DRAFT - prepared for discussion and Legislative Council drafting; not filed.

90th Legislature

By: _____ H.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the limitations period for certain actions for injury resulting in death and to the time for giving notice of a claim against a governmental unit arising from such a death.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) evidence establishing that a person other than the perpetrator of a homicide bears civil responsibility for a death is characteristically developed in the related criminal proceeding, through investigation, testimony, and records that the deceased person's family cannot obtain or use while the prosecution is pending;

(2) the two-year limitations period prescribed by Section 16.003(b), Civil Practice and Remedies Code, can expire entirely during the investigation, trial, retrial after a hung jury, and further proceedings in a homicide case, through no fault of the deceased person's family and on a timetable the family does not control;

(3) other jurisdictions, including Virginia and Georgia, have addressed the same collision between a civil limitations period and a pending criminal prosecution by tolling the civil period during the prosecution and guaranteeing the claimant a filing period after the prosecution ends;

(4) this Act lengthens a limitations period that has not yet run, including a period arising from a death that occurred before the effective date of this Act if that period, as lengthened by this Act, had not expired on that date; it protects time within that period, does not revive any cause of action whose limitations period, as lengthened by this Act, expired before the effective date of this Act, and does not disturb any statute of repose.

SECTION 2. Section 16.003(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Except as provided by Section 16.0___, a person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person.

SECTION 3. Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.0___ to read as follows:

Sec. 16.0___. LIMITATIONS PERIOD FOR CERTAIN ACTIONS FOR INJURY RESULTING IN DEATH; EFFECT OF CRIMINAL PROSECUTION.

(a) In this section:

(1) "Homicide case" means a case in which an individual's death was caused by conduct constituting an offense under Chapter 19, Penal Code.

(2) "Qualifying prosecution" means a criminal prosecution in a court of this state of any person for an offense arising out of the act or omission that caused the death in a homicide case, including a prosecution of a person against whom a claim described by Subsection (b) is or may be asserted. The term does not include:

(A) an adjudication proceeding under Title 3, Family Code; or

(B) a prosecution in a federal court or in a court of another state.

(3) A qualifying prosecution commences on the date an indictment charging an offense described by Subdivision (2) is filed or, if indictment is waived or is not required, the date an information charging the offense is filed.

(4) "Conclusion" of a qualifying prosecution means the earliest of:

(A) the date a verdict of guilty or not guilty is rendered, including a verdict on a lesser included offense or, in a trial to the court, the date the court announces a finding of guilty or not guilty;

(B) the date the court accepts a plea of guilty or nolo contendere; or

(C) the date an order is signed that dismisses or otherwise terminates the prosecution.

(5) A jury's inability to reach a verdict, and the resulting discharge of the jury or declaration of a mistrial, is not a conclusion of a qualifying prosecution. After a mistrial, the prosecution remains pending and concludes only on the occurrence of an event described by Subdivision (4). A decision not to retry a case after a mistrial is not a conclusion unless and until a dismissal is filed and an order described by Subdivision (4)(C) is signed.

(b) Notwithstanding Section 16.003(b), a person must bring an action for injury resulting in death under Chapter 71 in a homicide case not later than six years after the date of the death. This subsection applies to the action regardless of the person against whom it is brought, including the perpetrator of the homicide and any other person, and regardless of the beneficiary on whose behalf it is brought.

(c) Floor during pendency of a qualifying prosecution. If a qualifying prosecution commences before the limitations period prescribed by Subsection (b) expires, the period may not expire during the pendency of the prosecution, and the time remaining in the period is determined as follows:

(1) if 18 months or more remain in the period on the date the prosecution commences, the period continues to run during the pendency of the prosecution until 18 months remain, at which point the running of the period is suspended until the conclusion of the prosecution; and

(2) if less than 18 months remain in the period on the date the prosecution commences, the time remaining in the period is increased to 18 months and the running of the period is suspended until the conclusion of the prosecution.

(d) Resumption after conclusion. The limitations period does not run during the six months following the date of the conclusion of a qualifying prosecution. On the date six months after the conclusion date, the period resumes running with the time remaining in the period as of the conclusion date, determined under Subsection (c) or, if the prosecution concluded before the running of the period was suspended under Subsection (c), the time then remaining.

(e) Non-expiry condition. Subsections (c) and (d) apply only if the qualifying prosecution commences before the limitations period prescribed by Subsection (b) expires. If the period expires before a qualifying prosecution commences, the cause of action is barred, and this section does not revive it.

(f) First prosecution only. If more than one qualifying prosecution arises out of the same death, Subsections (c) and (d) apply only by reference to the first qualifying prosecution to commence. The commencement, pendency, or conclusion of any later qualifying prosecution does not suspend, extend, or otherwise affect the limitations period.

(g) Proceedings that are not qualifying prosecutions and do not affect conclusion. Parole and mandatory supervision proceedings, community supervision revocation proceedings, and post-conviction habeas corpus proceedings are not qualifying prosecutions, do not suspend the limitations period, and do not constitute, postpone, or alter the conclusion of a qualifying prosecution. The conclusion of a qualifying prosecution is not postponed by the pendency of an appeal.

(h) Outcome-neutral. Subsections (c) and (d) apply regardless of the manner in which the qualifying prosecution concludes, including conclusion by conviction of the offense charged, conviction of a lesser included offense, acquittal, acceptance of a plea, or dismissal or other termination without a trial.

(i) Same-facts nexus. Subsections (c) and (d) apply to a claim under Subsection (b) that arises out of the same facts as the qualifying prosecution. A claimant is not required to prove that the prosecution first revealed or materially clarified the factual basis of the claim.

(j) Statutes of repose unaffected. This section does not extend, revive, or otherwise affect any period prescribed by a statute of repose, including Sections 16.008, 16.009, 16.011, 16.012, and 74.251.

(k) Longer periods preserved. This section does not shorten any longer limitations period otherwise applicable to a cause of action, including a period prescribed by Section 16.0045.

(l) Burden of pleading and proof. A claimant who invokes Subsection (c) or (d) must plead and prove the commencement of the qualifying prosecution, its pendency, the date of its conclusion, and that the claim arises out of the same facts as the qualifying prosecution.

(m) No other effect. This section does not create a cause of action, alter any element of a claim or defense, alter any rule governing damages, affect the admissibility or preclusive effect of any judgment in a criminal case, or require or prohibit the stay of a civil action.

(n) Relation to Section 33.004(e). The period prescribed by this section and the period prescribed by Section 33.004(e) operate independently. A claimant entitled to the benefit of both periods may bring suit not later than the later of the deadlines prescribed by those periods.

SECTION 4. Section 101.101, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Subsections (a) and (b), for a claim to which Section 16.0___ applies in which a qualifying prosecution, as defined by that section, commences before the limitations period prescribed by that section expires, notice of claim under this section is timely if given not later than six months after the date of the conclusion of the qualifying prosecution, as determined under that section.

SECTION 5. (a) This Act applies to a cause of action for injury resulting in death if the limitations period for the cause of action, as lengthened by this Act, had not expired on the effective date of this Act. This subsection applies regardless of whether the death occurred before, on, or after the effective date of this Act.

(b) This Act does not revive a cause of action whose limitations period, as lengthened by this Act, expired before the effective date of this Act, and does not affect any final judgment.

SECTION 6. This Act takes effect September 1, 2027.