

Legislative History for Connecticut Act

SB628

PA 532

1957

Senate: P. 3296-3297

House: P. 3360-3361

General law: P. 68, 142-155, 164

LAW/LEGISLATIVE REFERENCE  
DO NOT REMOVE FROM LIBRARY

20  
19 P

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
and House of Representatives Proceedings

Connecticut State Library  
Compiled 2015

S-26

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1957

VOL. 7  
PART 6  
3224-3761

MAY 27, 1957 73

favorable report and the passage of the bill.

SENATOR SHANNON:

Mr. President, this bill raises the salaries of the town court of Killingly as follows: Judge, Eighteen Hundred Dollars; Deputy Judge, Two Hundred Dollars; Prosecuting Attorney, Eighteen Hundred Dollars; Assistant Prosecuting Attorney, Two Hundred Dollars; Clerk of the court who shall also be clerk of small claims division, Fourteen Hundred Dollars. It's a good bill and I think it should pass.

THE CHAIR:

Are there any further remarks? If not, those in favor signify by saying AYE, opposed NO. The report's accepted; the bill is passed.

THE CLERK:

Cal. No. 1393, File 1315, Substitute for Senate Bill 628.  
An Act concerning actions for injuries resulting in death.  
Favorable report, General Law.

THE CHAIR:

The Senator from the 12th.

SENATOR FILER:

Mr. President, I move for acceptance of the committee's favorable report and passage of the bill.

MAY 27, 1957 74

THE CHAIR:

The question is on acceptance of the committee's favorable report and the passage of the bill.

SENATOR FILER:

Mr. President, in death actions this would afford a one year statute of limitations from the date of injury or when the injury was first discovered or in the exercise of reasonable care should have been discovered, but not beyond three years from the date of the accident, the act or omission complained of. It's a similar bill to the one we put through on negligence and malpractice actions.

THE CHAIR:

Are there any further remarks? If not, those in favor will signify by saying AYE, opposed NO. The report of the committee is accepted; the bill is passed.

THE CLERK:

Cal. No. 1394, File ....

THE CHAIR:

The Senator from the 12th.

SENATOR FILER:

May we call up Cal. 1514 out of order at this time?

THE CHAIR:

Without objection, I'll ask the Clerk to call up Cal.

H-35

CONNECTICUT  
GEN. ASSEMBLY

HOUSE

PROCEEDINGS  
1957

VOL. 7  
PART 6  
2923-3519

Wednesday, May 29, 1957

MR. LARSON (DEEP RIVER):

This bill amends the present law regarding the so-called pour over provisions of a will. It allows a devise or bequest to a trust created by the testator's spouse, parent or child, as well as the testator, with the limitations that if a trust is amended or revoked in any manner, except for certain minor instances, the devise or bequest will be invalid. The bill also provides trust referred to in the will shall not come under the jurisdiction of the probate court, unless the trustee or trustees thereof is a non-resident.

THE SPEAKER:

Will you remark further? If not, question is on acceptance and passage in concurrence. Those in favor say "Aye", opposed. Bill is passed.

THE CLERK:

Cal. No. 1901, file 1315. Sub. for Senate Bill 628. An Act concerning Action for Injuries Resulting in Death. Favorable report of General Law.

MR. BASOM (WATERFORD):

This bill changes the present statute in this particular respect. Under the present law the action must be brought within one year from the neglect or fall complained of. The proposed bill changes this to one year from the date when the injury is first maintained or discovered, or in the exercise of reasonable care should have been discovered. It further provides that in no event may an act be brought more than three years from the act or omission complained of. We think it is a very good bill.

Wednesday, May 29, 1957

THE SPEAKER:

Question is on acceptance and passage in concurrence. Will you remark further? If not, those in favor say "Aye" opposed. The bill is passed.

MR. POPE (FAIRFIELD):

I ask for suspension of the rules for immediate transmittal of House Bills upon which we have acted finally today to the Senate.

THE SPEAKER:

Question is on suspension. Those in favor say "Aye", opposed.

MR. POPE (FAIRFIELD):

Mr. Speaker, I now move that all House bills upon which we have taken final action be immediately transmitted to the Senate.

THE SPEAKER:

You've heard the motion, all those in favor say "Aye", opposed. Bills are transmitted.

THE CLERK:

Kindly turn to page 12, we will take up the second matter. Cal. No. 1913, file 1316. Sub. for Senate Bill No. 493. An Act concerning the Removal of Sand, Gravel or Other Materials from Lands Under Tidewaters and the Improvement of Coastal and Inland Navigation. Favorable report of State Development.

MR. CAIRNS (MADISON):

There is an amendment with the bill which was adopted by the Senate. I would like to move for the rejection of this amendment.

THE SPEAKER:

Question is on rejection of the amendment.

JOINT  
STANDING  
COMMITTEE  
HEARINGS

GENERAL LAW  
PART 1  
CGS 1-377

CONN.  
GENERAL  
ASSEMBLY  
1957

CONNECTICUT  
STATE LIBRARY

GENERAL LAW COMMITTEE

THURSDAY, Feb. 7, 1957

In 10% of the cases have these articles been accepted in evidence. The fact remains that it is impossible to get medical evidence for a plaintiff. The Hartford case tried because of the butazolidin effect as far as malpractice in Connecticut will not be changed one bit by this legislation unless this committee is willing to help eliminate the action of malpractice in Connecticut.

Plaintiff's attorneys are not happy with this law as it is. Rather than no aid, by all means give them this sort of bill.

S.B. No. 628<sup>✓</sup> concerning actions for injuries resulting in death should be grouped with others. As the law now exists only a person suspected of the crime may be present. That means that the estate of decedents cannot under our law be represented in our hearings.

Rep. Elliott: Why was this law put into the books as it is -- through negligence?

Attorney Segal: Frankly, carelessness of lawyers again.

Ernest A. English, Jr., Legislative Agent for the State Bar Association, Executive Council: They have not had an opportunity to pass approval or disapproval on any of these bills. I have an unusual request and that is to ask if it would be possible to send you by the 11th of this month a written report of any action taken by the Executive Council.

Sen. Filer: If you have a report at that time, please send it to us.

Mr. English: The State Bar has endorsed S.B. No. 628<sup>✓</sup>. S.B. No. 33 is similar to this one. We would ask that you defer consideration of this bill until you consider the other one.

Mr. Earle Borman, State Department of Health, Toxicologist Department: I speak on Senate Bill No. 121<sup>✓</sup>, which concerns reports of the State Toxicological Laboratory in Evidence. It was introduced into the 1957 General Assembly by request of the public health council of the State Department of Health. Enactment of this bill will enable the courts to accept certified reports as prima facie evidence and encourage them to refrain from requiring personal testimony by our toxicologists except when expert testimony of a contrary nature is introduced.

- Rep. Arnold: (continued) - It has to deal with the retailer bringing suit on a bill for liquor which is under \$25.00. I might add that a similar bill was introduced in that committee.
- Rep. Beulah Blackman, Trumbull: I wish to speak on S.B. No. 834. The bill is self explanatory and I believe the lawyers in the area are in favor of this bill, and I trust that your committee will give it a favorable report.
- Sen. Filer: Any other legislators who wish to speak on any of the bills? If not, we shall now return to our regular schedule and consider the bills on statutory limitation. S.B. No. 32, S.B. No. 35, S.B. No. 379, S.B. 383, S.B. 384, S.B. 632, S.B. 628 and H.B. 959.
- S.B. No. 32 (Sen. Barringer) AN ACT CONCERNING EXCLUSION OF A DEFENDANT'S ABSENCE FROM THE STATE IN COMPUTING A PERIOD OF LIMITATION.
- S.B. No. 35 (Sen. Barringer) AN ACT CONCERNING LIMITATION OF ACTION FOR INJURY TO PERSON OR PROPERTY IN NEGLIGENCE, ETC.
- S.B. No. 379 (Sen. Drutman) AN ACT CONCERNING LIMITATION OF ACTION FOR INJURY TO PERSON OR PROPERTY.
- S.B. No. 383, (Sen. Drutman) AN ACT CONCERNING ACTION FOUNDED UPON A TORT.
- S.B. 384 (Sen. Shannon) By request - AN ACT CONCERNING THE STATUTES OF LIMITATION IN TORT AND NEGLIGENCE ACTIONS.
- S.B. 632, (Sen. Borden) AN ACT CONCERNING LIMITATION OF ACTION FOR INJURY TO PERSON OR PROPERTY.
- S.B. 628 (Sen. Borden) AN ACT CONCERNING ACTIONS FOR INJURIES RESULTING IN DEATH.
- H.B. No. 959 (Rep. Gersten) AN ACT CONCERNING THE LIMITATION OF ACTION FOR INJURY TO PERSON OR PROPERTY.
- Sen. Filer: Anyone in favor of any of these bills?
- Mr. Charles Hunt, lawyer in Bridgeport, Conn.: Recently I have had occasion to have a very interesting experience with the Statute of Limitations which has to do with negligence actions as it exists on our statute books today. The lawyers who have not come in contact with this particular statute are unaware of the serious injustice that our existing law can bring about.

Mr. Hunt: (continued) - As far as I was concerned, personally, I was not aware of this most unfair situation until I became involved in a case about a year ago. There was without my knowledge and I dare say without the knowledge of a great many members of the Bar, a case in the courts decided about four years ago. To understand the nature of the difficulty it might perhaps be profitable to consider that case. It is the Dincher case vs. Marlin Fire Arms in New Haven, Connecticut. The company sold to a sporting goods store rifles. This store was in some town in Pennsylvania. They had the rifle on their shelves for 3 years and somehow it was sold to another sporting goods store. A purchaser came and bought the rifle and then he loaned the rifle to a cousin and while he was using it in target practice, he lost the sight of his eye. It blew his eye out. He instituted a law suit in the United States District Court for the District in Connecticut against the manufacturer.

An examination of the rifle was made after the accident and it was found that the cause of the backfiring of the rifle was due to a defect in manufacturing the rifle. There was too large a bore for the chamber that the shell was placed in at the time of discharge. There was an escape of gas and the gun backfired and he has his eye blown out.

They came to the District Court and more or less as a joke, the lawyer for the defendant decided that he was going to make a motion that the action be summarily dismissed on the ground that our statute of limitations barred this action. The particular wording of our statute of limitation is that in any action for injury to a person caused by negligence, the action must be brought within one year from the date of the act or omission complained of. It was claimed in this case the act complained of was the rifle manufacturer and since the rifle was manufactured and at least sold by the defendant more than a year before the man had his eye blown out, therefore his claim was barred. In the conversation you do not think you can get any place with that. He made that motion and lo and behold! when the matter was considered by the judge he said that's what the statute says: "within one year of the date or omission" and that's a year ago, therefore, the action is barred and the suit was dismissed.

Mr. Hunt: (continued) - It went on appeal to the Supreme Court of Appeals in New York and 2 to 1 the action of the lower court was sustained and the man with the eye blown out was left remedyless. He had no remedy whatsoever.

As to how this thing got into our legislation in the first place, I believe it resulted from honest inadvertence on the part of the Legislature at the time the bill was enacted.

A wrongful act can happen today and the injury might not happen until more than a year later. In automobile cases you have the same thing.

The entire thinking, the entire history of Statute of Limitations, not only here in Connecticut, but everywhere has been to require a person who has a claim to bring his claim within a reasonable time. If he slips on his rights, then the court says we

won't listen to you. How can a person fail in his right who has no right to institute a claim, if he has no right of action -- no right to bring a suit until he is injured?

There are other considerations apart from Statute of Limitations. There is the consideration of manufacturing of a chattel. That is another question for the Legislature. If you feel that it would be wise to offer protection to manufacturers of chattels, you may consider that, but I am directing my attention to the Statute of Limitations. The effort to protect a manufacturer of a chattel ought to be by way of a statute other than by a Statute of Limitations because if you attempt it by means of Statute of Limitations, you get into involvement and difficulties.

Another case was where a man was injured by a ladder. The ladder collapsed because of negligence in the manufacturing of the ladder. We instituted suit against the manufacturer of the ladder. The defendant relying upon the Dincher case filed an omission for summary judgment because the ladder was manufactured and sold slightly before a year of the injury. The question of whether or not a person gets a right of action depends upon the law of the place where the injury occurs. The statute, if you can start the limitation running before the injury occurs, is saying that there will be no liability -- if after you have conduct -- unless it happens within the space of a year.

Mr. Hunt: (continued) - If, however, you do not choose to view it that way, then you prefer to say it withholds the remedy. You have a right of action but this statute merely says we give you no remedy for it. You have admitted the right of action but with no remedy. That is foreign to our traditional thinking. If that is the case then the statute is unconstitutional. The State Constitution says every person for his injury shown shall have remedy by due course in court. If this claim, as to constitutionality, is accepted insofar as my case is concerned, we have no Statute of Limitation that applies to our case. It operates against our local citizens and in favor of non-residents.

It seems to me in keeping with the traditional thinking of Statutes of Limitation, the time ought to begin to run at the time that the injured person acquires his right of action to make the limitation start to run as it has been construed to start under our existing statute.

I have an appeal now because my case was granted action and it was thrown out of court. It is in bad need of remedy and I sincerely urge that you adopt some remedy to remove the difficulty. To combine the idea of protecting the manufacturer after five years -- I earnestly urge that you consider the difficulties presented by that problem. If such legislation is to be adopted to protect manufacturers, it should be left out of Statute of Limitations. You might have an injury occurring 4 years and 364 days afterwards and the man would have one day to bring suit.

Limitation of actions is one thing and the limitation of liability of a manufactured chattel is another and separate, distinct thing and it should be kept separate and apart.

Mr. Stanley Jacobs, New Haven: I agree with Mr. Hunt. Under the interpretation given to this statute by the Supreme Court, the title should be Limitation of Actions and Non-Actions because actions are limited before they become actions. His action was limited before his eye was blown out.

Mr. Jacobs: (continued) - If a contractor built a school for a municipality and either negligently or wilfully made the concrete weak and after 10 years that school collapsed or a floor collapsed and many children are killed and injured - then to the parents of these children who were killed and injured we would have to say under our interpretation of our statute 8324, you people have no right of action. You cannot collect a penny because he put in cheap concrete. Your children who are dead, you cannot recover anything from them. This injury you will have to bear the expense yourself. You are injured and because of the manufacturer's negligence you have to pay for it. In our State we have always said that a party will bear the consequences of his own negligence subject to the Statute of Limitation, meaning an injured party has to assert his action within a reasonable time. To my knowledge, no other State in the Union has this interpretation on the books of Statute of Limitations. It doesn't seem to us fit to give the manufacturer or contractor such an unquestionable right. They should be held for their negligence.

Sen. Filer: Does this put the statute back to where it was?

Mr. Jacobs: I would say that some of the suggested amendments, particularly 379, would put the statute back where it was before the interpretation.

Sen. Filer: Would it accomplish it if it said "from the date of injury"?

Mr. Jacobs: The term of action is better than term of injury. If the word "injury" was inserted it would be accomplished simply. I feel that the matter would be taken care of. I cannot think of any case where it would invoke terrible injustice.

Attorney Morton Cole, Cole & Cole, Hartford: If a manufacturer manufacturers something defective, he should prevent a defective article from getting out of his plant. As far as the time limit is concerned, I think myself that we should have a statute which corresponds to Massachusetts, New York and New Jersey. That isn't asking a lot. Why should a person be limited actually from bringing an action at any time even 10 years after except for one thing -- you have got to have a reasonable period to make the community, to make them secure in their own approach to life. Two years is not asking a lot.

Attorney Cole: (continued) - Mr. Hunt has an excellent point of view. We ought to have a superior statute relating to the manufactured articles. I do not think that we should limit it to Section 8324 and change it to bring in all the manufactured articles. I notice there is a variance in the approach and one sets forth that particular suggestion that I make. I am only trying to seek a middle course because I do not think a defendant should be hit on the head no more than a plaintiff who suffered except what is fair and just and a two-year limitation even there would be just. The general tort statute, not negligence, takes care of that.

Certainly Section 8324 should be changed to at least make it a two-year statute.

On H.B. No. 959 I have been giving a lot of thought to this because I spoke against that bill. I have talked to a lot of attorneys and representatives of insurance companies and maybe if there was such a bill it might hasten the settlement of cases and relieve the courts of the burden. If a defendant feels they may have to pay interest, they won't compel a plaintiff until the case comes up and that is what is clogging our courts. Financially it won't make a bit of difference to a plaintiff.

Att'y. Frederick Rundbaken, Hartford Bar Association: I do not appear here on behalf of the Association or any vote they have taken. I am speaking personally in favor of H.B. No. 959, an act concerning the limitation of action for injury to person or property.

This amends the Statute of Limitation in actions for injury caused by negligence from one-year period to two years, in which a person can bring action. That will not crowd the dockets. If you have two years in which to negotiate a settlement or bring your action, it will have a tendency from keeping people from rushing to court and relieve some of the pressure. We never brought a negligence action until the dockets became crowded and we were forced to put our foot in the door and hold it there. If this period is extended for two years, I am certain that 50% of the actions will be negotiated within the two-year period.

Att'y. Rundbaken: (continued) - Another aspect or another procedure is that our State Agencies have found this a burden in reporting negligence actions. The doctors and hospitals are crowded because of negligence and they are on Blue Cross and it takes a year to get a report and if this is extended for two years, you will be able to negotiate better. Many times a person is not able to ascertain the extent of his recovery or injury within a year's time. If this is extended it will be in favor of the injured and recovery. Minors are using and employing motor vehicles. They cannot bring suit in their own name. They are 19 and 20 and they will arrive at the age so that they can bring action in their own name if this is extended.

If you feel this might be stretching things too far, I will say that I think it would cover the remedy and no one would be hurt.

Mr. Robert Susser, Norwich: These bills have met the approval of the Bar Council of the State of Connecticut. S.B. No. 35 and S.B. No. 32 I refer to, when the injury is first sustained as a result of the act or omission. Connecticut is out of kilter with the other 48 States.

The Junior Bar Association have suggested changes in our present statute and they have come up with these bills. Suggestions that we felt were most needed at the present time. It was approved in the form it is in S.B. No. 35. The bill was introduced to the Bar Council and they discussed the bill thoroughly and in considering it it waived the two problems -- unfair hardship by the fact that injury can occur after the statute has run and the other fact was forcing a manufacturer to defend the claim after many years after the injury had occurred. The Bar Council decided that it would be appropriate to amend Section 335 with a cut-off provision. The Council felt that it could be very well incorporated within a section of S.B. No. 35. You are changing the cut-off date in case of an act or omission to a third party. They approved the bill a year from the injury first sustained because of the problems of the manufacturers, there should be a cut-off period.

In S.B. No. 32 pertains to a person committing a tort in New York. This involved a Long Island Railroad. After all actions were filed, the person moved to Connecticut. We felt that the holding period should be limited to 5 years.

Mr. Susser: (continued) - This is ample protection who gets heavily involved and moves out of state to escape suit in the state where the trouble was. Five years would be sufficient to carry out the present purposes to Section 8330. This was approved by the Bar Council of the State of Connecticut and Legislative Committee.

Rep. Bascom: Is this a situation where the defendant lived where the plaintiff resided and did not tell he moved into Connecticut?

Mr. Susser: Yes.

Mr. Frank Monchun, Monchun, Globman and Cooper, Hartford:  
We are in favor of S.B. No. 379, S.B. No. 383, S.B. No. 384 and H.B. No. 959. We were involved with the Supreme Court concerning the Statute of Limitation.

The primary purpose of these bills is to amend Sections 8316 and 8324 of the General Statutes and to clarify and clearly define the time from which the statute of limitations runs, in tort and negligence actions. The amendments would make it clear that the statute of limitations starts to run when the cause of action arises which would be from the date of injury or damage. As recently interpreted by our Supreme Court, in the case of Vilcinskis vs. Sears Roebuck and Company, Volume II, No. 55, Conn. Law Journal December 26, 1956, Section 8324 of the Statutes starts to run even before injury occurs and before a cause of action arises. In that case, the defendant in violation of a city ordinance sold an air rifle on December 9, 1950. The plaintiff was injured by said air rifle on August 27, 1953, more than one year after the sale of the gun.

An action was brought on March 26, 1954. The trial court sustained a demurrer to the complaint, which raised a question as to the statute of limitations. The Supreme Court affirmed holding that the statute started to run from the date of sale and not from the date of injury which is when the cause of action arose. As can be readily seen from a mere summary of the facts of this case, the statute as interpreted operates unfairly to persons who may be injured more than one year after the alleged negligence of the defendant. Not only is this result unfair but we do not believe the legislature ever intended that a statute of limitations designed to limit a cause of action should begin to operate before the cause of action arises.

Mr. Monchun: (continued) - An examination of the history of the statute discloses no valid reason why the present statutes should be interpreted as they have been nor does such history indicate any intention on the part of the legislature to start the statute of limitations running in a tort or negligence action before any cause of action arises.

The statutes in question appear in Chapter 414 of the General Statutes and it is to be noted that most of the statutes of limitations which appear in this chapter specifically are made to start running from the time that the right of action accrues. See Sections 8313, 8315, 8317, 8320, 8323, 8326 and 8336. The wording of Sections 8316 and 8324 with which we are here concerned is "from the date of the act or omission complained of". This wording is unique among all of the sections in Chapter 414 and the amendments sought here would simply make Sections 8316 and 8324 conform to the other statutes of limitation.

It is well established that inherent in a statute of limitations is the idea that it does not begin to run before the cause of action arises. See cases cited in Main Brief attached to page 7. It is clear that the legislature in Chapter 414 has included only statutes which apply to an existing cause of action and which limit the time within which an existing cause of action may be brought. Sections 8316 and 8324 as now construed, fly in the face of the inherent idea that a statute of limitations does not begin to run until the cause of action arises. Moreover as now construed these statutes are not statutes limiting a cause of action at all but they have become by judicial interpretation, statutes of substantive law in the field of negligence, since these statutes now have the effect of preventing a cause of action from arising a certain length of time after an act of negligence and prevent a cause of action from arising before any injury or damages takes place. This result amounts to a rule of substantive law which has no place in a chapter dealing with limitations on causes of actions.

In summary, as presently construed, Sections 8316 and 8324 operate unfairly in result, are contrary to the inherent nature of statutes of limitations generally and to other statutes of limitations in Chapter 414, are inconsistent with the history and intention of the legislature as to the effect of a statute of limitations in a cause of action based upon tort or negligence, and amount to a new rule of substantive law in the field of negligence

Mr. Monchun: (continued) - actions which the legislature never intended.

We respectfully submit that Sections 8316 and 8324 of the General Statutes be amended to provide that actions thereunder shall be brought within one year next after the right of action shall accrue.

Mr. Aaron Levins: One year statutes exist in 7 states; 2 year in 19, 3 years in 10, 4 years in 3, 5 years in 2 states and 5 states have 6 years. In New England, Rhode Island, Massachusetts, New Hampshire and Vermont have more than one year. I speak on H.B. No. 959. Maine, I am not sure of. Our sister states have statutory periods longer than that. I think a large number of the states have the longer period and I urge the two-year period.

With reference to S.B. No. 632 and S.B. No. 628, I support the gentleman from New Haven to ask the statute to run from the date that the person wants to sue or first discovers the defect. These two bills would lighten the score.

I hope you give a favorable report to S.B. No. 632 and S.B. No. 628.

Attorney Hunt: I am not in agreement with the Bar Council who put a three-year choke-off on the negligence of manufacturers. I cannot agree that you can die before you are born in one year but you cannot in three years. I see no reason for this bill. I do not know of any other state who has this protection for manufacturers. Manufacturers know what process they use -- whether they use reasonable care in the design and care of an object. I do not see the difference between three years and one year, but it is better to give them a little time. In connection with manufacturers liability cases resulting in personal injury -- they are far and few between.

I do not see what protection this choke-off could have concerning children because of a defective school building. If it is unjust after three years, it will be after one year. If this choke-off was the answer, I am sure some other state would have it. We had to protect our manufacturer or industry in the 1800's and certain rules were passed to encourage the growth of industry. That is no longer required.

Mr. Susser: Everything that we use is manufactured. If we are to let the bars down on manufacturers so that they may look to this statute and say we may take less care -- it may result in too great a harm to the public. The public is entitled to be protected. When we go into a store and purchase a chattel, we have a right to rely upon the fact that the one who makes it is an expert and exercises the highest degree of care in manufacturing it.

To worry about passing these statutes, putting an end to their liability, - is losing sight of protecting the public from accidents from chattels.

Sen. Filer: Anyone else in favor of these bills? Anyone opposed to these bills?

Attorney Joseph Cooney, Hartford, representing Casualty Companies: The Statutes of Limitations are as old as the courts and it is fundamental justice.

These bills propose changes in Sections 8324 and 8316 and provide either an outright extension from one to two years, or a change making the one year run from the date when the injury is first sustained as a result of the act or omission complained of, or one year after the cause of action has come into existence, or one year next after the right of action shall accrue, or extends the death action to one year from the time when the neglect or fault was discovered or should have been discovered.

Presumably, everyone will agree that there must be a limit of time to the bringing of an action. Nevertheless, this universally accepted legal principle implies a recognition of the fact that an occasional injustice may be done. Statutes of Limitation are as old as the courts. It is elementary justice that a defendant should not be required to defend a stale claim, and the courts have noted that with the alapse of time, "evidence has been lost, memories have faded and witnesses have disappeared". This situation is even more true in these times when thousands of claims arise daily, often from an incident which the defendant at the time believed to be a trivial one resulting in no serious injury. As lawyers experienced in litigation, the members of this committee on General Law know that very often suits and personal injury cases are not instituted until the one-year Statute of Limitations has almost expired.

Attorney Cooney: (continued) - In fact, a small minority of lawyers make a definite policy and practice of not taking action on any claim on behalf of a plaintiff until the period of limitation has almost expired. This not only deprives the defendant of information that there is a claim, but even if he knows of the claim he does not know the nature and extent of it, does not have an opportunity to fully investigate it, and is deprived of an opportunity to meet the plaintiff's contentions and of his rights to examine the plaintiff or to check up on his allegations until the lapse of time has often made it impossible for him to do so. What good is a medical examination of a plaintiff fifteen months after an alleged injury? What evidence can be produced to overcome his assertion that for a year after the accident he suffered continuous pain, nervousness, headaches and other subjective complaints? To extend the Statute of Limitations would throw the door wide open to the assertion of stale claims and even fraudulent claims. It would delay justice in legitimate cases, and would result in further clogging of the docket with ancient suits.

The case usually cited in support of these bills is *Dincher vs. Marlin Firearms Company*, 198 F. 2d, 821. In that case a plaintiff sued a manufacturer claiming that a seven year old gun had backfired due to the fact that it was negligently manufactured.

A recent case decided by our Supreme Court of Errors is *Vilcinskis vs. Sears, Roebuck*, which is found in *Connecticut Law Journal*, Vol. XX, No. 55, decided in December, 1956. In that case the defendant sold an air rifle, on or about December 9, 1950, to a minor ten years of age. On August 27, 1953, almost three years later, the minor, playing with the plaintiff, discharged the rifle inflicting serious injuries on the plaintiff and negligence was claimed in selling the air rifle in violation of an ordinance. It was not claimed that the air rifle was defective in any way. The history of Section 8324 was reviewed in a very clear opinion by Inglis, C.J. In the course of his opinion, which was the unanimous opinion of the court, the following appears: - "There is no reason, constitutional or otherwise, which prevents the legislature from enacting a statute, such as Sec. 8324, which starts the limitation on actions for negligence running from the date of the act or omission complained of, even though at that date no person has sustained damage and therefore no cause of

Attorney Cooney: (continued) - action has come into existence. Indeed, such a provision accords with the purposes of statutes of limitation. One purpose is to prevent the unexpected enforcement of stale claims concerning which the persons interested have been thrown off their guard by want of prosecution. *Anderson v. Bridgeport*, 134 Conn. 260, 266, 56 A. 2d 650. If a person is to be sued for negligence, the claim that he is liable should, in fairness, be brought to his attention soon enough after the claimed act of negligence to permit witnesses to be available for his defense. Accordingly, it is in harmony with the theory of statutes of limitation to make the time for bringing the action start at the time of the occurrence of the alleged negligence and not at the time when the injured person sustained damages. It is consonant with the purpose of protecting defendants against stale claims that the legislature should enact a statute, such as Sec. 8324, which may on occasion bar an action even before the cause of action accrues."

In the *Dincher* case the claimed negligence occurred seven years prior to the suit. If the so-called inequity of invoking a Statute of Limitations in that case is to be corrected, at what point would equity be done? Suppose the injury occurred twenty years later instead of seven years later.

The effect of these bills is to entirely remove the Statute of Limitations. This works a great and obvious injustice on defendants. In the course of several years a defendant may have destroyed his records, his employees whose testimony is vital may be no longer in his employ, or may be dead. Nevertheless, every time a claim is made, no matter of what ancient vintage, a defendant would be compelled to try to make some sort of investigation and to offer some sort of a defense although he may be utterly without means of ascertaining what the facts were at the time of the alleged negligence years before. At no time could any defendant be sure what stale claims might be made against him or what prudent provision he could make for his potential liability on those unknown or unknowable matters.

Attorney Cooney: (continued) - As a practical matter, the overwhelming percentage of tort claims arise from automobile cases. As it is now, many defendants are disagreeably surprised when after eleven months or more, for a comparatively minor injury, they are notified of a very substantial claim for damages. However, if you tinker with the Statute of Limitations, if you extend the time either from one to two years, or make the statute begin to run only from the time that the plaintiff ascertained that he was injured, there will be a tremendous increase in stale claims. It will be in the interest of the plaintiff to postpone the initiation of his action for a long period of time and not make claim until so much time has passed that the defendant will not be able to contest his allegations. A stale claim could very well be used to bludgeon settlement based not on liability but upon the expense and inconvenience to which a defendant would be put as soon as he is notified of its existence.

This legislation is not in the public interest. The public is already alarmed at the cost of liability insurance. When liability insurance becomes too costly, some people do not carry it, or carry only limited amounts, and then indeed a great injustice is done because the defendant may be financially irresponsible. The cost of insurance is based on experience and on the amount paid in claims. As the over-all amount of payments go up, rates go up. It is the public which ultimately pays. Any legislation which encourages the presentment of stale claims, which postpones notice and knowledge to the defendant that a claim is being made, and the nature thereof, is not in the public interest and in the long run will injure the rights of people who are entitled to be compensated for legitimate claims.

Sen. Filer: Anyone else in opposition to these bills? If not, the hearing is closed on bills concerning the Statute of Limitations.

The next bills we take up are S.B. No. 912 and S.B. No. 372.

S.B. No. 912 (Sen. Bundock) AN ACT RELATING TO INTEREST IN TORT ACTIONS.

S.B. No. 372 (Sen. Drutman) AN ACT CONCERNING INTEREST PAYABLE IN ACTIONS OF TORT.

Sen. Filer: Anyone in favor of these bills?

Mr. Sussler: (continued) - The federal rules of the court is to allow the parties to know what is going on before the trial so that they are minimized and justice can take place during court proceedings. This bill is designed to do that and there are safeguards so that unnecessary use of documents cannot be used. This bill will fill a gap and allow for protection to the parties being required to bring in documents.

There is that one suggested change and that is to cross out the last sentence in the statement of purpose.

Sen. Filer: Does this correspond to the federal provision?

Mr. Sussler: Yes, it does change the language to meet the Connecticut situation.

Mr. John Q. Tilson, Hamden: State Bar Association, Legislative Committee: I would like to register the approval of the State Bar Association of this bill, S.B. No. 29. It was reviewed by the State Bar Association.

I would like to register their action on several bills. They approve S.B. No. 32 in principle. If you consider it favorably, we would like to consider the wording of it.

S.B. No. 35 is approved by the Association as amended by the substitute bill which was offered this morning. They approve the period running from the time of the injury.

That would automatically disapprove S.B. No. 379, S.B. No. 383, S.B. No. 384, S.B. No. 632 and H.B. No. 959.

We oppose the principle of S.B. No. 912 which provides interest in tort actions. We feel it opens up a door that we are not in favor of at the present time.

The Association is in favor of H.B. No. 1392.

We approved S.B. No. 34 and that approval is subject to an amendment.

S.B. No. 628 -- we favor our bill on that. The Legislative Committee of the State Bar Association approved or disapproved these bills.

Sen. Filer: Anyone else in favor or in opposition on S.B. No. 29 or H.B. No. 1405? We shall close the hearing on these two bills and proceed to S.B. No. 347.

S.B. No. 347 (Sen. Sibal) by request AN ACT CONCERNING VENUE FOR APPEALS IN COMPENSATION AWARDS.