

## **Retroactivity of Statutes**

New laws enacted by the legislature usually affect only future conduct. Sometimes, however, legislation affects cases that are pending in the court system or conduct that occurred before the law was passed, these cases are known as “retroactive laws.”

This information brief defines what a retroactive law is, explains constitutional limits on retroactivity, and addresses how a law must be drafted to be retroactive. This information is primarily intended to assist individuals who draft legislation in Minnesota. It also may be helpful to individuals who, as legislators, legislative staff, attorneys, or lobbyists, are involved in the legislative process in Minnesota.

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New laws enacted by the legislature usually affect only future conduct. Sometimes, however, legislation affects cases that are pending in the court system or conduct that occurred before the law was passed, these cases are known as “retroactive laws.”

Criminal conduct occurring before a law is enacted, or criminal cases pending at the time a law becomes effective, may be impacted by the new law. Similarly, civil causes of action that arose or civil cases that are pending at the time the law is enacted may also be affected by a new law. However, not every law that appears to be retroactive will be applied retroactively by the courts. A new law must satisfy a number of rules in order to be given retroactive effect. These rules are derived from state and federal constitutional limitations on retroactivity, from the Minnesota statute governing retroactive application of laws, and from court decisions interpreting these constitutional and statutory provisions.

## What Is a “Retroactive Law”?

In the case *Cooper v. Watson*,<sup>1</sup> the Minnesota Supreme Court defined a retroactive law as a law that, in respect to past transactions or considerations, does one of the following:

- takes away or impairs vested rights acquired under existing laws
- creates a new obligation and imposes a new duty
- attaches a new disability

The court in this case gave a second definition of retroactive statutes, finding that a retroactive statute is a law that:

- intended to affect transactions that occurred, or rights that accrued, before the law became operative; and
- ascribes effects to the transactions or rights not inherent in their nature, in view of the law in force at the time they occurred.

The court focused on how the retrospective application of a law could destroy a right or create a duty where one did not previously exist. Retroactive laws have a wide variety of applications, including judicial and administrative procedures,<sup>2</sup> legal remedies,<sup>3</sup> pension benefits,<sup>4</sup> insurance

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<sup>1</sup> 290 Minn. 362, 369, 187 N.W.2d 689, 693 (1971).

<sup>2</sup> *Holen v. Mpls.-St. Paul Metro. Airports Comm’n*, 250 Minn. 130, 84 N.W.2d 282 (1957); *Polk County Social Services v. Clinton*, 459 N.W.2d 362 (Minn. App. 1990).

<sup>3</sup> See, e.g., *Brotherhood of Ry. & Steamship Clerks, etc. v. State*, 303 Minn. 178, 229 N.W.2d 3 (1975) (law altering types of relief available under Human Rights Act); *Peterson v. City of Minneapolis*, 285 Minn. 282, 173 N.W.2d 353 (1969) (application of new comparative negligence law); *Reinsurance Assoc. v. Dunbar Kapple, Inc.*, 443 N.W.2d 242 (Minn. App. 1989) (statute changing the right to seek contribution and indemnity against a tortfeasor); *Olsen v. Special School District No. 1*, 427 N.W.2d 707 (Minn. App. 1988) (application of new discounted damages law).

<sup>4</sup> See, e.g., *Duluth Firemen’s Relief Assoc. v. Duluth*, 361 N.W.2d 381 (Minn. 1985); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305 (Minn. App. 1994) (unemployment benefits).

coverage,<sup>5</sup> criminal violations,<sup>6</sup> and property rights.<sup>7</sup> The one thing they all have in common is the purpose or effect of altering a person or entity's preexisting rights or duties.

In accordance with the *Cooper* definitions, not every new law that affects past situations is retroactive. For example, in *Halper v. Halper*,<sup>8</sup> the court ruled that it is not a retroactive action to apply new statutory child support guidelines to parties whose divorce proceedings were not finalized before the new law became effective. The court ruled this way because the right to receive court-ordered child support (and the obligation to pay it) does not accrue until a court issues a final decree that dissolves the marriage.<sup>9</sup> Similarly, courts have held that a law is not retroactive if it is entirely procedural and merely changes the means to vindicate existing rights.<sup>10</sup> This is because a law affecting how to enforce rights (a procedural law) is not the same as affecting the rights themselves (a substantive law).

## What Statutory Limits Are There on the Retroactive Application of Laws?

Minnesota Statutes, section 645.21, contains the specific statutory rule on retroactivity:

*No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.*

Therefore, new statutes enacted by the Minnesota Legislature are presumed to apply prospectively, not retroactively, unless explicitly stated otherwise. The courts will not give a statute retroactive application unless it is intended by the legislature and the legislature's intent is expressed clearly and manifestly in the law.<sup>11</sup>

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<sup>5</sup> *Holman v. All Nation Ins. Co.*, 288 N.W.2d 244 (1980); *Schoening v. U.S. Aviation Underwriters, Inc.*, 265 Minn. 119, 120 N.W.2d 859 (1963).

<sup>6</sup> See e.g. *Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955); *State v. Johnson*, 411 N.W.2d 267 (Minn. App. 1987); *State v. French*, 400 N.W.2d 111 (Minn. App. 1987) (*pet. for rev. denied*, Mar. 25, 1987).

<sup>7</sup> *Peterson v. Humphrey*, 381 N.W.2d 472 (Minn. App. 1986) (*pet. for rev. denied*, Apr. 11, 1986); *In Re Estate of O'Keefe*, 354 N.W.2d 531 (Minn. App. 1984) (*pet for rev. denied*, Jan. 4, 1985).

<sup>8</sup> 348 N.W.2d 360 (Minn. App. 1984).

<sup>9</sup> See also *Midwest Family Mutual Insurance Co. v. Bleick*, 486 N.W.2d 435 (Minn. App. 1992) (*remanded on other grounds*, July 27, 1992) (claim to automobile insurance benefits did not arise before new law's effective date); and *Olsen v. Special School District No. 1*, 427 N.W.2d 707 (Minn. App. 1988); and compare *Leonard v. Parrish*, 435 N.W.2d 842 (Minn. App. 1989) (right to court judgment had vested because all avenues of appeal were exhausted before new law's effective date).

<sup>10</sup> See *American Family Mut. Ins. Co. v. Lindsay*, 500 N.W.2d 807, 808 (Minn. Ct. App. 1993).

<sup>11</sup> See e.g. *State v. Traczyk*, 421 N.W.2d 299 (Minn. 1988); *Parish v. Quie*, 294 N.W.2d 317 (Minn. 1980); *In re Estate of Murphy*, 293 Minn. 298, 198 N.W.2d 570 (1972); *Cooper v. Watson*, 290 Minn. 362, 187 N.W.2d 689 (1971); *Chapman v. Davis*, 233 Minn. 62, 45 N.W.2d 822 (1951); *State v. Industrial Tool & Die Works, Inc.*, 220 Minn. 591, 21 N.W.2d 31 (1945) (*rehearing denied* Jan. 2, 1946); *State Dept. Of Labor v. Wintz Parcel Dr.*, 555 N.W.2d 908 (Minn. App. 1996); *Larson v. Wilcox*, 525 N.W.2d 589 (Minn. App. 1994); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305 (Minn. App. 1994); *Ind. Sch. Dist. No. 622 v. Keene Corp.*, 495 N.W.2d 244 (Minn. App. 1993) (*rev'd, in part, on other grounds*, 511 N.W.2d 728 (Minn. 1994)); *Thompson Plumbing Co., Inc. v. McGlynn*

## Exception for Clarifying or Curative Laws

There is one major exception to the rule that legislative intent on retroactivity must be “clear and manifest.” This exception applies to laws found by the courts to be “merely clarifying or curative.” A clarifying law corrects a previously enacted law to reflect that law’s original, preexisting intent. These corrections are often made for the following reasons:

- The existing law inadvertently failed to expressly cover a particular issue.<sup>12</sup>
- The earlier law contained a manifest error or was ambiguous in its coverage and, therefore, needed language refinement.<sup>13</sup>
- The existing law contained general language that was later found to need more specificity.<sup>14</sup>
- The courts have misinterpreted the construction of the existing law.<sup>15</sup>

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*Co., Const. Mort. Inv. Co., Inc.*, 486 N.W.2d 781 (Minn. App. 1992) (*rev'd on other grounds*, 1993 WL 536099); *In re Estate of Edlund*, 444 N.W.2d 861 (Minn. App. 1989); *State v. Harstad*, 397 N.W.2d 419 (Minn. App. 1986); *Lee v. Industrial Electric Co.*, 375 N.W.2d 572 (Minn. App. 1985) (*aff'd without opinion*, 389 N.W.2d 205 (Minn. 1986)).

<sup>12</sup> See *Strand v. Special School District No. 1*, 392 N.W.2d 881 (Minn. 1986); *Schoening v. U.S. Aviation Underwriters, Inc.*, 265 Minn. 119, 120 N.W.2d 859 (1963). However, the courts may refuse to imply retroactive legislative intent where the legislature omitted certain types of transactions in the scope of a new law’s coverage and it is unclear whether the omission was purposeful or inadvertent. As the Court of Appeals recently stated, “[A court] cannot supply that which the legislature purposely omits or inadvertently overlooks.” (citing *Wallace v. Comm’r of Taxation*, 289 Minn. 220, 230, 184 N.W.2d 588, 594 (1971). *Farm Credit Bank of St. Paul v. Ahrenstorff*, 479 N.W.2d 102, 104 (Minn. App. 1992) (*pet. for rev. denied*, Feb. 27, 1992) (new statute of limitations clearly applied to mortgages entered into before the effective date but did not clearly apply to mortgages foreclosed before the effective date but still subject to deficiency judgment action).

<sup>13</sup> See *Rural Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702 (Minn. 1992); *Polk County Social Services v. Clinton*, 459 N.W.2d 362 (Minn. App. 1990); *Jewett v. Deutsch*, 437 N.W.2d 717 (Minn. App. 1989).

<sup>14</sup> See *State, by Spannaus v. Coin Wholesalers, Inc.*, 311 Minn. 346, 250 N.W.2d 583 (1976); *Brotherhood of Ry. & Steamship Clerks, etc. v. State*, 303 Minn. 178, 229 N.W.2d 3 (1975); *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831 (Minn. App. 1994) (*pet. for rev. denied*, June 29, 1994).

<sup>15</sup> See *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987); *Hoben v. City of Minneapolis*, 324 N.W.2d 161 (1982). In contrast, comments by two legislators at committee hearings that the intent of the new law was to clarify rather than change existing law were not persuasive to the court in *Thompson Plumbing Co., Inc. v. McGlynn Co., Const. Mort. Inv. Co., Inc.*, 486 N.W.2d 781 (Minn. App. 1992) (*rev'd on other grounds*, 1993 WL 536099), where the law change was made in response to changing industry conditions rather than misapplication of the law by the courts.

## What Constitutional Limits Are There on the Retroactive Application of Laws?

Any enacted state law must follow the federal and state constitutions in order to be enforceable. There are three provisions in the U.S. and Minnesota Constitutions that can invalidate retroactive legislation. These provisions are: the prohibition against the impairment of contract rights, the protection of vested interests under the due process clause, and the prohibition against *ex post facto* laws.

### Prohibition Against the Impairment of Contract Rights

Both the federal and state constitutions limit the power of the state to impair or modify contract rights.<sup>16</sup> However, the courts have not interpreted these provisions to create an absolute prohibition against contract impairments; rather, they have ruled that the state reserves some power to modify contract terms when the public interest requires.<sup>17</sup>

The United States Supreme Court has used a test to determine if an impairment of contract rights is sufficiently required by the public interest has three parts. If the legislation can survive scrutiny under each of the parts, then it will be found constitutional. This three-part test has been applied by the Minnesota Supreme Court:

- Is the impairment substantial?
- If so, has the state demonstrated a significant and legitimate public purpose behind the legislation?
- If so, is the adjustment of rights and responsibilities of the contracting parties based on reasonable conditions and of a character appropriate to the public purpose justifying adoption of the law?<sup>18</sup>

This three-part test is applied with more scrutiny where the state itself is one of the contracting parties than when the law regulates a private contract, because deference to a legislative assessment of reasonableness and necessity is not appropriate when the state's self-interest is at stake.<sup>19</sup>

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<sup>16</sup> See U.S. Const. art. 1, § 10, cl. 1; Minn. Const. art. I, § 11.

<sup>17</sup> See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 98 S. Ct. 2716, 57 L.Ed. 2d 727 (1978); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983).

<sup>18</sup> *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 – 13, 103 S.Ct. 697, 704 – 05; *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740 (Minn. 1983); *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643 (Minn. Ct. App. 2010) *aff'd*, 806 N.W.2d 820 (Minn. 2011).

<sup>19</sup> *United States Trust Co. v. New Jersey*, 431 U.S. 1, 26, 97 S.Ct. 1505, 1519 (1977) (“[A]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake.”); *Christensen v. Mpls. Mun. Emp. Retire. Bd.*, 331 N.W.2d 740, 751 (Minn. 1983); *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643, 652 (Minn. Ct. App. 2010) *aff'd*, 806 N.W.2d 820 (Minn. 2011).

## Protection of Rights under the Due Process Clause

Courts also may refuse to give a statute retroactive application if doing so will deprive a person of a right in violation of the due process protections of the federal or state constitution.<sup>20</sup> A law will violate the Due Process Clause if it divests a constitutionally protected interest and does not “rationally relate to a legitimate government purpose.”<sup>21</sup> However, a statute that merely affects the statute of limitations for a legal claim may be altered retroactively.<sup>22</sup> The courts have recognized the legislature’s power to retroactively lengthen or shorten a statute of limitations, but have ruled that the legislature may not cut off existing causes of action without providing a reasonable period in which the party can assert the claim before it is time-barred.<sup>23</sup> This “reasonable period” may not be so short as to amount to a practical denial of the opportunity to pursue a claim.<sup>24</sup> The courts have found that a statute of repose, a limit not related to when a cause of action arises but related to an event fixed in time, is a substantive limit on a legal claim, and therefore can violate the Due Process Clause if it retroactively applied and does not relate to a legitimate government purpose.<sup>25</sup> Thus, the courts have distinguished between a statute of limitations and a statute of repose as respectively, procedural and substantive limitations, which affects whether or not a constitutionally protected interest has vested.

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<sup>20</sup> See U.S. Const. amend. XIV, § 1; Minn. Const. art I, § 8.

<sup>21</sup> See *United States v. Carlton*, 512 U.S. 26, 30 (1994); *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 829 (Minn. 2011).

<sup>22</sup> See *Donaldson v. Chase Sec. Corp.*, 216 Minn. 269, 276, 13 N.W.2d 1, 5 (1943) *aff’d sub nom. Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945) (providing no protectable property interest in a statute of limitations defense); *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 833 (Minn. 2011) (noting that there is no protectable property interest in a statute of limitations defense); *Application of Q Petroleum*, 498 N.W.2d 772, 782 (Minn. App. 1993) (noting that a private vested right is required for a due process violation, and that no private vested right is acquired in this instance until a final judgment is entered).

<sup>23</sup> *Kozisek v. Brigham*, 169 Minn. 57, 60, 210 N.W. 622, 623 (1926) (“Statutes of limitation . . . ‘are to be applied to all cases thereafter brought, irrespective of when the cause of action arose, subject, of course, to the universally recognized rule that they cannot be used to cut off causes of action without leaving a reasonable time within which to assert them.’”) (quoting *Osborne v. Lindstrom*, 9 N. D. 1, 81 N. W. 72 (1899)); *Wichelman v. Messner*, 250 Minn. 88, 107, 83 N.W.2d 800, 817 (1957) (“The constitutional prohibitions against retrospective legislation do not apply to statutes of limitation . . . provided that a reasonable time is given a party to enforce his right.”) (quotations and citations omitted); *City of Willmar v. Short-Elliott-Hendrickson, Inc.*, 475 N.W.2d 73, 77 (Minn. 1991).

<sup>24</sup> *Kozisek v. Brigham*, 169 Minn. 57, 60, 210 N.W. 622, 623 (1926) (“Statutes of limitation . . . ‘are to be applied to all cases thereafter brought, irrespective of when the cause of action arose, subject, of course, to the universally recognized rule that they cannot be used to cut off causes of action without leaving a reasonable time within which to assert them.’”) (quoting *Osborne v. Lindstrom*, 9 N. D. 1, 81 N. W. 72 (1899)); *Wichelman v. Messner*, 250 Minn. 88, 107, 83 N.W.2d 800, 817 (1957) (“The constitutional prohibitions against retrospective legislation do not apply to statutes of limitation . . . provided that a reasonable time is given a party to enforce his right.”) (quotations and citations omitted); *City of Willmar v. Short-Elliott-Hendrickson, Inc.*, 475 N.W.2d 73, 77 (Minn. 1991); *State v. Messenger*, 27 Minn. 119, 125, 6 N.W. 457, 459 (1880) (“[T]he time limited must be so short as . . . to amount to a practical denial of the right itself.”).

<sup>25</sup> *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 831 (Minn. 2011) (“we conclude that when the repose period expires, a statute of repose defense ripens into a protectable property right.”); *Larson v. Babcock & Wilcox*, 525 N.W.2d 589, 591 (Minn. Ct. App. 1994) (“Babcock & Wilcox and Detroit Stoker have obtained a vested right not to be sued under the statute of repose.”).

## Prohibition Against *Ex Post Facto* Laws

The legislature's power to enact laws with retroactive effect is sharply limited in the criminal law area. Both the federal and state constitutions specifically prohibit states from enacting any *ex post facto* law.<sup>26</sup> An *ex post facto* law is a law that:

- applies to events occurring before its enactment; and
- disadvantages the offender affected by it.<sup>27</sup>

The purpose of this constitutional limitation, according to the courts, is to ensure that individuals have fair warning of legislative acts and to restrain arbitrary and, potentially, vindictive prosecution.<sup>28</sup>

Thus, a law is *ex post facto* if it has the purpose or effect of creating a new crime that can apply to past conduct, increase the punishment for a crime committed in the past, deprive a defendant of a defense available at the time the act was committed, or otherwise render an act punishable in a different, more disadvantageous manner than was true at the time the act was committed. In contrast, a law is not *ex post facto* if it merely changes trial procedures or rules of evidence, and operates in only a limited and unsubstantial manner to the accused's disadvantage. Additionally, a law is not *ex post facto* if it is a civil, regulatory law and is not sufficiently punitive in purpose or effect to be considered criminal.

## How Can the Legislature Indicate that a Law Applies Retroactively?

Court cases provide guidance on how the legislature can effectively express its intent that a law be given retroactive effect. For example, using some form of the word "retroactive" in the law's effective date can be a sufficiently clear and manifest expression of legislative intent.<sup>29</sup>

Similarly, language in the bill's effective date which makes the bill applicable to "causes of action arising before" or "proceedings commenced or pending on or after" a certain date has been found to be a clear indication that the legislature intends the new law to apply to legal claims arising before the effective date, as long as a claim has not yet exhausted all avenues of appeal.<sup>30</sup>

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<sup>26</sup> U.S. Const. art. I, § 10; Minn. Const. art I, § 11.

<sup>27</sup> *Weaver v. Graham*, 450 U.S. 24, 101 S. Ct. 960, 67 L.Ed.2d 17 (1981); *Welfare of B.C.G.*, 537 N.W.2d 489 (Minn. App. 1995); *State v. Moon*, 463 N.W.2d 517 (Minn. 1990). (Although the Minnesota Supreme Court relied on the *Weaver* test in *Moon*, it expressly left open the question whether the Minnesota Constitution's *ex post facto* clause was more protective than the federal constitution because the issue was not raised by appellant in that case.) See also *Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955).

<sup>28</sup> *State v. Moon*, 463 N.W.2d 517, 521 (Minn. 1990).

<sup>29</sup> *Duluth Firemen's Relief Ass'n v. Duluth*, 361 N.W.2d 381 (Minn. 1985).

<sup>30</sup> See *LaVan v. Community Clinic of Wabasha*, 425 N.W.2d 842 (Minn. App. 1988) (*pet. for rev. denied*, Aug. 24, 1988); *Olsen v. Special School Dist. No. 1*, 427 N.W.2d 707 (Minn. App. 1988).

## Importance of a Clear Indication of Legislative Intent

One simple lesson to be drawn from many “legislative intent” cases is that it is important for legislators and drafters of legislation to consider how they want or expect a proposed law to be applied and, then, to express that intention clearly and explicitly in the legislation. If retroactive application is intended, the law’s effective date should say so, by using the word “retroactive” and other phrases explaining the scope of the law’s application. The following are common examples of phrases indicating retroactive intent:

- “This act applies to cases filed before... and pending [specify date or time period to be covered]...”
- “This act applies to former and current employees retiring [specify date or time period to be covered]...”
- “This act applies to proceedings conducted [specify date or time period to be covered]...”

Moreover, if a new law is intended to clarify or correct an existing statute and is meant to affect transactions undertaken or occurring before the passage of the clarification, it would be wise to make that intent explicit by language in the bill title stating the clarifying purpose of the new law.

Similarly, if only prospective application of the law is intended, it may be worthwhile to make that intent clear and explicit as well. Such explicit language is particularly helpful if the legislature wants to avoid a later court decision implying retroactive application under the “clarifying or curative law” exception.

Prospective application can be indicated clearly by the following types of language in the law’s effective date:

- “This act applies to causes of action accruing on or after...”
- “This act applies to proceedings commenced on or after...”
- “This act applies to agreements entered into on or after...”

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