 against perpetrators or claims alleging that an entity knowingly allowed, permitted, or encouraged child abuse, and applied that new period retroactively.

⁴² Aaron Aupperlee, *Dioceses Have Gone Bankrupt After Opening Window to Sex Abuse Lawsuits*, Tribune-Review, Dec. 29, 2018.

⁴³ Mass. Act ch. 145, § 8 (2014) (codified at Mass. Gen. Laws ch. 260, § 4C, 4C 1/2). The Massachusetts law's 35-year period for filing a claim is "limited to all claims arising out of or based upon acts alleged to have caused an injury or condition to a minor which first occurred after the effective date of this act" and did not revive time-barred claims. The Massachusetts law's seven-year discovery period, however, applied retroactively.

⁴⁴ Ga. Code Ann. § 9-3-33.1(d)(1) ("The revival of claim...shall not apply to [a]ny claim against an entity.").

⁴⁵ Utah Code Ann. § 78B-2-308(7) (reviving a civil action against an individual who "(a) intentionally perpetrated the sexual abuse;" or "(b) would be criminally responsible for the sexual abuse").

⁴⁶ Mich. Public Act 183 (S.B. 872) (signed June 12, 2018) (amending Mich. Comp. Laws § 600.5805 and adding § 600.5851b). The Michigan law revived claims filed by an individual who, while a minor, was a victim of criminal sexual conduct after December 31, 1996 when the person alleged to have committed the criminal sexual conduct was convicted of criminal sexual conduct and that defendant was (a) in a position of authority over the victim as the victim's physician and used that authority to coerce the victim to submit, or (b) engaged in purported medical treatment or examination of the victim in a manner that is, or for purposes that are, medically recognized as unethical or unacceptable.

Aside from Vermont, two other states have required a showing of gross negligence in revived claims against entities.

- **Delaware** eliminated its statute of limitations and revived time-barred claims during a 2-year window in 2007. It required a showing of gross negligence for revived claims.⁴⁷ Nevertheless, the Roman Catholic Diocese of Wilmington filed for bankruptcy to manage the potential liability resulting from a flood of lawsuits triggered by the window.⁴⁸
- Similarly, **Hawaii** passed a series of 2-year reviver windows beginning in 2012, which also required a showing of gross negligence.⁴⁹ That window closed on April 24, 2020.

By way of contrast, H.B. 1382 provides a two-year window to file a lawsuit against any organization with no time limit and no evidentiary or other safeguards.

* * *

In sum, it is important that North Dakota's civil justice system maintain the predictability and certainty of having a finite statute of limitations for any type of civil claim. Legislation that opens a window during which decades-old claims are revived sets a troubling precedent, allowing decades-old claims where witnesses, records, and other evidence upon which judges and juries can evaluate liability are no longer available. North Dakota's statute of limitations, in providing ten-years to bring a claim from discovery of the abuse, is more open ended than many states, but if the Committee feels that more time is needed, there are alternatives that would provide survivors of childhood sexual abuse with more time to sue without violating core principles of the civil justice system. Thank you again for the opportunity to testify today and considering ATRA's concerns as you address this difficult and important issue.

⁴⁷ Del. Code tit. 10, § 8145(b).

⁴⁸ Ian Urbina, *Delaware Diocese Files for Bankruptcy in Wake of Abuse Suits*, N.Y. Times, Oct. 19, 2009.

⁴⁹ Haw. Rev. Stat. § 657-1.8(b).