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Legal Update

A Statute of Limitations "Lookback" in Pennsylvania: How Likely Is It Now?

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RE: Current prospects for a retroactive civil "lookback"/revival window under Democratic control of the Governor's office, Senate, and House

Bottom Line Up Front

Democratic control of all three political branches makes it more likely than at any point in recent years that Pennsylvania will pursue a "lookback" window — a temporary period reviving childhood sexual abuse claims that are currently barred by the statute of limitations. But political control does not remove the central obstacle. Pennsylvania's courts treat a defendant's expired-claim defense as a constitutionally protected vested right, which is why past efforts targeted a constitutional amendment rather than an ordinary statute. A durable lookback window therefore most likely still requires amending the Pennsylvania Constitution — a multi-year process a legislative majority cannot complete in a single session. A faster, statute-only window is possible, but it would face a serious and well-grounded constitutional challenge.

A lookback (or "revival") window is a limited time period during which the legislature allows lawsuits that would otherwise be too late to be filed. It differs from simply lengthening a deadline going forward: a lookback reaches back and revives claims that have already expired.

Pennsylvania law draws a sharp line between prospectively extending a deadline and reviving a claim that has already expired.

An accrued claim — and the defense to it — is a "vested right." The Pennsylvania Supreme Court holds that once a cause of action has accrued it is a vested right that, under the Remedies Clause of the state constitution (Article I, § 11), may not be eliminated by subsequent legislation. *Ieropoli v. AC&S Corp*., 577 Pa. 138, 151, 842 A.2d 919, 929-930 (2004). Pennsylvania courts extend that protection in both directions. A defendant's "legal exemption from liability ...constituting a complete defense to an action brought, stands on quite as high ground as a right of action," so there is "a vested right in an accrued cause of action, [and] in a defense to a cause of action." *Ieropoli v. AC&S Corp.,* 577 Pa. 138, 151, 842 A.2d 919, 927 (2004).

Reviving an expired claim takes away that vested defense. Pennsylvania's Commonwealth Court has stated the point directly: "Legislation that purports to revive an expired claim violates the constitutional guarantee of 'due course of law.' "*City of Warren v. Workers' Comp. Appeal Bd.* (Haines), 156 A.3d 371, 379 (Pa. Cmwlth. Ct. 2017). Once the limitations bar attaches, the defendant holds an "accrued defense that cannot be taken away," and stripping it away "would violate [the defendant's] constitutional right to 'due course of law." *City of Warren v. Workers' Comp. Appeal Bd.* (Haines), 156 A.3d 371, 380 (Pa. Cmwlth. Ct. 2017). The Pennsylvania Supreme Court has likewise recognized that the Remedies Clause extends to defenses. *Konidaris v. Portnoff L. Assocs., Ltd.,* 598 Pa. 55, 67, 953 A.2d 1231, 1238 (2008).

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That is why prospective extensions are fine, but revival is not. Pennsylvania courts treat a statute of limitations as procedural—it extinguishes the remedy, not the underlying right—so the legislature can lengthen the filing period for claims that are not yet time-barred. But reviving a claim after the bar has attached substantively changes the parties' rights by erasing the defendant's vested defense, which marks the constitutional line Pennsylvania courts have drawn. This doctrine is the reason why proponents revival efforts have been routed toward a constitutional amendment rather than a simple bill.

Where Things Stand Today

Pennsylvania already reformed its childhood-sexual-abuse limitations rules — but only going forward. Act 87 of 2019 gives victims abused as minors until age 55 to sue (a 37-year window after turning 18), and those abused between 18 and 23 until age 30. 42 Pa. Stat. and Cons. Stat. Ann. § 5533. By its own terms, that amendment does not revive claims that had already expired. A companion measure enacted the same day, Act 89 of 2019, voided nondisclosure agreements that bar reporting abuse to law enforcement. 542 Pa. Stat. and Cons. Stat. Ann. § 8316.2. The 2019 package deliberately omitted the retroactive civil window, which is precisely why proponents have continued the separate revival effort on its own track.

Democratic control removes the divided-government bottleneck that previously prevented revival measures from advancing. Expect the issue to move onto the active agenda and expect proponents to press both a constitutional amendment and, possibly, a direct statutory window.

The amendment route is inherently multi-year. Amending the Pennsylvania Constitution requires approval by the legislature in two consecutive two-year sessions and then ratification by the voters at a referendum. Even with full control, that sequence cannot be completed within a single year, so a constitutionally secure lookback window remains, at the earliest, a multi-session project.

A statute-only window would be vulnerable. If proponents instead enact a revival window by ordinary statute to move faster, the authorities above make clear that opponents would immediately challenge it on constitutional grounds, and courts would face substantial pressure to strike it down as an impermissible taking of a vested defense.

Our assessment. The likelihood that Pennsylvania actively advances a lookback window in the coming session is now high. The likelihood that an enforceable retroactive window takes effect quickly is less certain because the constitutional path is slow and the statutory shortcut is legally fragile. The realistic near-term scenario is renewed legislative momentum and, possibly, a statutory window that opponents promptly litigate—not a settled revival window that institutions can treat as a fixed fact in the next twelve months.

What This Means for Institutions

Institutions most exposed to revived historical claims — religious organization, schools and universities, youth-serving organizations, healthcare providers, and their insurers — should not wait for the law to settle. We recommend that potentially affected clients:

1) **Assess potential exposure now.** Identify categories of historical claims that a revival window could reopen.
2) **Preserve records and defense materials.** A lookback would turn decades-old matters into live litigation; locate and protect relevant files, policies, and personnel records before a window opens.

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3) **Review insurance coverage.** Confirm whether historical liability policies would respond to revived claims and notify carriers as appropriate.
4) **Monitor the legislation.** Track both the constitutional-amendment resolutions and any stand-alone statutory window since each carries a very different timeline and litigation profile.

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This Legal Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact Michael O'Brien at 215.851.8532 or mobrien@eckertseamans.com, Mark Reardon at 302.552.2900 or mreardon@eckertseamans.com, Andrew Bond at 215.851.8443 or abond@eckertseamans.com, Francesca Spinelli at 215.851.8407 or fspinelli@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.

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