

SAINT PAUL LEGAL LEDGER MINNESOTA LAWYER



Crisis Management and Recovery Special Edition

A print and online guide for businesses continuity

Publication Date: May 7, 2020 in both Finance & Commerce and Minnesota Law

[Get Info](#)



House Judiciary Chair John Lesch, DFL-St. Paul, leads a remote hearing of his committee on April 8. The committee passed part of a request by Supreme Court Chief Justice Lorie Gildea to toll statutory deadlines, but left speed-trial statutory deadlines intact because of Senate opposition, Lesch said. (Photo courtesy House Public Information Services)

Bill boots Gildea's speedy-trial delay request

By: Kevin Featherly April 13, 2020

Courts will have authority to delay the statutory deadlines governing civil district and appellate court proceedings if a bill passed by House Judiciary committee last week makes it to the governor's desk.

However, Minnesota Supreme Court Chief Justice Lorie Gildea's request to toll speedy-trial demands for criminal cases met with Senate opposition and was dropped from the legislation, House Judiciary Chair John Lesch, DFL-St. Paul, said Thursday.

Lesch's House File 1197 does, however, delay various other court deadlines and statutes of limitations. It was one of three judiciary peacetime emergency measures his committee passed unanimously on April 8.

Another bill, Lesch's House File 1196, deals with execution of wills—a topic that takes on added urgency as the deadly, senior-targeting coronavirus circulates. It allows courts to overlook harmless drafting errors during the crisis if a judge finds clear and convincing evidence that the will reflects the testator's wishes.

The third bill, House File 798, extends the deadline for contesting a scheduled 4.7% cost-of-living adjustment for child-support obligors that goes into effect on May 1.

Judicial request

Lesch's bill to toll court deadlines stems from Gildea's March 19 request to the four DFL and GOP legislative caucus leaders. Gov. Tim Walz and the House and Senate Judiciary chairs were also copied on her letter.

She asked lawmakers to delay expirations on statute-imposed deadlines for both speedy trials and civil proceedings. Examples include the 60-day window for implied-consent hearings, the 15-day deadline for eviction appeals and the 30-day limit for filing unemployment compensation claims, among many others.

With stay-at-home orders in place and public access to courts curtailed during the COVID-19 crisis, the chief justice worried that citizens, judges and court staff won't meet many of the deadlines in statute. She asked that they be delayed throughout the COVID-19 peacetime emergency and for 60 days afterward.

The committee approved the civil part of her request and the 60-day tail. But the speedy-trial extension was dropped, Lesch said, even though public defenders and defense attorneys—despite the constitutional implications of Gildea proposal—offered no resistance.

Lawyers understood—even if senators didn't—that a speedy trial during a pandemic might be constitutional but unfair, Lesch said.

"I don't think a single defendant in Minnesota is getting a fair trial right now, if we force them into a trial," Lesch said. "The jurors are going to be side-eyeing each other about who has got the virus. You're not going to be able deliberate adequately. It's just not going to happen."

Lesch said it's possible that either the governor or Gildea will issue an order enforcing the speedy trial toll instead. "The courts are going to do what they need to do to keep people safe," he said. "And that means there will be certain abrogations."

Walz has previously said he might issue an executive order granting Gildea's request if lawmakers failed to act on it.

As approved, the Lesch bill does not bar courts from holding hearings, requiring appearances or issuing orders if a judge deems them necessary for a specific case or if they touch public or personal safety.

Wednesday's hearing, held remotely through online videoconferencing, included some public testimony.

Samuel Spaid is an attorney and research director for the Home Line nonprofit, which provides legal help to renters through a statewide hotline. Since the pandemic started, Spaid said, Home Line has heard from thousands of Minnesotans who can't afford to pay rent during the crisis.

"We were concerned that there will be flood of nonpayment eviction cases that occur as soon as this order is lifted," Spaid said. The Lesch bill will help ease those worries, he said.

Joel Carlson, chief lobbyist of the Minnesota Association for Justice, said the bill will help keep employment law, personal injury and contract cases alive, despite the chaos and lack of court access caused by the coronavirus.

Many such cases require extensive preparatory work, Carlson said, yet a lot of litigants have effectively lost access to counsel during the pandemic.

"This just gives everyone time to make sure their legal rights are protected and that they can have access to the court," Carlson said. "They haven't lost anything during this time. That is what this legislation does." The measure expires on Feb. 15, 2021.

The bill now heads to the House floor. The Senate, which has only held COVID-19 working groups so far, plans to take up the judiciary emergency measures at its next working group

meeting on April 13. However, Senate Majority Leader Paul Gazelka, R-Nisswa, did tell members on April 7 that Senate committee “digital hearings” would start up soon.

Through a spokesperson, Gildea declined Thursday to comment on the developments.

Will power

The other two bills deal with the execution of wills and child support cost-of-living adjustments.

Lesch’s HF1196 temporarily implants federal Uniform Probate Code language into statute that allows imperfectly executed wills to pass muster with the courts, as long as a judge rules it reflects the testator’s wishes.

Bryan Lake, Minnesota State Bar Association’s government relations head, told committee members that COVID-19 has made it challenging to properly execute wills. Many people, especially the elderly, don’t want to leave their homes to visit a lawyer and they don’t want to invite in witnesses, either. Some decide to take matters into their own hands.

“That makes attorneys nervous,” he said. “Because—although it sounds simple—clients often make technical errors when executing these documents.” They might sign on the wrong line, for instance. Or, as has happened in at least one case Lake knows of, they might sign the arrow-shaped “Sign Here” stickers that a lawyer has pasted onto a form.

“If they are improperly executed, then they’ll be found invalid,” Lake said.

The bill doesn’t change requirements that the testator and witnesses sign a will. But it offers some flexibility—a witness doesn’t have to watch the testator sign as long as the testator acknowledges the signature’s validity, for example. And because the bill retains the “clear and convincing” civil standard, Lake said, judges will be able to protect against falsified or coerced wills and codicils.

“It opens the door a little bit wider and gives the court a little bit more flexibility to deal with the individual circumstances,” he said.

The measure applies to documents and writings executed between March 13, 2020, and Feb. 15, 2021. Committee members approved it, 17-0.

Un-COLA

The final bill, HF 798 from Rep. Kelly Moller, DFL-Shoreview, provides an emergency time extension to file motions contesting a scheduled automatic child-support increase.

Melissa Rossow, an assistant Ramsey County Attorney and director of that office’s Human Services Legal Division, said that about 45,000 notices were sent out in the first week of April, notifying parents paying child support that their obligations will increase 4.7% through an automatic cost-of-living adjustment (COLA).

Some can’t afford to pay that and obligors can contest the increase. However, their motion to contest is supposed to be filed by April 30. The COLA increase takes effect May 1.

The bill provides two extensions to the April 30 deadline. The first, on June 30, is available to anyone without needing to show cause. The second, on Oct. 31, is available to those didn’t file on the first deadline but can demonstrate that they failed to do so because of COVID-19.

Nothing in the bill prevents the child support recipient parent from appearing in court to state their views on the payment adjustment, she said. If the COLA is not contested by Oct. 31, the May 1 increase goes into effect, Rossow said.

The measure has support from the Minnesota County Attorneys Association, the Minnesota State Bar Association's Family Law Section and the Legal Services Advocacy Project, Rossow said. The Anoka, Dakota, Hennepin and Ramsey county child support offices also are on board, she said.

Like the two other bills, HF 798 passed the committee 17-0 and is on its way to the House floor.

ABOUT KEVIN FEATHERLY



Kevin Featherly, who joined BridgeTower Media in mid-2016, is a journalist and former freelance writer who has covered politics, law, business, technology and popular culture for publications and websites in the Twin Cities and nationally since the mid-1990s.

