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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 35
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 35's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Seitz and Miranda

Local Impact Statement Procedure Required: No

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Highlights

- The bill eliminates the current 12-year period of limitation for an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by such victim asserting any claim resulting from childhood sexual abuse, only for purposes of making claims against a bankruptcy estate.
- The bill narrowly applies to organizations that are classified under a specific subsection of federal law.
- The bill may increase taxable income of Ohio claimants, but the prospective state revenue gain, if any, would depend on the details of settlements arising from lawsuits filed against an estate meeting the criteria set forth by the bill.
- The bill implements a sunset date of five years; as such, all fiscal effects will be relatively short-term.

Detailed Analysis

The bill eliminates the period of limitation, currently 12 years after the age of majority,¹ for a civil action based on a claim of childhood sexual abuse for the purposes of making claims against a bankruptcy estate of an organization chartered under federal law. The bill includes a subset provision to remove this elimination after five years.

¹ The age of majority is 18 years of age, or 21 years of age for a person with a developmental disability or physical impairment.

The elimination would allow an action in this very limited circumstance to be brought. If enacted, the bill will likely have an immediate impact on claims made by certain Ohio claimants in the pending bankruptcy settlement for Boy Scouts of America (BSA), Chapter 11 Plan of Reorganization.

With respect to the BSA restructuring plan, eliminating the period of limitation enables those electing a Trust Claim Submission to receive more money under the Trust Distribution procedures. For these claims, the proposed settlement establishes a claims matrix and delineates six possible tiers to which an allowed abuse claim can be assigned depending on the nature of the abuse. A base value is assigned as a default amount for each tier prior to the application of scaling factors. The scaling factors increase or decrease that default amount. If the claim could be dismissed or denied in the tort system due to the passage of a statute of limitations or repose, the settlement's statute of limitations scaling factor would be applied to scale down the claim amount.² Based on Ohio's current statute of limitation for childhood sexual abuse, 30% to 45% of victims' claims value are allowed under the proposed settlement agreement that is still pending final court action.³ If the bill is enacted, and if the agreement is finalized by the court, Ohio claimants in the BSA will no longer be subjected to the scaling reduction, thus potentially increasing the amount ultimately received by each claimant.

Fiscal effect on local civil justice systems

As mentioned, the most likely and immediate outcome of the bill is that Ohio claimants may receive more money under the BSA settlement if the current proposal is accepted and finalized by the U.S. Bankruptcy Court for the District of Delaware. At the time of the Trust Claim Submission, Direct Abuse Claimants may elect claim determination deferral for a period of 12 months from the restructuring plan's effective date to see if statute of legislation revival legislation occurs in their respective states. The bill could have an impact on local Ohio civil justice systems, given the restructuring plan allows victims to opt out of the trust distribution procedures to pursue claims against certain parties in state court.⁴ The number of potential claims that would instead be settled by trust distribution or litigated in state courts is unknown; however, it is not expected to have a significant impact on civil caseloads for any individual Ohio court. Any additional civil cases that may be filed presumably would be relatively small, with the courts' existing staff and resources absorbing the work and related costs.

Indirect fiscal effect on state and local income tax revenue

Internal Revenue Code (IRC) Section 104 provides an exclusion from taxable income with respect to lawsuits, settlements, and awards.⁵ However, the facts and circumstances surrounding

² See Exhibit A: Trust Distribution Procedures, Article VIII: Claims Matrix and Scaling Factors of the [Third Modified Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC \(PDF\)](#), which is available on the Tort Claimants' Committee (TCC) website: tcbsa.com.

³ See the [Proposed Statute of Limitation Scaling Factor](#), also available on the TCC website.

⁴ A civil action falls under the jurisdiction of common pleas, municipal, and county courts, with the latter two permitted to hear civil cases in which the amount of money in dispute does not exceed \$15,000.

⁵ Refer to the Internal Revenue Service website for [Tax Implications of Settlements and Judgments](#), which can be found on irs.gov.

each settlement payment must be considered to determine the purpose for which the money was received because not all amounts received from a settlement are exempt from taxes. The IRC permits a taxpayer to exclude from federal adjusted gross income (FAGI) “the amount of any damages (other than punitive damages) received . . . on account of personal injuries or physical sickness.” That section further provides that “emotional distress shall not be treated as a physical injury or physical sickness.” The IRS website summarizes the law as follows: “mental and emotional distress arising from nonphysical injuries are . . . excludible from gross income under IRC Section 104(a)(2) only if received on account of physical injury or physical sickness.”

Since FAGI is the starting point for Ohio’s personal income tax (PIT), the bill could create additional tax revenue under the state income tax. However, the additional receipts, if any, are predicated on the nature of the settlement agreements between Ohio claimants and the BSA. Any revenue gains that might result from the bill would be deposited into the GRF, with subsequent transfers of such revenue to the Local Government Fund (1.66% of the revenue), and the Public Library Fund (1.66%).⁶

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⁶ An uncodified provision of H.B. 110 increases the share allocated to the Public Library Fund to 1.70% for the current biennium. The provision would expire and the share decrease to 1.66% on July 1, 2023, under current law.