

Legislative History for Connecticut Act

SB 504	<PA 513>	1969 ⁸
Senate	2128 - 2129	2
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1969

VOL. 13
PART 5
2032-2564

May 22, 1969

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THE CHAIR:

The matter will be held. Clerk has an announcement to make.

THE CLERK:

All members of the Appropriations committee, please report to the Appropriations room 310, immediately.

SENATOR MARCUS:

Mr. President, may we also hold retaining its place Cal. No. 559 on page 2.

THE CHAIR:

If there is no objections, that file will be held.

THE CLERK:

CAL. NO. 648. File No. 715. Substitute for Senate Bill No. 504. An Act concerning a Statute of Limitations for Actions Against Architects, Professional Engineers and Architectural Designers. Favorable report of the Joint Committee on General Law.

SENATOR JACKSON:

Mr. President, I move acceptance of the committee's favorable report and passage of the bill. This bill will provide that no action shall be brought against any architect, professional engineer or Architectural Designer for forming or furnishing or designing, planning supervision or function etc., and also construction of the improvement or new building within seven years after substantial completion or improving of a new building. The content is that even though there is some cause for action, within the seventh year, after the substantial

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completion that there shall be one additional year in which to bring an action. But in any event, no more than eight years from the substantial completion and also in Section 3, substantial completion is spelled out as being when the building is first used by the owner or tenant. Nothing in this act will be construed to extend the period of the statute of limitation in all other matters. I urge the passage of this bill.

THE CHAIR:

Will you remark further on this bill? If not, as many who are in favor signify by saying, "Aye". Contray minded? The bill is passed.

THE CLERK:

CAL. NO. 881. File No. 436. Favorable report of the Joint Committee on Judiciary and Governmental Functions. Substitute for House Bill No. 5480. An Act concerning the Statute of Limitations for Injury to Person or Property.

SENATOR PICKETT:

Mr. President, I move acceptance of the committee's favorable report and passage of the bill. I think we are all, well aware of the fact that the merits of this bill were argued at length, yesterday and therefore, I shall just move for passage.

SENATOR FAULISO:

Mr. President, I concur with the distinguished Senator from the 33. I think this was extensively debated yesterday. There is no point in repeating the arguments. I think the arguments are still fresh in the minds of the Senators. I would

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THE SPEAKER:

I would respectfully suggest the leadership on both sides in view of the fact that these items did not appear with two stars that for the benefit of the members that these two items be retained one more day. Is there any objection that these two items be retained. No objection being noted, Cal. 1007 and Cal. 601 will be passed retaining their place on the Calendar.

THE CLERK:

Page 8 of the Calendar. Cal. 1095. Sub. for Senate Bill 504. An Act concerning a Statute of Limitations for Actions Against Architects, Professional Engineers and Architectural Designers. Favorable report of the Committee on General Law. File 715.

MR. LEARY: (43rd)

Mr. Speaker, I move the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

THE SPEAKER:

Question is on acceptance and passage. Will you remark.

MR. LEARY: (43rd)

Mr. Speaker, this bill will provide a seven-year statute of limitations on any acts against an architect, any professional engineer or an architectural designer, which action is brought to recover damages for a deficiency in design or supervision or construction, etc. or for injury to a person or property arising out of such deficiency. It will also prohibit action for

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indemnity or contribution which is brought as a result of any such claims for damages within a seven-year period. Section 2 of the Act states if an injury does occur in the 7th year but before the 8th, the expiration of the 8th year, additional one year would be allowed to bring in action, any type of action. Section 3 of the bill defines what is meant by a substantial improvement which is what the bill refers to. The first definition is a building used by an owner or a tenant thereof or secondly a building that is available for use after having been completed in accordance with the contract. It's a good bill and I urge its passage.

MR. COLLINS: (165th)

Mr. Speaker, I would ask a question, through you, to the gentleman reporting out the bill. I've been sitting here looking at the file trying to understand why this particular bill is before us, but more so wondering, a theoretical situation if you will, if a building collapsed after it was constructed due to faulty design, the architect on this particular building would it be true that anyone injured in that building would have no recourse?

MR. LEARY: (43rd)

Through you, Mr. Speaker, the last paragraph of the bill, Section 5, answers the question posed to me. Such a person injured or person whose property was damaged would have a cause of action against the person in possession of the premises. It would not eliminate entirely any cause of action.

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MR. COLLINS: (165th)

If I understand section 5 then, through you, this would eliminate the cause of action you would have against the architect for faulty design. Is that correct?

MR. LEARY: (43rd)

Through you, Mr. Speaker, yes it is correct.

MR. COLLINS: (165th)

Mr. Speaker, I would again direct a question to the gentleman reporting out the bill, if he knows the answer. Is there any other statute of limitation against any other professional person which starts from the date of completion rather than from the date of discovery of the error.

THE SPEAKER:

Will you remark further on the bill. The gentleman from the 165th.

MR. COLLINS: (165th)

Mr. Speaker, I have very little to say except this is a very, very narrow and limited bill. In my opinion, it is very strict private interest bill. I don't think that the statute of limitations applies to any other professional person in the manner as indicated here and I intend to vote against it.

MR. STECKER: (39th)

Mr. Speaker, I debated long and hard whether I should absent myself in the House from this bill and decided that I would not because in my community I have 23 architects who are relying on my judgment in this House to speak for this bill and

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I feel that I owe them representation. In response to the remarks that were made by my colleague, Mr. Collins, I think that architects and engineers are in a little bit of a peculiar situation, different than what most professions are in, in that as it now stands as the law now stands, not only are we responsible for a building for our lifetime but our estates are responsible for that building as well. To put it in very simple terms, if a person 60 years from now is going down a stairs holding on to a handrail and the handrail fails, even if I'm long gone from this earth, that person would have recourse to sue my wife if she is still alive or my estate for the action I took perhaps 10 years ago. This is a third-party type suit. It is my understanding that in the case of the medical profession, for instance and other professions, that there is not this danger, the suit is brought directly by the person who has been harmed directly to the person who is responsible for this harm. So, I think that this is protection which is needed. I might also respond that all of the suits that have been brought under the Continental Casualty Company, the errors and omissions insurer for architects and engineers, have been brought within five years of the completion of the building. It is a very rare instance when it exceeds beyond that so I think that the seven-year provision in this is adequate to cover any of the situations that arise.

MR. O'NEILL: (7th)

Mr. Speaker, I rise in support of the bill. The Committee considered this at some length and considered the

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extension of the period of time. It was originally suggested that it be 10 years. The Committee, in its wisdom, reduced it back to 7 years. The big problem that I think we have here with architects is, more than any other area, what happens to them upon retirement when they get out of the business of being an architect and they are no longer busy at their work. Under the present situation they still must maintain insurance, liability insurance, for the rest of their lives, even though they are no longer practicing. They no longer have architectural income but they still must maintain a liability policy. This bill would allow them after the 7-year period to finally get out from under the burden and drop that policy. This is a great expense and unnecessary expense. From the analysis at the hearings we had, we found no buildings that caused trouble after 7 years. The architect is protected, the public is protected and I think it is time that we remove the very unfair burden that architects and engineers carry as a result of having no statute of limitations whatsoever to protect them.

MR. STEVENS: (122nd)

Mr. Speaker, I question through you, to Mr. O'Neill if he cares to answer. He has raised a question in my mind concerning coverage of architects. Is it not true, sir, that the insurance coverage would apply if you had it in effect when you made your error and you do not have to carry it subsequent to your practicing as an architect.

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MR. O'NEILL: (7th)

Unfortunately, the answer is No.

MR. STEVENS: (122nd)

This is rather unusual. This is the first time I've ever heard of an insurance policy that does not cover you for an incident when you make your error.

MR. ARGAZZI: (25th)

Mr. Speaker, I don't think it is unusual to see extended periods of liability for the professions. When an attorney gives a certificate of title to a person he represents in a real estate transaction his liability on that property remains for the entire time that he is in practice until the defect in title is discovered. Here we are singling out a narrow, or we are picking one profession and saying we should limit their liability when their liability is really no different than many other professions. I think it is a bad bill.

MR. BARD: (145th)

Mr. Speaker, I wish that all these opinions were not contradictory because though I would hate to speak against a bill just for the sake of speaking, it does seem to me a preferential treatment for those covered and I can't quite agree that an insurance policy covering architects could be in the manner that Mr. O'Neill indicated. It just seems unfair because the person injured later on has some rights here, they are not being protected. This bill just doesn't make sense. I will oppose it.

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MR. WEBBER: (113th)

Very briefly, Mr. Speaker, at the time of the hearing there was absolutely no opposition to this bill whatsoever. We raised a lot of questions, we asked a lot of questions, there was no one there who seemed to have any objections to this matter. As a matter of fact, Mr. Speaker, and I am not a lawyer, I don't have the legal answers but I do understand and have been told that all of the other professions do enjoy a statute of limitations. I would think, Mr. Speaker, that conversely to what has been said we are singling out a very important and dignified profession in our state by prohibiting their having this same kind of consideration. I doubt very much, Mr. Speaker if a defect in a building, a serious defect that could cause real damage could not be noted within a 7-year period. I think it is a good bill and I hope it passes.

MR. BINGHAM: (157th)

Mr. Speaker, if that is the purport of the bill then the bill should clearly fail. If an attorney draws a bill and the defect is not discovered until some time later, 30 years later, he is still liable for the defect. If an attorney certifies title and the defect is not found until some time later, he is still liable for the defect. This is clearly a special interest bill. It is not a people's bill and it should fail.

MR. STECKER: (39th)

Mr. Speaker, speaking for the second time on this bill,

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there are some differences here that I would like to point out. I'm not an attorney and I would invite one of the attorneys here to correct me if I am wrong on this. But it seems to me that in searching a title or any other such matters that an attorney performs that his liability is to the client only. The architect and the engineer is in a different situation because for instance the architect that designed this building is subject to suit by every person who goes through this building. If a person should trip on the stairs out here, the architect, whoever it was for the State Capitol, is subject to suit by that person. I believe this is different than what was expressed by some of the attorneys that spoke of title searches, etc. The other item that I would like to clarify is that although it may be peculiar and it may be unfair, still it is a fact that we are only protected as long as we carry any errors and omissions insurance. In other words, if after I have retired or I am deceased, if my estate does not carry errors and omission insurance on the work I have done over my career, they are unprotected as far as any suits are concerned.

MR. AJELLO: (118th)

Mr. Speaker, the remarks just made by the gentleman may well be true. If they are I am astounded. This would be contrary to about 10 different types of laws that I am familiar with, one of them being the survival of action and several other things. I wonder if in view of this it might not be fruitful for this Chamber at this time to either pass this retaining or

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or temporarily until we can straighten out and get some of the answers to these questions. It seems that there are questions of substantive law involved here which trouble a sufficient number of the members so that we ought to know in what direction we are going.

THE SPEAKER:

I would suggest rather than pass retaining that we pass temporarily. I think we are passed the point where we can afford the luxury of retaining items. Is there objection to this bill be passed temporarily. If not, item will be passed temporarily.

THE CLERK:

Cal. 1101. Senate Bill 182. An Act concerning Shifting of the Burden of Proof of Certain Factors in Dog-Bite Cases from the Plaintiff to the Defendant where the Plaintiff is a Minor under Seven Years of Age. File 1136.

MR. BARD: (145th)

Mr. Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

THE SPEAKER:

Question is on acceptance and passage. Will you remark.

MR. BARD: (145th)

Mr. Speaker, I believe a reading of the title of this bill is enough to explain the bill. It is just a shifting of

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of the Park and Forest Commission that some unscrupulous Connecticut residents will rent out their own home in a coastal town, put their own house trailer in one of our State parks for \$2.00 daily, have a home directly on the beach and make money doing it. This is at our expense, ladies and gentlemen, and the expense of all of the taxpayers to the State of Connecticut. Teen-age children of the long-term camping families after they have secured their sites then apply for summer jobs at the park either working at the concessions or for the park department. Now this is a pretty nice setup. I agree that we need more camp sites, I agree with Mr. Yedziniak, I agree with Mr. Hogan. We do need more camp sites. All I am saying is that I don't think we can afford them this year, but we can certainly expand the camp sites we have by opening them up to greater usage. I urge support of this bill.

MR. AJELLO: (118th)

I don't know anything about camping but if we don't vote pretty soon on this bill it seems to me the season will be over.

THE SPEAKER:

As the sun slowly sinks in the west, are we ready to vote. All those in favor indicate by saying AYE. Those opposed. The bill is PASSED.

the CLERK:

Page 8. Cal. 1095. Substitute for Senate Bill 504.

An Act concerning a Statute of Limitations for Actions Against

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Architects, Professional Engineers and Architectural Designers.

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MR. LEARY: (43rd)

Mr. Speaker, I'll be brief. This bill was debated at great length a few hours ago, I believe. I would just like to raise a few of the issues and try to answer them that were raised in the earlier debate. One of the first contentions was that the architects' insurance policies would cover them for any incident or any deficiency in their judgment that took place, while the policy was in effect. I am holding here a copy of the Architects' and Professional Engineers' liability policy, issued by the Continental Casualty Company. This is the only company in Connecticut that insures these professional people. The policy period of Section 4 states as follows: The insurance afforded by this policy, applies to errors, omissions or negligent acts which occur within the United States of America, territories or possessions, during this policy period. So in effect the answer to the argument that the insurance carries on beyond their retirement is false. This is the only policy, the only company that insures these professional people in this State and the policy itself covers only the period for which the policy is in effect. Argument No. 2 was to compare the status of lawyers, it seems to me with that of professional engineers and architects. The claim was made that lawyers don't have a statute of limitations against their negligent acts and this is true. However, I think we can make a few arguments to show that the professional engineer and architect is much more in need of this than the

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lawyer is. First of all, an attorney's exposure to liability for negligence is virtually limited to his own particular clients. Those with whom he is dealing hand in hand or arm to arm. Whereas a professional engineer or architect is exposed to liability and to the very real threat by suit by the whole world, namely third parties. Secondly, an attorney is able, his negligence is immediately discovered. If he neglects to bring suit, for example, within the one year or the now two-year statute of limitations, this is known immediately. The facts are there, the issues can be tried and a fair result reached. A professional engineer or architect who maybe negligent, however this negligence may not be discovered for ten, 15, 20 or 25 years. Mr. Stecker in commenting on the bill gave the example of a tenant coming down a apartment staircase and the railing pulls out. That tenement could have been built 25 or 30 years ago and it is certainly beyond his power at that point to prove that he was not negligent either by omission or by action.

Thirdly, the situation where an attorney has long-term liability primarily ~~merely~~ in the certificate of title situation where he examines a title and issues a certificate served, I mean certifying a title is clear. The land records upon which he based his search and upon which he was able to issue this certificate won't change. They are there for future examination for years and years. In fact back to the point where land records are kept. I think the answer so far as the attorney is compared to the professional engineer and architect, the attorney can adequately insure him

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self at a fairly low premium rate whereas the architect is faced with this unlimited liability for a limited time and frankly they have to pay what amounts to exorbitant rates on their liability coverage because there is only one company in Connecticut issuing this type of policy. Mr. Speaker, this is a good bill and I wholeheartedly urge its passage.

MR. SARASIN: (95th)

Mr. Speaker, this is a bad bill and I wholeheartedly urge its rejection.

THE SPEAKER:

I would remind the members that we have debated this at length previously.

MR. COLLINS: (165th)

Mr. Speaker,

MR. SARASIN: (95th)

Mr. Speaker, I am not through.

MR. COLLINS: (165th)

I will yield to the gentleman from the 95th, Mr. Speaker.

MR. SARASIN: (95th)

I paused for emphasis, Mr. Speaker. Slightly embarrassed at this point, I will continue. Mr. Speaker, I haven't heard the gentleman on the other side of the aisle say anything that applies to architects, designers and engineers that does not apply to attorneys, that does not apply to doctors, dentists and I assume veterinarians. I think the policy that he talks about and the point to be made here is that he is talking about

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an insurance policy. I think the real issue is not the insurance policy, the issue is the personal responsibility of the individual. The fact that he can get insurance to cover himself for any malpractice on his part is fine but the same thing applies to the lawyer, the doctor as well as to the engineer. The argument that the parties injured, not the first party that the attorney deals with, where it would be different with the architect, this to me is a little bit suspicious too. We are talking about quite simply the parties that are injured. Anyone who may bring an action for negligence against a professional and it applies just as equally to the attorney and the doctor as it does to the architect. In all of these situations, its question of approximate cause, whether the individual, the architect or the attorney somehow contributed to the injury complained of, whether it is the immediate party or a third party, it is still a question of approximate cause. I don't think we should even be considering the fact that there is an insurance policy here. The policy covers the attorney no differently than it covers the architect. It is for the error committed at that time and just to use a ridiculous example, if the architect forgot to put the steel into the building and as a result, 30 years later it collapsed, well he should be responsible for it. The attorney has the same problem with a certificate of title. The doctor has the same problem when he leaves a sponge in the patient. What I am saying, Mr. Speaker, is that there is no different situation here. They are exactly the same for all

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professional people and we quite proudly stand for the fact that we are personally responsible for our own errors and omissions and I think we adopt this bill, we are creating a special exception for architects and designers that does not apply and should not apply to any of the professions. I yield to the gentleman from the 165th.

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MR. COLLINS: (165th)

Mr. Speaker, I can only say that I concur with the comments of my colleague from the 95th. I do think that this bill represents a substantial change in the statute of limitations. I do think that architects and engineers are now covered by the standard statute of limitations which run from the time of discovery of the defect rather than from the time that the building or whatever it may be was designed. I don't think this departure is warranted. I would concur in his remarks that if it is an insurance policy situation we are looking at to solve, we should not do it by a statute of limitations statute.

MR. GILLIES: (75th)

I disagreed in the last debate with the gentleman from the 95th. In this debate not only is he photogenic, I also think he is making good sense and I agree.

MR. GUDELSKI: (110th)

Mr. Speaker, I disagree with my two previous distinguished gentlemen and I do it because of the fact that the nature of the work of the professional engineer and the architect is entirely different from the nature of the work of the

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lawyer, the doctor as has been pointed out who leaves the sponge in the patient's abdomen or wherever it may be, and the reason for that is because the nature of the work is such that the engineer or the architect designer is designing for long period of time and as a human being, he like a lawyer, he like a doctor can make a mistake. And this statute is absolutely necessary for his particular protection when you consider the fact that he is liable for any mistake even after his demise. His particular estate can be forced to protect his or the estate's interest from any particular error which could have occurred in the design plans or specifications, 40 or 50 years ago. This is an unusual circumstance and it does happen. Generally when an error does occur, insofar as design is concerned, it does not take seven years to come to the surface, to become evident. Mr. Speaker, from the standpoint of the insurance. There must be a difference for the simple reason that insofar as being available to the professional engineer and the architect there is only one insurance company that makes it available and this insurance company is not the only one in the State of Connecticut, it is in the entire United States and it is the Continental Casualty Company of Washington, D. C. And when this insurance is available to the professional it is only available through a renewable basis, on an annual renewal basis and as long as that insurance is in effect, then the professional man is covered. It certainly cannot be in effect after his demise, after the job that he had done for some reason

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or another could have collapsed, if you are considering a building or a bridge. However, the proof is absolutely necessary to prove the fact that it was his fault. It does present the fact that he can, through his descendants, be sued for what he had done even though he is already dead. Let me also point out that there are 32 other states in these United States of ours who have this statute of limitations. They saw fit that it was necessary to enact this law for the protection of these professional people. Of these 32, exactly 16 or one-half, have a statute of limitation less than seven years. Three of them, three prominent States, California, Illinois and Tennessee, have a statute of only four years, for the professional engineer and the architect. Mr. Speaker, this is a very good bill. It's needed for his own protection. It's needed for the protection of his own profession and business and I urge its passage.

MR. SARASIN: (95th)

Mr. Speaker, speaking for the second time depending upon if you count a pause for breath. Mr. Speaker, with all due respect to Rep. Gudelski, actually nothing that he has said is any different for the architect than for the attorney. It is extremely difficult and it has been for the last couple of years for an attorney to get malpractice insurance. I am also insured by the Continental Casualty Company. The clause read by the gentleman earlier and probably in my policy. I am not aware of it, I don't know whether it is or not. My estate as well as every attorney's estate and every doctor's estate is

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responsible for my errors or for my omissions and until the estate is closed. This is the same as the estate of anyone who is responsible for the death of someone in a highway accident. It is an asset of the individual. That part of an individual lives. We are all liable for errors committed. We are insured if we are going back to discussing insurance, rather than personal responsibility, if we have the insurance for the time, during the time of the error or during the time of the omission. If the error was committed in 1952 and we had insurance at that time, that policy must cover it and this is the same for the doctor as the lawyer and every other professional person who is personally responsible for his own act. Again we are creating a special class. I object to it violently, Mr. Speaker and I urge rejection of the bill.

MR. SPIEGEL: (126th)

Mr. Speaker, I would like to urge adoption of this bill and I assure you the General Law Committee would not have brought this bill out unless there is a very valid and worthy proposal. Mr. Speaker, I don't wish to disagree with the gentleman from the 95th. However, I think there is one great distinction between the lawyer and the architect and engineer. As a lawyer, I may issue a certificate of title and that certificate of title will probably never be used until the person goes to resell his property. This means that certificate of title may not be used for 15, 20 or 30 years. Contrarily, the architect, engineer builds a building which is used day in and day out and

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it has constant usage. We chose deliberately seven years because we felt if there were going to be any defect in a building it would certainly show up within a seven-year period. I think it is a good bill. I think that the profession needs the protection and I urge passage of the bill.

MR. GUDELSKI: (110th)

Mr. Speaker, for the second time. I want to clarify one particular situation that was pointed out by the distinguished representative from Seymour. As far as a professional architect or engineer is concerned his insurance is, as I indicated before, on an annual renewable basis. If the particular default of his particular design does happen after his demise then he has no protection because the protection only is applied when the insurance is in effect and if he should retire and give up his insurance his protection ceases at that point. Only because it is on an annual basis and only renewable on an annual basis at an exceedingly high premium.

MR. ERVIN: (140th)

Mr. Speaker, there certainly is confusion on this insurance angle and with all respect I have to disagree with the remarks just made by that gentleman. If you have insurance in the year 1950 and you paid insurance that year and the wrong isn't discovered until 1970 and of course you renewed your insurance premium every year, that insurance that you paid for in 1950 still covered you for that year for all of your wrongs and you would be covered. Now somebody made the statement before

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indicate by saying AYE. Those opposed. The bill is PASSED.

THE CLERK:

Page 10 of the Calendar. Cal. 1119. Substitute for Senate Bill 684. An Act concerning the Laws of the State Pertaining to Human Rights and Opportunities as amended by Senate Amendment Schedule "A", which is in your file.

MR. BROWN: (148th)

Mr. Speaker, I move for rejection of Senate Amendment "A".

THE SPEAKER:

The gentleman has moved for rejection of Senate Amendment Schedule "A". Will you remark on that motion.

MR. BROWN: (148th)

Mr. Speaker, this particular bill, 684, started out as a housekeeping bill basically to codify all of the laws with respect to, statutes with respect to the Commission on Human Rights. However, with the advent of Senate Amendment Schedule "A" which was on a voice vote from the Senate, the Chair ruled it a technical amendment and then the amendment was passed. The following of course is the Senate Amendment Schedule "A" which was to strike out Section 8 and insert in lieu thereof the following: that the Commission may employ this Counsel on a full-time basis a member of the Bar of this State who shall be in the unclassified service. Such counsel shall represent the

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GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
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VOL. 13

PART 9

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Wednesday, May 28, 1969

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Calendar 1005, Substitute for House Bill No. 6818. An Act concerning Wage Requirements for Services Rendered to State Agencies.

MR. AJELLO (118th):

May Calendar 1005, Substitute for House Bill 6818 be passed retaining its place on the Calendar?

THE SPEAKER:

Is there objection? Hearing none so ordered.

THE CLERK:

Calendar 1095, Substitute for Senate Bill 504, An Act concerning a Statute of Limitations for Actions Against Architects, Professional Engineers and Architectural Designers.

MR. ARGAZZI (25th):

Many of us who were/seriously, who doubted the wisdom of passing this bill and who were interested, that is uninterested in moving for reconsideration.

THE SPEAKER:

Does the gentleman from the 25th move acceptance and passage?

MR. ARGAZZI (25th):

Yes I do Mr. Speaker.

THE SPEAKER:

Will you remark?

MR. ARGAZZI (25th):

Those of us who had serious doubts about this bill which we passed have gotten together and resolved from many of those doubts. Some of our objections have been removed and we/^{no}longer

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wish to pursue the reconsideration. We would like the bill passed. JS

THE SPEAKER:

Will you remark further on the bill?

MR. GILLIES (75th):

Mr. Speaker, as I understand this bill, the motion was made to

THE SPEAKER:

The gentleman from the 25th, on page 17, has moved for acceptance and passage of Calendar No. 1095, Substitute for Senate Bill 504. File 715, will you remark on the motion for acceptance and passage?

MR. GILLIES (75th):

Well, Mr. Speaker, is the question before the House acceptance and passage of this bill.

THE SPEAKER:

It is sir.

MR. GILLIES (75th):

Then I am opposed to passage of this bill.

It seems to me that we discussed this at great length, there were valid reasons to reconsider. Primarily there valid reasons to reconsider, primarily the reason for reconsideration concerned the fact that there would be adequate protection afforded these individuals. It is the concern of many of us that this is establishing a rather poor precedent. We are giving to one group, one professional body, a special provision as regard to their

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personal liability for negligent act. This is not a provision that is available to any other professional group and it seems to me, Mr. Speaker, and members of the House, that this is establishing a very dangerous precedent, that we will be back here again and again to change statutes of limitations upon all areas of professions personal responsibility. I as an attorney, and other members in this House, who go and do things in our professional capacity expect to be responsible for those things and to limit our liability in this way, I think, is establishing a dangerous precedent and I remove rejection of this bill.

THE SPEAKER:

Will you remark further on the bill pending before us?

MR. SARASIN (95th):

With all due respect to Rep. Gillies, I would oppose his position in this matter and ~~back~~ the position of Rep. Argessi. I too was one of the ones who was very local in opposition to this bill when it appeared on the floor the other day but I did have an opportunity to sit down and discuss this matter with some interested people, Architects and their attorneys. It is now my feeling, perhaps only my personal feeling, that there are genuine policy considerations to be taken into account and it is on that basis that I now support the acceptance and passage of this bill and in deciding to change my position I have completely disregarded the fact that whether insurance is available or not and rely solely on the issue whether there is a good reason to ~~limit the extended liability of this profession, that of Architects.~~

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I have come to the conclusion that it is. Mr. Speaker, I would point out that there are ...limitations existing as they apply to Architects and as I understand there are many states that have it now under consideration. I would support the bill as it stands.

THE SPEAKER:

Will you remark further on the bill?

MR. WEBBER (113th):

This matter was thoroughly aired the other day and I think all of the shortcomings, all of the advantages, all of the arguments were clearly put forth and I think we are all familiar with what could be said and I prefer not to go into a long discussion again and I would like to point out that the gentleman the General Law Committee gave this matter a lot of consideration and I think it was proven very conclusively, the other day, that Architects are in the unique position of not being able to buy the kinds of insurance that most of the other professions can. I am hopeful that we will retain the position that we adopted the other day/and support the committee and vote for the bill.

THE SPEAKER:

Will you remark further on the bill?

MR. PAPANDREA (78th):

I rise in support of the committee. I have not heard an argument advanced today that was not as fully and as clearly aired the other day. Above from the matter, was up for reconsideratio

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THAT There would be some amendment proposed that could make this a better bill. I don't believe this is special or class legislation; it is an area of statute limitations, I think the arguments were made, made well clearly and compellingly and I urge we support the committee and pass the bill.

THE SPEAKER:

Will you remark further on the bill? If not all those in favor indicate by saying aye. Those opposed? The bill is passed.

THE CLERK:

Calendar 1114, Senate Bill 1523. An Act concerning Personal Service Upon a Partnership. File 1057.

MR. CARROZZELLA (81st):

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

THE SPEAKER:

Question is on acceptance passage, will you remark?

MR. CARROZZELLA (81st):

Mr. Speaker, we passed this bill the other day and the bill merely says that personal services upon a partnership can be made by serving one of the partners. The gentleman from the 163rd approached me on a problem and said that we should at least try to provide for notice to the other partner. The bill was reconsidered and is before us now. I would now yield to the

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Rep. Gudelski:
(Con't.)

This is in exactly the same category updating the Federal standards. Thank you.

Sen. Jackson:

Thank you.

Rep. Gudelski:

In addition to that Mr. Chairman, I want to speak in behalf of bill number 504.

S. B. No. 504 A STATUTE OF LIMITATIONS.

and I am particularly concerned about my own professional field as an engineer. Give you my particular feeling in this respect. I have received from my employer, a company that I'm working with of course is very much concerned with or about this bill and these statements by Mr. Philip Genovese of the Philip Genovese and Philip W. Genovese and Associates, of New Haven. He picked exactly my sentiments and I urge your consideration from this standpoint. I quote a letter from Philip W. Genovese.

"Gentlemen:

There currently exists a gross in fairness and the extent of exposure of consulting engineers in the practice of their profession. A matter of statute of limitation preserved and urgently required your extension in this session."

Of course now I am speaking of Mr. Genovese and he continues quoting "I am a consulting engineer in private practice employing 42 people. I have in the last twenty years been responsible for the design of under or over one hundred million dollars of construction. During this period the law of governing the liability of engineers has changed to the point where engineers can no longer accept where they stand. We hear of all sorts of wierd decisions being handed down by the court but even more important a growing scatter shock approach, to litigation which means to involve engineers more and more.

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Rep. Gudelski:
(Con't.)

It is my understanding that many of the other states have recognized the needs of a statute of limitation. It seems to me that from the date a client has accepted my work a two year period should be sufficient time interval for anything to happen that can rightfully be the responsibility of the engineer. This is an important matter when one considers that there presently is no limitations, that the estate and heirs of the engineer may be liable after his death and unable to defend themselves. I believe the trend to be revolutionary and needs control. Connecticut must keep pace with the other states. It is my understanding that S. B. No. 504 adequately takes care of this situation.

S. B. No. 504 A STATUTE OF LIMITATIONS.

I am hopeful of the professional society will produce statistics and a better organized justification. At any rate, I thank you for your kind consideration, Very truly yours. Philip W. Genovese."

I am aware of the fact that the societies will. I am aware of the fact that the engineering society will provide justification as pointed out in that particular letter. Also I have another bill which I also ask for your support and favorable report on and that is in regards to the study and so far as the age is concerned on rent controls. The bill itself is self evident

Sen. Jackson: What is the number?

Rep. Gudelski: 6639.

H. B. No, 6639 AN APPROPRIATION FOR A STUDY OF THE NEED FOR MAXIMUM LIMITATIONS UPON ELDERLY HOUSING.

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Mr. Green:
(Con't.)

Now these things can be easily and appropriately inspected. And not only inspected out in the open water the way that the bill your talking about is, but in the harbor and where boats are moving at relatively slow rates of speed. Actually the enforcement has been fairly effective in these particulars. At least I'm understand it has.

Sen. Jackson:

Wouldn't it be the same as operating an automobile?

Mr. Green:

Not really. I can go through a whole series of spot checks on an automobile that you know their procedures for road inspections and routine check to determine whether or not the person has the proper licensing and qualification. When you pull me over, I can and I try to switch around as I believe you are an attorney and you know that some of the clients will try to do. Its pretty obvious to the police officer coming up from behind or coming back to the car that a switch has been made. It ususally is, and in a boat there isn't that kind of difficulty. I'm not saying that it isn't impossible, when I said that I stand corrected. I say it is extremely difficult. Thank You.

Sen. Jackson:

Thank you. Anybody else?

Rep. Motto:

Mr. Chairman, Members of the Committee. I would like to apoligize for breaking in on your public hearing but I just came from another hearing. I speak in favor of S. B. 504

S. B. No. 504 A STATUTE OF LIMITATIONS.

This statute of limitations should be enacted to promote justice by preventing the assertion of claims after a lapse of a long period of time to architects, engineers and contractors. They have no control over an owner whose neglect in maintaining an improvement. They cause dangerous and unsafe conditions which develope over a period of years. They cannot

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Rep. Motto:
(Con't.)

prevent an owner from using an improvement for purposes for which he was not designed. Or can they prevent the owner of a building from making alterations or changes which may years afterwards be determined unsafe and defective and appear to be a part of original improvement. I therefore urge that this bill be passed as a matter of good law in fairness and equity to architects, engineers and contractors. Thank you.

Sen. Jackson:

Will you give your name please?

Rep. Motto:

Rep. Motto. Sorry.

Mr. Dolan:

Marshall Dolan, State Boating Commission, Honorable members of the committee. I would like to speak on S. B. 205. As you have heard before from the Coast Guard, there is pending now the federal boating act of 1969 which will supercede the act of 1958 and update it. Much needed legislation in the fields of boating safety. I'm certainly gratified that there is a lot of trust being put into the bills before the legislature this year. It shows a keen interest in this very large and growing recreational field.

I've appeared before this committee sometime before and found the members very receptive to good legislation to help keep this recreational activity as safe as possible. I think however, that bill 205 might be slightly premature in as much as our acceptance of the state boating act by the Coast Guard and the Federal Government. The passing of jurisdiction from the Federal Government to the state is largely controlled by our agreement and uniformity with the Federal Boating Act. And also our repositry agreement under that act. The Federal Boating Act of 1969 certainly will require the same agreement, the same uniformity.

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Mr. Greene:
(Con't.)

It also provides for a cheat of the proceeds of sale to the State of Conn. which may be a source of some revenue to the state in the event that the sale produces more money than is needed to defray the cost of the sale and the cost of the repairs previously done. It also expedites the handling of these cases in the courts and will not constitute any kind of a law jam or contribute to any law jam in the court. It also insures against the unnecessary reduction of the value of property under statutes or attachment for long periods of time.

We feel it really needs legislation. It has had favorable consideration by other bodies. Realize that the Marine Trade Association is a 25 million dollar business in the State of Conn. It is a large contributor to the tax and it is a growing business. The problem that we have here will increase not decrease, unless action is taken. Thank you for your consideration.

Rep. Webber:

I'm going to interrupt these boat hearings for a little while. There are many people here I'm told from a note handed to me. Who are here to discuss S. B. 504. We would like to get that bill off the agenda if we may. We will get to that bill right now, so many of you can leave. I think we have heard enough. We'll go back to boat bills. Don't misunderstand me, but I think we have given the boat people a pretty good portion of this hearing. This is a bill stating statute of limitations.

Atty. Spellacy:

Thank you Mr. Webber, Attorney Burke Spellacy here to represent Conn. Society of Architect Inc. The Conn. engineer in private practice and the Conn. Society of Professional Engineer. Each group would like to register support for S. B. 504.

S. B. No. 504 A STATUTE OF LIMITATIONS.

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Atty. Spellacy:
(Con't.)

You have already heard two representatives concerning the merits of this bill and provisions that relate to a statute of limitations. Briefly, the reason that we ask the bill is that the great multiplicity of lawsuit to presently being brought against architects and engineers. In the common law there was the content of contract which acted as a bar a legal bar to bring suit against architects and engineers by one who is not a party to the contract.

In 1957 in a case of Bingham versus the Binghamton Housing Authority which may be found on 143 New England Statutes 895. It has been your no longer once an owner has accepted the work of an owner of an architect or an engineer. Was that architect or engineer immune from lose to? Since 1957 to date, thousands of lawsuits have been initiated throughout the United States against architects and engineers for alleged defects. In response to these suits 31 states and the District of Columbia have now adopted statutes of limitations limiting the period in which a potentially agrieved party may initiate legislation. The bill you have before you is patterned and taken from legislation presently enacted in the District of Columbia.

I have with me which I'll distribute to the Committee, the record of the hearings and the report of that committee concerning the Washington, D. C. legislation. As you note the record, two cases filed in the District of Columbia court, in particular impressed the committee for the urgency of passing this legislation. The first case was filed in 1965. A visitor to an auditorium fell on a stairway and hurt herself. She alleged the improper location of a hand rail. The architectural firm that designed this auditorium did the work in 1928. Yet in 1967 a lawsuit was initiated. It was initiated against the law firm despite the fact that all the partners who alive in 1928 were now dead.

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Atty. Spellacy:
(Con't.)

It is a tough time preparing the defense of the case Mr. Webber. The records were gone, partners were dead and expensive litigation ensue. In one other case, in 1934, an engineering firm designed a grain elevator. In 1957 the elevator was destroyed by an explosion, 25 years after the work was done. Within weeks after the explosion the engineering firm persued for malpractice. That case is still pending in the Washington court and has not been resolved.

The situation that I just spoke with the statutes of limitation that presently exists on the groups for other books. I'm holding section 52 of the Connecticut General Statute. One quarter of this volumn is devoted to statute of limitation for the particular group. If I were to grab a member of this committee and strike and intentionally beat him and kick him and injure him that member of the committee would be barred beyond a certain period for bringing suit against me. If I further were to call a member of this committee a homosexual and to write that alligation

Rep. Webber: Very careful.

Atty. Spellacy: I can be careful Represenator, to the statute of limitation. We have two years to get back at me. If the same injured party I referred to was taken to the hospital and the wrong leg were amputated he again would have to bring suit under a malpractice provision within one year to the date of discovery of the injury. And finally what about Spellacy who committed all these acts and did all these wrongs, while the court considered it a misdemeanor and they didn't prosecute me within one year I would get away with it and if it were considered a felony and I had five years to get away with it and if I took some money from you, even the internal revenue services a statute of limitation on bringing an action, and I probably could keep the money.

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Atty. Spellacy:
(Con't.)

Now, as I indicated 31 states have passed an active legislation limiting statutory period. In the District of Columbia studied that this committee has you will see that most actions are brought over half within the first two years.

Our bill provides for a four year three in one limitation. Under the Washington study 85% of claims filed are filed within the four year period. If this committee would make the limitation five years 90% of the claims are brought within a five year period. Thus the section of limitations would have or act as a bar to only a small number of claims. The reasons for the enactment, the lose of records, the inexact memory, the unavailibility of witnesses, the possibility of outright fraud. Those are all clear to you.

There are two factors I would like to mention in addition. One is that only one carrier in the United States today, the Continental Insurance Company carries malpractice insurance on these type of claims. And it is my understanding that they are seriously considering giving it up. There are just so many suits being filed and so many claims to be defended, it is extremely prohibited. The second thing is that even though an architect or engineer retires under the existing situation he is forced to carry liability insurance long after he is retired to the day he dies because he might be sued 30 or 40 years from now, long after he retired for something he did in many many former years.

Now, one final word. An architect and an engineer are skilled professions. They design, supervise and they install. Once they have done their work however, maintenance is most important and as Rep. Motto pointed out to you, the best designed building in the world can be rendered potentially dangerous by improper maintenance or failure to follow instructions. And this probability increases with each passing year. Therefore I submit the four year is a fair period in which to

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Atty. Spellacy:
(Con't.)

give a potential party the opportunity to commence a lawsuit. Thereafter, the suits in my judgement ought to be barred. This I'm authorized to say is a most important piece of legislation concerning the groups that we represent before the General Assembly. I strongly urge its passage. With me today are a considerable number of architects, engineers. I ask them to stand and I asked them to registrar and sign their support for this bill. If you will stand up gentlemen. Please be seated. Thank you.

Rep. Webber:

O. K. Thank you. Are you going to talk on the same bill? Do you have something new to add sir?

Mr. Cohn:

Mr. Chairman, I just want to register to the impati's accord to the Home Builders Association of Conn. in favor of this bill.

Rep. Webber:

Your name?

Mr. Cohn:

Robert Cohn.

Mr. Griswold:

Mr. Chairman. I'm Hayden Griswold, Jr. I'm Registered for the Conn. Society of Civil Engineers, and we also are in favor of this bill.

Rep. Webber:

It's nice to hear your voice, but it is just as effective, honestly gentlemen, if you register with the Secretary. Really. If you can to do that unless you have something new to add.

Mr. McNulty:

Mr. Chairman, my name is Carroll McNulty, I'm President of the Conn. Society of Architects. I would like to add just one thing to what Mr. Spellacy said a minute ago regarding a statute of limitations. And this has to do with third party suits, which I think should be specifically thought of as well. Third party suits often involves and architect to have no thought what so ever and originally could not have had and causes him to defend himself and free himself and cost himself without generally speaking the protection of his insurance. I thank you.

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- Mr. Fine: Mr. Chairman, my name is Morton Fine a member of the Board of Registration of Engineers and land Surveyors. Speaking on behalf of S..B. 504. Although the board does not have a direct interest with the matters conerned in this bill in view of the fact that the board does feel that it would be good for the engineer profession. We do support it. Thank you.
- Mr. Purcell: Mr. Chairman. I'm James B. Purcell. I'm President of the Conn. Engineers and Private Practice, many of whom are here today. I just had to say that we are in full support of this bill and we hope you will give it favorable consideration.
- Mr. Spellacy: Mr. Webber. Mr. Jackson urge you to call this out of order.
- Rep. Webber: Why don't we take about a three minute intermission while these gentlemen leave the room to register and then we will go on to the other bills.
- Sen. Jackson: S. B. 416. This pertains to regional planning agencies and is actually a zoning matter, most of the subject matter was covered at an earlier hearing, but we put it in today in the event that somebody wanted to add something. We just had S. B. 504, 581 publication notices to local hearings upon motor vehicles for juck yards, again a zoning matter which was already heard. We didn't have the bill so we had send down for it. Discussion if there is anyone.
- S. B. 676 is not in the printed list of bills we have available. It pertains to community antenna television systems. Is there anyone who wishes to speak in favor of this bill?
- S. B. 683 and that concerns notices in cases of bulk transfers.
- Mrs, Burke: Mr. Chairman. I'm Rebecca Linda Burke, Supervisor of Uniform Commercial Code and wish to state my position. I would just like to comment on three bills. They don't repect the right or change the code or the law in any way.

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Sen Jackson:

Thank you very much. Is there anyone else who wishes to speak on the state songs?

Lets see now, we will move on to H. B. 6639.

H. B. 6639 AN APPROPRIATION FOR A STUDY OF THE NEED FOR MAXIMUM RENTAL LIMITATIONS UPON ELDERLY HOUSING.

Anyone to speak for or against?

H. B. No. 7264 RECORDING OF DECLARATION AND OTHER INSTRUMENTS.

H. B. No. 7265 AMENDMENT OF SECTION 12-350 TO PROVIDE DEBTS WHETHER OR NOT JUDICIALLY ESTABLISHED AND DEDUCTIBLE ITEMS IN ESTATE TRANSFER TAX.

H. B. No. 7385 THE FLYING OF THE STATE FLAG ON SCHOOLHOUSES.

H. B. No. 7390 REPEALING THE FAIR TRADE ACT.

Miss Vandevere:

Mr Chairman, Honorable Members of the Body. I would like to speak in favor of H. B. 504 the statutes of limitations. The purpose of my coming here is in the house to bring about justice to a client whose attorney died suddenly. Notice of his death was recieved by certified mail. And by that time that certain term of the calendar had expired. When action on this case was to have been heard. Efforts have been made but to no avail, because of limitations of the present law. May I respectfully request that H. B. 504 be amended to extend to five years and that this be permitted to be rectroactive to the date of notice of the attorneys death or to the date of passage of this bill to continue to be denied the rights to go forward with this case due to an act of God would be a grave injustice to the party concerned and it would be inhumane. This person is approaching her 70th year of age. I pray that this honorable body would kindly consider the unusual circumstances and amend this bill to apply rec- troactively five years from the date of passage. I thank you.

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Rep. Stecker:
(Con't.)

Well then, perhaps I can clarify this a little bit for your purposes to Mr. Webber. I think that the bill you heard last week was probably S. B. No. 504, I think which was sponsored by Senator Alfano.

Rep. Webber:

That is correct.

Rep. Stecker:

The bill that you have before you this morning 1291 by Senator Miller is a bill which would accomplish essentially the same purposes, however, the society of architects and engineers as well I think, would prefer to see S. B. 504 in action in place of 1291.

S. B. No. 1291 EXTENDING THE STATUTE OF LIMITATIONS TO INCLEDE ARCHITECTS, ENGINEERS AND LAND SURVEYORS.

It is a more comprehensive bill. It is a little bit more carefully spelled out. S. B. No. 1291 is introduced by Senator Miller merely tacks on to the words physicians, surgeons, dentists, etc. The words of architects and engineers is in it and it is kind of a catch all sort of a bill. And I think that the 504 as I say is the much more explicit bill and would be a better bill for passage. So I would urge your consideration of 504 favorably. Thank you.

Sen. Jackson:

Thank you. Is there anyone else from the assembly come in? If not I think we can start the public portion and our procedure will start.

Mr. Levy:

Gentlemen. My name is Herman Levy, 152 Temple St. in New Haven, Conn. I represent the National Association of Theater owners of Conn. And I have represented them for some 30 years. I would like for a moment to call to your attention that the only complaint you have so far is from the Berlin Drive-In Theater and the New Britian Herald editorial was aimed at that to.

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Mr. Bercamp:
(Con't.)

ambulance chasing is so isn't newsmen who race to the scene of an accident to take photographs for the paper only on a lot bigger scale. Thank you.

Rep. Webber:

Am I to assume that there will be no more comment on 1226 or 1228? I'm not cutting it off but I'm assumming. O.K. fine. Now on 1291 and I think we heard something. Is there anyone else here who wants to talk on 1291? Yes sir.

Mr. Dennison:

Mr. Chairman, Members of the Committee. My name is Thomas Dennison. I'm an attorney in Hartford. I am here on behalf of the Conn. Association of Architects and Private Practice. With regard to H. B. 1291.

H. B. No. 1291 EXTENDING THE STATUTE OF LIMITATIONS TO INCLUDE ARCHITECTS, ENGINEERS AND LAND SURVEYORS.

The Architects do support a statute of limitations bill in theory. But we feel that S. B. 504 which deals specifically with statute of limitations for architects is more carefully drafted and more specific as it applies to architects. And should be considered favorably by the committee rather than 1291. The primary objection I have is in H. B. 1291 which merely adds architects and land surveyors and engineers to the existing statutes. The wording states that no action may be brought more than 3 years from the act or omission complained of.

Now if that applies to architects. The act or omission complaint can merely be placing of a line or a drawing on a sheet of paper. The problem comes up when was that act or omission performed and S. B. 504, the wording reads, no action shall be taken more than 3 years after substantial completion of the building or improvement.

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Mr. Dennison:
(Con't.)

Substantial completion is confined in another section of the statute the more definite time from which you can compute 3 year statute.

Rep. Webber:

In other words, I remember 504. We heard that last week. I think it related entirely and exclusively to architects. Then it is correct. Would you like to keep the engineers and land surveyors out of it?

Mr. Dennison:

I think that the architects should be more properly excluded from H. B. 1291 and a specific bill drafted namely 504 to deal specifically with architects problems. I think the bill thats drafted 504 does deal with the problems that are peculiar to architects.

Rep. Webber:

O.K. Thank you. Anyone else on that matter? We will hear 1297. I think we will hold this up. This was Senator Jackson's bill, unless there is someone here to talk on 1297. 1301, rental charges for use of town facilities by circuit courts. Anyone here on that matter? If not we will go to 7390. Repealing the fair trade act. Anyone here in favor of it? Anyone here in opposition?

Mr. Cole:

My name is Francis Cole, Executive Secretary of the Conn. Pharmaceutical Association. I am here in opposition to 7390.

H. B. No. 7390 REPEALING THE FAIR TRADE ACT.

The instruction of my associates representing 1300 registered pharmacists, and their employees. Fair trade in Conn. has been on the law books for over 33 years. It has been working and is effective without cost to the state. This is why predatory price cutters are seeking appeal of the Fair Trade Act. In my 16 years of watching legislation attempts have been made at almost every session to legate a statute that give the manufactures the right to protect his interest.