

Statement

Insurance Association of Connecticut

Judiciary Committee

March 17, 2010

HB 5473, An Act Concerning Actions To Recover Damages For The Sexual Abuse, Sexual Exploitation Or Sexual Assault Of A Minor

The Insurance Association of Connecticut is opposed to Section 1 of HB 5473, An Act Concerning Actions To Recover Damages For The Sexual Abuse, Sexual Exploitation Or Sexual Assault Of A Minor, as it seeks to retroactively extend the statute of limitations from thirty years to no time limit for civil actions based upon claims of sexual assault of a minor.

Statutes of limitations are designed to provide a finite time in which a person can assert their rights and protect parties from limitless litigation. The time restraints established by statutes of limitations ensure that information is available and evidence does not become stale. Section 1 of HB 5473 will make it extremely difficult to gather evidence that may be relevant to the prosecution of a claim. Furthermore, eliminating the statute of limitations makes it more likely that evidence will no longer exist and parties and witnesses may no longer be living.

Section 1 of HB 5473 specifically seeks to apply retroactively, which shall provide rights to individuals that do not currently exist and could result in a multitude of stale or closed actions to be reopened. As such, the retroactive nature of section 1 of HB 5473 makes radical and potentially unconstitutional changes to the Connecticut Statutes of Limitations laws. Court decisions in the vast majority

of states that have looked at this issue strongly indicate that reviving causes of action that have already expired under the statute of limitations violates the concept of due process. Many courts throughout the country have ruled that lapsed statutes of limitations create vested due process rights in defendants. *See*, e.g. *Wiley v. Roof*, 641 So.2d 66, 68 (Fla. 1994) (holding that “retroactively applying a new statute of limitations robs both plaintiffs and defendants the reliability and predictability of the law.”); *Kelly v. Marcantonio*, 678 A.2d 873, 882-83 (R.I. 1996) (ruling that reviving time-barred childhood sexual abuse claims would “impinge upon a defendant’s vested and substantive rights and would offend a defendant’s art. 1, sec. 2, due process protections.”) Due to the constitutional concern, states have flatly rejected retroactivity with respect to changes in the statutes of limitations on civil claims.

Finally, altering the timeframe for bringing such a cause of action and permitting it to extend to already accrued causes of action is not in the public interest. Reviving time-barred actions for liability for sexual acts towards minors will create an unsound precedent with adverse consequences for other types of actions. Childhood sexual assault victims are, quite understandably, highly sympathetic. But there are many situations where the operation of the statute of limitations may be perceived as unfair to particular individuals or individual groups. For example, a person who has been rendered a paraplegic, or suffered severe burns over most of his body, or an adult victim of sexual assault will find their claims time-barred if they file a complaint just one day after the applicable limitations period expires. The unsettling facts of a particular situation should not

trump the critical importance of the predictability and certainty that statutes of limitations serve.

Due to these public policy and constitutional concerns, other states have overwhelmingly rejected extreme proposals, like section 1 of HB 5473, to retroactively expand the statutes of limitations for child sexual abuse lawsuits. For those reasons, the IAC urges your rejection of Section 1 of HB 5473 or, at the very least, removal of the retroactive effect of the proposal.