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Minnesota law extends sexual abuse filing window, puts pressure on archdiocese

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A 2013 Minnesota law easing the state's statute of limitations on sexual abuse claims has led to a barrage of claims against a Minnesota Catholic archdiocese and renewed concerns among institutions nationwide about the potential effect of such laws.

The Archdiocese of Saint Paul and Minneapolis recently filed suit against its liability insurers dating back to 1952 for coverage of claims arising since Minnesota opened a three-year “window” for those with previously time-barred abuse claims. With more than a year before the window closes, the archdiocese has said the growing cost of dealing with the claims may force it to seek bankruptcy protection.

Minnesota is the fifth U.S. jurisdiction to enact a temporary waiver of the statute of limitation for abuse claims, and similar legislation continues to be introduced in several other states.

“Window” legislation and other retroactive extensions of statutes of limitations are a major concern for institutions that care for children, experts say.

“It's not just the (Catholic) church, it's educational institutions, day care and child care providers,” said Jim Dorion, Chicago-based global practice leader for complex liability and risk services with Marsh Risk Consulting, a unit of Marsh L.L.C.

“Institutions have to pay attention in every legislative session to these proposals,” said Mark E. Chopko, a partner with Stradley Ronon Stevens & Young L.L.P. in Washington and a former general counsel for the U.S. Conference of Catholic Bishops. “Any open-ended liability at today's (verdict or settlement) valuations will drive an institution into bankruptcy.”

Minnesota's window statute, the Child Victims Act, went into effect in May 2013 and will run for three years. Since the change in the law, the St. Paul archdiocese has been hit with 20 lawsuits and numerous additional notices of claim, and expects more claims before the window period expires, the archdiocese said in a lawsuit

filed in November 2014 in U.S. District Court in St. Paul against nearly two dozen insurers. They include Fireman's Fund Insurance Co., Travelers Casualty & Surety Co., American Home Assurance Co., Lloyd's of London underwriters and several London market companies.

The insurers — which issued primary and excess general liability policies between 1952 and 1986 — have denied coverage on several grounds, including that there were no “occurrences” under the policies because the alleged abuse was expected or intended by the archdiocese and that there was no bodily injury to victims. The dispute echoes coverage issues raised in many previous clergy abuse cases.

While the archdiocese said it is seeking a “global resolution” to abuse allegations that would rely on insurer contributions, it also reported a \$9.1 million operating loss for fiscal 2014 and said it may seek bankruptcy protection to deal with the claims.

Before the clergy abuse scandal erupted in the 1980s — costing Catholic dioceses more than \$2.3 billion to date — most states required plaintiffs to bring childhood abuse claims within a few years of turning 18. In recent years, though, about one-third of the states have extended or eliminated civil statutes of limitations for childhood abuse, said to Marci A. Hamilton, a professor at Yeshiva University's Benjamin N. Cardozo School of Law in New York.

Many states, for instance, enacted “discovery” rules under which the statute of limitations clock doesn't start ticking until a plaintiff realizes he or she was harmed by childhood abuse. Connecticut and Massachusetts have retroactively allowed plaintiffs up to age 48 and 53, respectively, to file claims, Ms. Hamilton noted.

Window laws, retroactively waiving statutes of limitations for periods of one to three years, have been enacted in five U.S. jurisdictions: California, Delaware, Guam, Hawaii and Minnesota. Hawaii, which created a two-year window in 2012, renewed it for two more years last year.

The laws are needed to redress unfair treatment of abuse victims shut out of court by antiquated time limits, argues Ms. Hamilton, who supports statute of limitations reforms.

But they have also produced floods of claims, huge liability exposure for insurers and strenuous opposition from religious and other nonprofit groups.

California's one-year window in 2003 triggered roughly 1,000 claims, most against Catholic dioceses, and led to the Los Angeles Archdiocese's record \$660 million settlement of abuse claims in 2007.

With the Minnesota window open until 2016, insurers “don't know what to expect and neither does anybody else,” said Mr. Chopko, a policyholder attorney. “You don't know whether you're defending 10 suits or 100 or 1,000 because you have a year and a half to go.”

Some organizations — including religious and educational institutions — are “sitting on lists of people” who would likely become claimants if statutes are extended in other states, Marsh's Mr. Dorion said.

“A certain number of institutions are acutely concerned about where amendments to statutes of limitations might be going,” he said. “Sometimes, that is their best and only defense.”

Opponents have halted legislative action in several states. Bills creating a one-year window in New York, for example, have failed in the state Senate every year for the past five years after passing the state Assembly,

Ms. Hamilton said.

California Gov. Jerry Brown in September vetoed a measure that would have raised the allowable age of childhood abuse claimants to 40 from 28.

Efforts to expand statutes of limitations, though, will continue: A Georgia legislator has already introduced a bill for the state's 2015 session to allow plaintiffs up to age 53 to file childhood abuse claims, a 30-year extension of the current limit.
