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FISCAL IMPACT REPORT

SPONSOR: Robinson DATE TYPED: 3/13/03 HB _____
 SHORT TITLE: Limitation on Decedent's Claim for Relief SB 929
 ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
NFI	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Attorney General's Office (AG)
 LFC Files

SUMMARY

Synopsis of Bill

Senate Bill 929 enacts a new section of the Uniform Probate Code which creates a limitation on a decedent's claim for relief. This section applies to all statutes of limitation applicable to the claims for relief of a decedent that arose during the decedent's lifetime.

The bill provides that no decedent's claim for relief will be barred by operation of a statute of limitation less than four months after the decedent's death. Additionally, the bill provides that if a decedent's claim would have been barred less than four months after the decedent's death and is not otherwise tolled, the decedent's claim will be barred after four months following the decedent's death.

The bill provides that unless a statute of limitations is otherwise tolled, if the statute of limitations begins to run before a decedent's death, it shall continue to run unabated against a decedent's claim for relief after the decedent's death.

The bill states that unless specifically designated otherwise by statute, a decedent's claims for relief shall pass directly and exclusively to the personal representative of the decedent's estate. No suit may be filed on behalf of the decedent until a personal representative has been properly qualified and appointed. Further, the statute of limitation shall not begin to run against a decedent's claim for relief that accrues at or after the decedent's death until the personal representative of the decedent's estate has been properly qualified and appointed.

The provisions of the bill would not apply to statutes of limitations applicable to claims of relief of the estate of the decedent.

Significant Issues

The Attorney General's Office (AG) indicates that Section 45-3-109 and the bill apply to the same claims for relief.

- Section 45-3-109 NMSA 1978 applies to “. . . a claim of relief belonging to a decedent which had not been barred as of the date of his death.. .”

The bill only applies “when a decedent’s claim for relief arises before and survives the decedent’s death and is not otherwise barred.”

- Section 45-3-109 NMSA 1978 provides that no statute of limitations shall apply to bar a claim for relief surviving the decedent’s death sooner than four months after death.

The bill provides that no decedent’s claim for relief will be barred by operation of a statute of limitation less than four months after the decedent’s death.

The AG indicates that while this bill appears to clarify and slightly expand the provisions of Section 45-3-109 NMSA 1978 of the Uniform Probate Code, it does not repeal that section and thus, it may appear that some sections of this bill are redundant. However, section 45-3-109 NMSA does not contain language giving the personal representative of the decedent’s estate the exclusive authority, standing and capacity to pursue the decedent’s claims for relief whereas the bill does include such language.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. However, the Administrative Office of the Courts (AOC) indicates that any new provisions to state law that affect the flow of cases in the state courts could impact the judiciary.

There will also be minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

TECHNICAL ISSUES

1. On page 2, line 22 following the word “and”, the word “are” should be deleted and replaced with the word “is.”

OTHER SUBSTANTIVE ISSUES

The AG states that if the intent of the bill is to clarify and expand upon the provisions of Section 45-3-109, an amendment could be considered that repeals the provisions of that section and substitutes the language of this bill.