

Legislative History for Connecticut Act

SB 1012	PA 111	1995
Senate 2559-2560, 2606-2608		(5)
House 3266-3276		(11)
Judiciary 1706, 1713-1714, 1714-1715, 1735, 1736-1737, 1737-1739, 1752-1753, 1754-1757, 1778, 1780, 2019-2022, 2026, 2027, 2121, 2122		(25)
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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1995

VOL. 38

PART 8

2543-2919

Calendar 306, Substitute for HB6667, pass  
retained.

Calendar 312, Substitute for HB6674 is pass  
retained.

Calendar 313, Substitute for HB5063, I would move  
to the foot of the Calendar.

THE CHAIR:

Motion is to refer this item to the foot of the  
Calendar. Without objection, so ordered.

SEN. FLEMING:

On Calendar Page 9, Calendar 314, Substitute for  
HB5510 is marked Go.

Calendar 317, SB942 is pass retained.

Calendar 321, Substitute for SB891 is marked Go.

Calendar 328, SB1196 is passed temporarily.

Calendar 330, Substitute for SB915 is passed  
temporarily.

Calendar 334, Substitute for SB958 is marked Go.

On Calendar Page 10, at the top of the page,  
Calendar 336, Substitute for SB1140 is marked Go.

Calendar 339, Substitute for SB1012, File 581.  
Madam President, I would move that to the Consent  
Calendar.

THE CHAIR:

Motion is to refer this item to the Consent

Calendar. Without objection, so ordered.

SEN. FLEMING:

Madam. Calendar 344, Substitute for SB686 is pass retaining its place.

Calendar 345, Substitute for SB1107 is pass retaining its place.

Calendar 346, Substitute for SB1001 is pass retaining its place.

Calendar 348, SB873, File 596. Madam President, I would move that be referred to the Committee on Appropriations.

THE CHAIR:

Motion is to refer this item to the Committee on Appropriations. Without objection, so ordered.

SEN. FLEMING:

Calendar 350, Substitute for SB861 is passed temporarily.

Sorry, Madam President. Calendar 351, Substitute for SB908 is passed retaining its place.

Calendar 360, Substitute for SB1009, File 620. Madam President, I would move that that be referred to the Committee on Human Services.

THE CHAIR:

Motion is to refer this to the Committee on Human Services. Without objection, so ordered.

please announce the tally.

THE CLERK:

Total number voting, 35; necessary for passage, 18. Those voting "yea", 24; those voting "nay", 11.

THE CHAIR:

The Resolution is adopted. Members, I'd ask you to please stick by the Chamber. We will be voting on the Consent Calendar soon. Would the Clerk please call the Consent Calendar.

THE CLERK:

Page 6, Calendar 253, Substitute for SB951.  
Page 10, Calendar 339, Substitute for SB1012.  
Page 14, Calendar 378, Substitute for SB837.  
Page 16, Calendar 387, Substitute for HB6686.  
Page 16, Calendar 388, Substitute for HB5034.  
Page 16, Calendar 389, Substitute for HB6995.  
Page 17, Calendar 391, HB5112.  
Page 19, Calendar 404, Substitute for HB6372.  
Page 19, Calendar 405, Substitute for HB6887.  
Page 19, Calendar 406, HB6790.  
Page 20, Calendar 410, HB6687.  
Page 20, Calendar 412, Substitute for HB6761.  
Page 20, Calendar 413, HB6666.  
Page 21, Calendar 416, Substitute for HB6801.

Page 22, Calendar 421, Substitute for HB6730.

Page 27, Calendar 135, Substitute for SB528.

Page 27, Calendar 194, Substitute for HB6677.

THE CHAIR:

The motion before us is adoption of the Consent Calendar. Senator Fleming.

SEN. FLEMING:

Yes, thank you, Madam President. Madam President, I would like to request that Calendar 389, Substitute for HB6995, File 650 which is on Calendar Page 16 be removed from the Consent Calendar and marked Go.

THE CHAIR:

That item is removed from the Consent Calendar and marked Go. Senator Rennie.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If so, the machine will be locked. The Clerk please take a tally. Please announce the tally.

THE CLERK:

Total number voting, 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0.

THE CHAIR:

The Consent Calendar is adopted. At this time, the Chair will entertain any points of personal privilege or announcements.

Seeing none, would the Clerk return to the Call of the Calendar.

THE CLERK:

Page 3, Calendar 85, Substitute for SB76, An Act Concerning the Establishment of Deadlines for the Processing of Applications for State Economic Development Assistance. Favorable Report of the Committee on Commerce, File 108.

THE CHAIR:

Senator Guglielmo.

SEN. GUGLIELMO:

Yes, Madam President. I move adoption of the Joint Committee's Favorable Report and passage of the bill.

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GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
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VOL. 38

PART 9

3040-3417

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House of Representatives

Tuesday, May 23, 1995

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber please.

(Roll Call vote taken)

DEPUTY SPEAKER HYSLOP:

Have all members voted? Have all members voted? If all members have voted, please check the machine and make sure that your vote is properly recorded. The machine will be locked and the Clerk will take a tally.

(Tally taken)

DEPUTY SPEAKER HYSLOP:

The Clerk will announce the tally.

CLERK:

SB 906 as amended by Senate "A" in concurrence with the Senate. Total number voting, 150; necessary for passage, 76; those voting Yea, 150; those voting Nay, zero; absent, not voting, one.

DEPUTY SPEAKER HYSLOP:

The bill as amended is passed.

Clerk, please call Calendar 487.

CLERK:

On Page 21; Calendar 487, Substitute for SB 1012,  
AN ACT CONCERNING APPORTIONMENT OF LIABILITY.  
Favorable report of the Committee on Judiciary.

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DEPUTY SPEAKER HYSLOP:

The Honorable Chairman of the Judiciary Committee,  
Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I move acceptance of the  
Joint Committee's favorable report and passage of the  
bill.

DEPUTY SPEAKER HYSLOP:

The question is on acceptance and passage. Will  
you remark further?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This bill to which, as  
far as I know, there are no amendments is the end  
result of a lengthy process of attempting to answer a  
question which --

DEPUTY SPEAKER HYSLOP:

Excuse me a moment, Representative Jarjura.

Would the House please come to order? We're  
getting a little bit noisy.

Proceed.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. As I was indicating, this  
bill is the end result of a lengthy process of  
attempting to answer a question which arose because of  
the tort reform legislation passed several years ago.

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Essentially, this bill clarifies the circumstances under which another party can be brought into an action once the statute of limitations has expired if the defendant in the action has named them as a third-party defendant.

Mr. Speaker, I would urge passage of the bill. Essentially, this opens up a window during which other parties can be brought into the litigation if a defendant brings them in.

DEPUTY SPEAKER HYSLOP:

The question is on adoption. Will you remark further?

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. I rise in support of the bill. I think it's something that's long overdue. And it's going to clarify a provision in our existing law regarding which parties in a lawsuit may be held responsible for damages.

But there are a couple of questions I have for the proponent of the bill, Mr. Speaker, particularly on the issue of the statute of limitations. So, through you, if I may, to the proponent of the bill?

In a situation where the statute of limitations has run as against a particular defendant and the

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individual is brought into the case as a third-party defendant, may the plaintiff who neglected to name that party initially as a defendant in a case bring an action directly against that defendant notwithstanding the fact that the statute of limitations has run?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. The answer is yes.

DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Mr. Speaker. Under those circumstances, would that individual, in a situation where there was a collateral source or an insurance policy applied, would that individual be able to take advantage of that insurance policy notwithstanding the fact that notice was not given within the initial statute of limitations? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. The answer is yes.

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DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. And one final question. As far as the State of Connecticut or a municipality, there are certain circumstances where suit is allowed because that party -- if that party is found to be the sole proximate cause of injuries and damages sustained.

In a situation like this may a third party bring into this case the State of Connecticut or a municipality where that standard applies if it was not named by the plaintiff initially? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. If a town or a governmental entity, as you indicate, could have been a defendant prior to the time the statute of limitations ran, they could be brought into the case after the time the statute runs.

DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. Thank you, Mr. Speaker. I think this

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bill is a much-needed correction because in tort reform legislation a few years ago this state chose to abandon the rule of joint and several liability, meaning that any individual defendant could be liable for an entire judgment. It was necessary to make certain that all parties were before the court.

As I understand this file copy, a party will mean just that; an individual who is before the court, not simply anyone who is out there who might be in some way responsible.

But in order that the legislative intent is clear on this, I should like to ask, if I may, through the proponent of the bill if -- to the proponent of the bill, if an individual is not cited by the initial plaintiff, is not brought into the case by one or more of the defendants for purposes of apportionment, may that individual be considered by the jury on the issue of apportionment although that individual or corporation is not a party to the case? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. I believe this bill is silent as to that question.

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DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. My understanding is that the bill uses the word "parties" and the word "party" is used for purposes of apportionment. Is it the proponent's understanding that "party" means party to the lawsuit and not anyone anywhere in the world who might possibly be said to have been in some way responsible? That's the way I read it. I just want to make sure that the intent is good, that "party" means party to the action, not anyone who is outside the lawsuit. Is that correct? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Through you, Mr. Speaker. Yes. In fact, it would mean anyone who is actually a party to the lawsuit.

DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

So that if a plaintiff in a case had sued two individuals, a third person had been brought in under apportionment and a direct action is subsequently made against that person, a defendant is not entitled to a

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charge that one not a party to this case may be considered on the issue of apportionment. Is that correct? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Yes, that's correct. The original intent of the bill was to provide a defendant with the opportunity to bring in other prospective defendants within a timely fashion. This bill only relates to the ability of the original plaintiff to bring those new defendants as a defendant in the action.

DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. In an instance where there is an action brought directly against a municipality, for example, under the Highway Defect Statute, were the standard to be applied is that the municipality is the sole proximate cause of the injury, may that municipality bring other persons into the case for purposes of apportionment at that time? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

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Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Yes, I believe they could try.

DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

All right. And through you, Mr. Speaker. An individual brought into the case by the municipality against whom a direct action is subsequently brought could then be liable for 100 percent of the damages given the sole proximate test has to be applied to the municipality. Is that correct? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. Yes, that is correct.

DEPUTY SPEAKER HYSLOP:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. And thank you, Representative Lawlor. There have been a great number of cases that have come up through the lower courts on

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this matter, most of them dealing with the definition of who constitutes a party or the idea of who an actual party is for purposes of apportionment.

I think this bill makes clear, as the colloquy just indicated, that party means a party to the action. It doesn't mean any individual. The statute of limitations is expanded in this case with a very narrow window to give an opportunity for a plaintiff to bring an action directly against an individual who was not initially named in the case.

So this bill will clarify to the advantage of both plaintiffs and defendants the existing law, will resolve a split of authority in the lower courts. And I would urge its approval. It has been the result of numerous discussions and I think all of the parties who participated in these discussions ought to be commended for coming to a conclusion in this area.

Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill? If not, staff and guests to the well of the House. The machine will be open.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by

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Roll Call. Members to the Chamber please.

(Roll Call vote taken)

DEPUTY SPEAKER HYSLOP:

Have all members voted? Have all members voted?  
If all members have voted, please check the machine and  
make sure your vote is properly recorded. The machine  
will be locked and the Clerk will take a tally.

(Tally taken)

DEPUTY SPEAKER HYSLOP:

The Clerk will announce the tally.

CLERK:

SB 1012 in concurrence with the Senate. Total  
number voting, 150; necessary for passage, 76; those  
voting Yea, 148; those voting Nay, two; absent, not  
voting, one.

DEPUTY SPEAKER HYSLOP:

The bill passes.

Clerk, please call Calendar 430.

CLERK:

On Page 15, Calendar 430, SB 1080, AN ACT  
INCREASING COMMON STOCK OWNERSHIP FOR A PENSION FUND  
FROM 50 PERCENT TO 65 PERCENT OF TOTAL ASSETS, as  
amended by Senate Amendment Schedule "A". Favorable  
report of the Committee on Finance.

DEPUTY SPEAKER HYSLOP:

JOINT  
STANDING  
COMMITTEE  
HEARINGS

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PART 5  
1503-1856

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JUDICIARY COMMITTEE

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SEN. UPSON: (Inaudible, microphone not turned on).

REP. MORDASKY: Oops, I'm at the Judiciary Committee.

SEN. UPSON: (Inaudible, microphone not turned on).

REP. MORDASKY: Wait a minute, wait a minute, I just said that when you plug up all the holes in the chicken house, they still find a way to get in.

(Laughter)

Thank you very much, sir.

SEN. UPSON: Thanks a lot. Senator Kissel has a question.

SEN. KISSEL: And since we share part of the district, I'm happy to see you here. Can you just make sure that this committee gets copies of that Massachusetts legislation.

REP. MORDASKY: Yes sir, I've got it right here.

SEN. KISSEL: That's all. Thank you very much.

SEN. UPSON: Thank you very much.

REP. MORDASKY: You're welcome.

SEN. UPSON: Bill Gallagher. Where is he? The public portion, CTLA.

BILL GALLAGHER: May it please the committee, my name is Bill Gallagher. I'm here as a representative of the Connecticut Trial Lawyers Association and I want to speak on four bills, 631 -- CB631 and Raised Bills 1011, 12 and 13.

The CB631 on volunteers, the immunity for volunteers and the fee shifting for certain municipal employees. With respect to the volunteers aspect of that, we agree in principle --

SEN. UPSON: 681.

BILL GALLAGHER: 681, I'm sorry. I wrote 631 on my

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than immunity would be appropriate. And I'm reasonably certain that our organization could support that.

SEN. KISSEL: I'm -- I'd really like to work on trying to do that, so that maybe we can get everybody on board and go forward with that. Thank you very much.

BILL GALLAGHER: With respect to the Insurance Unfair Practices Act. This proposal, which is RB1011, seeks to delete the phrase in the second line of Section 6 at the very beginning of that act with such frequency as to indicate general business practice. This is based on Lees versus Middlesex Insurance, which is a Connecticut Supreme Court decision, the citation is 229 Conn 482. It was cited this past year that held that multiple acts of misconduct in handling a single insurance claim is insufficient under CUTPA and also under CIUPA

The Supreme Court has held that there's no unfair trade practice remedy unless there's an unfair insurance practice remedy. It's been long -- the consensus that multiple acts in a single claim would delete the liability under CIUPA. The court has ruled very clearly that that's not the case, that there has to be multiple cases rather than single multiple acts and a single claim. So that our response to that is to delete the provision that requires the general business practice. The plaintiff in a case of unfair insurance practice or settlement practices has to show now that other -- the company has engaged in the same kind or similar conduct in other circumstances, frequently -- in other cases and frequently that evidence is very difficult to come by.

The last subject I want to talk about is the two impleading statutes, 1012 and 1013. 1012 seeks to amend the third party practice 52-102a and 1013 seeks to amend 52-572h, which is the allocation of negligence.

And let me just say that we support 1012, that what it does is it creates a window. There's a two -- statute of limitation because the allocation only

applies to the negligence cases and it provides that a defendant has another year, he has up to three years from the date of injury or loss or debt to bring someone in and it creates a window. The plaintiff then has 60 days. We're not crazy about the 60 days and think that it might be more reasonable at 90 or 120 days, but we can live with the 60 days.

That at least deals with the -- there are two problems here that -- as a result of the abolition of joint and several liability. The first problem is that a lawyer may bring suit in a timely fashion maybe three or four or five months after he gets the case and the defendant waits until two years and three months and then brings in third parties that the defendant has known about all along and the purpose of that would be to diminish the plaintiff's recovery by allocating negligence, but the plaintiff can't go after that third party because the statute has run and there are conflicting decisions on this point.

What the bill that was before you last year did is ignore that and 1013 ignores that and it ignores the opposite. And we support the 1012 that creates the windows so both plaintiff and defendant have a shot at allocation in a fair way. 1013 simply changes the joint and several liability statute to say that nobody can be brought in after the statute of limitation runs. And that's not fair to the defendants where the plaintiff brings suit at the 11th hour on the 23rd month and the defendant then doesn't have time to bring -- possible to even bring suit and make the return date of that law suit after the statute has run. So the defendant would be treated unfairly with respect to the provision in 1013.

And similarly if there are provisions for bringing in a third party without creating a window, it's unfair to the plaintiff. 1012 in our judgment does that. It balances both interests and allows the defendant an extra year and then gives the plaintiff a reasonable amount of time, 60 days, which hopefully we can increase somewhat, but a plaintiff then can come in.

The problem frequently is that the plaintiff doesn't know when he brings suit. For example, the plaintiff brings suit on a simple fall on ice and it develops that there's a contract between the owner of the property and someone else to come in and clean the ice, so that after the statute runs, they bring in the person, that third person who was really negligent here and is going -- and whose negligence is going to be allocated and it's going to diminish the plaintiffs' recovery, yet the plaintiff had no reasonable way to find that out.

And what we're hoping to do is to support this unending litigation on these issues. And we'd hope that you would consider favorably Bill 1012.

I have nothing further, thank you.

REPRESENTATIVE LAWLOR: Senator Kissel.

SEN. KISSEL: Just regarding the time and -- I mean the 60 days is palatable, but something else would be more appropriate. Is there a specific amount of time that you would feel would be more appropriate?

BILL GALLAGHER: I think that -- a reasonable time for -- considering that the defendant has a year to do this, would be to give the plaintiff six months, give him half the period of time. I think that's more reasonable. But I'm not suggesting that we can't live with 60 days. The problem is in diarying these things and staying on top of them, especially for the smaller practitioners who may get on a trial and not have the time to get to it. Whereas, if you create a longer window, then it's not going to be as the result of not burning midnight oil to do this. But we're not suggesting that the bill as drafted is totally unacceptable. We'd just like to see a longer window.

SEN. KISSEL: It seems to me that the concerns of the small practitioners in the State are appropriate and thank you for suggesting that.

REP. LAWLOR: Representative O'Neill.

REP. O'NEILL: If I may take you back to 681 and lines

ROBERT SHEA: Good afternoon, Senator Upson, Representative Lawlor, esteem members of the committee.

My name is Robert Shea, I'm an attorney with the SB1012 SB1013 Insurance Association of Connecticut and I'm before your committee today to testify very briefly on SB1014 SB681 five bills. We have submitted written statements SB 349 in support of our position and provided those to the clerk earlier this morning.

The first bill is CB5183, AN ACT CONCERNING THE USE OF IN-HOUSE COUNSEL WHERE A RESERVATION OF RIGHTS LETTER HAS BEEN INVOKED. The Insurance Association of Connecticut strongly opposes this bill. As a practical matter, this legislation would prevent attorneys in this State from obtaining and working as in-house counsel lawyers. The --

SEN. UPSON: Has any state ever prohibited? I've never heard of such a thing.

ROBERT SHEA: The only state in the nation, Senator, that has questioned the use of in-house counsel attorneys is the State of North Carolina, and that was done by way of a court decision, not by way of legislation. And furthermore, Senator, the --

SEN. UPSON: I didn't mean to interrupt your testimony.

ROBERT SHEA: That's quite alright, sir. The American Bar Association has looked at this issue year after year, after year, and has never opposed the use of in-house counsel.

Most recently in the -- and more recently in the State of Connecticut, the Honorable Judge Spear, now a Justice of the Connecticut Appellate Court, addressed the issue of the propriety of in-house counsel in a case called King versus Guiliani, which was a case that was pending in the Bridgeport Superior Court. The question in this case -- or the major question in this case is whether the use of in-house counsel by the USF&G Insurance Company is an appropriate practice of law.

Judge Spear stated that the American Bar

Association clearly allows staff counsel offices. And Judge Spear also stated that, and I quote, "It is significant that the organized bar in Connecticut has made no complaint about this practice. Nor is the court aware of any disciplinary charges being filed against such staff attorneys. The apparent acceptance of this practice by the bench and bar of this state supports USF&G's contention that staff counsel is proper."

We submit to this committee that there is no public policy reason to prohibit attorneys, commissioners of the Superior Court in this state from obtaining employment in-staff counsel offices. We urge the committee to reject this bill.

I'd like to talk in conjunction about two bills next, RB1012, AN ACT CONCERNING IMPLEADING AND RIGHTS AND REMEDIES OF THIRD PARTY DEPENDENTS -- DEFENDANTS, excuse me, and RB1013, AN ACT --

SEN. UPSON: We're all third party dependents.  
(Laughter).

ROBERT SHEA: That was a slip. Defendants. And RB1013, AN ACT CONCERNING APPORTIONMENT OF DAMAGES.

The Insurance Association of Connecticut opposes both of these bills and specifically with respect to RB1012. What this bill intends to do is address the apportionment issue, which members of the Bar and the Judges of the Superior Court agree is currently a problem. What this bill purports to do is address the apportionment issue --

SEN. UPSON: Is there something wrong with the microphone?

REP. LAWLOR: Bob, you might want to -- you might be a little to close to it.

ROBERT SHEA: Okay. This bill wants to change apportionment and address this problem by making amendments to the impleader statute, which is 52-102a, and we submit to the committee that the appropriate way to deal with the apportionment

issue is to change the actual apportionment statute, which is 52-572h.

So inherent in this legislation under 52-102a is a confusion between impleaded defendants and apportionment defendants. An impleaded defendant can be liable for damages to either the third-party plaintiff or to the original plaintiff, but an apportionment defendant is in a case only for the purposes of allocating fault among responsible parties.

Another problem with RB1012 is it automatically extends the Statute of Limitations for at least a year and 60 days. And we submit to the committee that that would cause further delay in the court system to automatically extend the statute in such a manner.

Finally, this bill does nothing to relieve the numerous number of motions and court arguments that are -- proceed every week in the courts in Connecticut on this apportionment issue. And we strongly urge the committee to reject RB1012.

With respect to RB1013, I will simply echo Mr. Gallagher's comment that this bill is not fair to defendants. And we urge the committee to reject this bill. Again, it's not an appropriate way to deal with the apportionment issue.

And finally on the apportionment issue, I would like to --

SEN. UPSON: So both you and CTLA agree on that one?

ROBERT SHEA: Right.

SEN. UPSON: But not on the one before?

ROBERT SHEA: We -- yes --

SEN. UPSON: Not on 1012?

ROBERT SHEA: That's right, Senator, we oppose 1012. And believe it or not, the Insurance Association is in my opinion very close to working out an

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agreement with the Connecticut Trial Lawyers and other interested parties on this apportionment issue.

SEN. UPSON: For both -- on both these areas --

ROBERT SHEA: On both these areas. We believe that our draft proposal will go a long way to solving many, if not all, of the problems that are currently --

SEN. UPSON: A long way, but as long as CTLA?

ROBERT SHEA: The problem with the CTLA bill that they support 1012 at this time is that it does nothing to help relieve the problem in the courts of lawyers and judges having to spend many many hours every week in motion practice on the apportionment issue. Our draft proposal takes away the need for lawyers to appear every Monday morning at short calendar and spend many hours to --

SEN. UPSON: I'm hearing that that may be the judges idea too.

ROBERT SHEA: It may be. We have submitted our proposal to the Judicial Department and hope that they will help out in the process. In any event, we ask the committee --

SEN. UPSON: (inaudible) -- if in-house counsels aren't doing motions, what will they get paid for.

ROBERT SHEA: Resolving cases in a fair and equitable manner. (Laughter).

SEN. UPSON: Thank you.

ROBERT SHEA: That's what they do now, Senator.

SEN. UPSON: We're here for truth also.

ROBERT SHEA: That's right. In any event, we --

SEN. UPSON: But seriously, can the two groups work out something you think in both of these --

ROBERT SHEA: We're pretty close, Senator, and we ask

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the committee's indulgence to allow us a few more days to try to work out an agreement --

SEN. UPSON: Thank you.

ROBERT SHEA: -- and we will submit that to the committee. Thank you.

SEN. UPSON: Thank you. And thank you for getting here at 6:00 o'clock in the morning.

ROBERT SHEA: You're welcome.

SEN. UPSON: We appreciate your testimony.

ROBERT SHEA: I have just a couple of quick comments on other bills.

SEN. UPSON: Go ahead.

ROBERT SHEA: RB1014, AN ACT CONCERNING LAND OWNER LIABILITY FOR RECREATIONAL USE OF LAND. The Insurance Association opposes this bill because the purpose of this bill is to subject municipalities to liability when they make their land either by way of ball fields or parks, other recreational land available to the general public for use and enjoyment.

And I'd like to follow up on Mr. Sweeney's example case of where a municipality was performing some dredging in a lake and there was a wire that extended across the lake. And I would agree with Representative Radcliffe in his comment that under that circumstance it would be an issue of fact as to whether the municipality's failure to warn, under those circumstances would be considered wilful and malicious and therefore subject the municipality to a liability under Section 52-557h.

We urge the committee to reject RB1014.

With respect to CB681, AN ACT CONCERNING THE LIABILITY OF VOLUNTEERS AND CIVIL ACTIONS AGAINST MUNICIPAL OFFICIALS AND VOLUNTEERS, the Insurance Association of Connecticut supports this legislation with the exception of the text that

SEN. UPSON: Any questions? Thank you.

ANITA SHEPKIR: Thank you.

KAREN CLARK: Thank you.

SEN. UPSON: Vincent DeAngelo from CBA. Vincent DeAngelo? Oh, there he is.

VINCENT DEANGELO: Senator Upson, Representative Lawlor, my name is Vincent DeAngelo, I am on the Executive Committee of the Litigation Section of the Connecticut Bar Association. I'm here on behalf of the Connecticut Bar Association just as an association position with regard to bills -- RB No. 1012 and 1013.

1012 deals with apportionment, basically bringing in parties to apportion damages. As the committee is aware, there exists a problem under Tort 2 as to what do we do, when do we bring them in and when do we -- and what happens.

The Connecticut Bar Association's committee was composed of five lawyers, three defense lawyers, two plaintiffs lawyers. I myself spent most of my professional life doing defense work and in the last three years, I've been doing more plaintiffs work. And Mr. Gaston asked me to speak accordingly.

1012 is -- there will have to be some extension of the Statute of Limitations if the interests of both sides are to be reasonably accommodated. There's no way if a plaintiff sues a defendant on the eve of the statute that generally speaking the defendant can do anything to bring someone in quick enough for apportionment. Yet to say -- and if they bring them after in the statute, the courts have been holding, which is probably not fair to the plaintiffs, that well you can have them in for apportionment, but not for damages. There may be many instances where a plaintiff truly believes there's no good reason to sue someone or make a claim, a jury may disagree, and it puts the plaintiff's lawyer in a bind.

1012 accommodates all those interests. It defers blush, the plaintiff sues those parties who the plaintiff reasonably believes are responsible. If the defendants believe that someone else is responsible and should be in the case for apportionment, they're brought in and the plaintiff then has I think 60 days to make claims, the difference -- without regard to the Statute of Limitations. What it does, of course, for the plaintiff's point of view is it says look if there is someone you think should be a defendant and should be apportioned, don't cut off our right if some jury may think this person is 25 percent responsible, why should my damages be reduced by 25 percent without me having an opportunity first to make a claim against that person. And for the defendant, it certainly protects the defendants in that it allows them when they're sued toward the end of a statutory period to bring in someone else, make sure that everyone is there that needs to be there in their opinion.

Essentially if one starts out with the position that everybody who either side wants should be in the case, there has to be a mechanism to bring them in and then there has to be a subsequent time period where the other parties can sort out and make their claims. It is true this would have the effect of extending the Statute of Limitations and in some instances to three years. I don't have the details of the compromise that has been eluded to by Mr. Shea, but my reading of what I understand that would detail would entail in effect extending the statute to two and a half years in any event and I believe there would be problems.

1012 really was drafted by people on both sides of the aisle from the Litigation Committee Section whose view is to try to take a more neutral position than might be taken by other groups that have interests.

With regard to 1013, 1013 we oppose and oppose for the very simple reason that you can't have 1012 and 1013. 1013 puts a two-year time period on it.

Three years, by the way, I would point out is --

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since we have a Statute of Limitations that runs from act or omission as apposed to injury, is really not significantly longer, if it's indeed at all longer than statutes found across the country where the date of injury and not the date of the act or omission is the tolling for the governing force.

There is a finality. It extends it to some extent yes, but it does it fairly and truly allows everybody some -- if the defendant wants to bring someone in, bring them in. And then allows the plaintiff an opportunity, which is now being cut off, to respond.

SEN. UPSON: Are you working with the IAC on language --

VINCENT DEANGELO: I just heard about that today, Senator, and --

SEN. UPSON: -- or are you doing that with CTLA --

VINCENT DEANGELO: I would -- we will be working with either one of them on --

SEN. UPSON: I would hope so.

VINCENT DEANGELO: We're not -- you know, I don't -- I know what I've seen this morning just very briefly before I came in and I think it has more problems than 1012, but the concept has got to be there and 1012 right now does it the best.

SEN. UPSON: But you're going to make sure that you get involved with that?

VINCENT DEANGELO: Oh yes, our committee will get involved with that, Senator, yes. Definitely.

SEN. UPSON: Any questions? Yes, Dale.

REP. RADCLIFFE: Thank you, Mr. Chairman. With regard to both 1012 and 1013 --

VINCENT DEANGELO: Yes.

REP. RADCLIFFE: Wouldn't it just be easier to say that

apportionment only applies to parties and define parties as parties to the action?

VINCENT DEANGELO: The problem with that from the defense standpoint, and I choke a little bit being more of a plaintiff's lawyer saying this, but the problem with that is I'm -- I get hurt, my wife is driving the car, all I want to do is sue the other driver. The other driver may have a feeling that maybe my wife has something to do with it. If I didn't sue my wife, you're going back, you're getting away from Tort 1 and Tort 2 --

REP. RADCLIFFE: Right.

VINCENT DEANGELO: -- you're getting back to the plaintiff choosing. That has a certain appeal from the plaintiff's side, but certainly from the Connecticut Bar Association's situation, a mixed view -- if you believe, which I believe the legislature has spoken on, that there should be a way of bringing everyone in and apportioning and not letting the plaintiff make that choice, then there has to be some way for that -- for the defendant in my scenario to bring my wife in.

REP. RADCLIFFE: But isn't there some way that they can be brought in with -- you mentioned finality, it doesn't seem to me there's finality in your automobile example to take that just as one case. Where there's been an automobile accident, more than two years have expired and the driver of one of the vehicles thinks I'm home free because after all we have a statute in this State that says you can only sue people two years after the act or omission complained of --

VINCENT DEANGELO: Right.

REP. RADCLIFFE: -- and I guess nobody sued me, so it's okay. And then the Statute of Limitations suddenly springs up to bite you based not on anything you've done, based not on the facts of that accident, but based on the actions of a third-party that you can't control. If you're looking for fairness, is that fair?

VINCENT DEANGELO: It probably is in the sense that you now would still have the sense that look after three years I'm over and done, your expectation would change a little bit, but to a certain extent you become a defendant in the law suit based on the actions of a third party whom you can't control in any event. You know, if the plaintiff sues you --

REP. RADCLIFFE: Yeah, but I know I'm exposed for two years.

VINCENT DEANGELO: Yes.

REP. RADCLIFFE: Now, under 1012 I'm exposed for two years, but it might be three years if another driver in that accident was sued --

VINCENT DEANGELO: Yes.

REP. RADCLIFFE: -- and that defense counsel decided to bring me in and then maybe in 60 days I'd get sued. Are we going to get into a situation where there might be disclaimers or reservation of rights due to lack of notice in those cases? Is that fair to the individual consumer?

VINCENT DEANGELO: Well the only answer to that is -- it's a balance, Representative Radcliffe. I don't disagree that that does, you know, extend the statute, it has the effect, and there is probably no way of doing that if you're -- if one wants to balance the needs and the legitimate interests of defendants with the legitimate interests of plaintiffs. I don't -- there isn't a perfect answer to that problem. One could argue whether it has to be two years. Maybe it should be six months, you know, as apposed to a year and cut it down a little bit more that way. You know, there -- the courts have struggled with it. I think that members of the committee have struggled with it. How do you balance those -- how do you balance all of those competing interests.

REP. RADCLIFFE: How about an equal protection problem. Two people similarly situated, involved in similar accidents on the same date, one can be sued two years and a day later and another can't? Is there

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any protection problem there?

VINCENT DEANGELO: I think you can say the same thing --  
I don't believe so, Representative --

REP. RADCLIFFE: Okay.

VINCENT DEANGELO: That just would be my opinion,  
although I don't claim to be a great constitutional  
lawyer. And I can think of other situations where  
the same thing happens, you know, based on when  
someone -- you can think of a medical malpractice  
situation where someone is hurt in one case and  
someone says you're going to have a problem two  
years after the event. In another case no one is  
told. In one case one person has three years  
ultimately and the other person has two. There's a  
lot of anomalies in our statutes and I can't think  
that we'd get to around them all.

REP. RADCLIFFE: Okay, thank you.

SEN. UPSON: That's why we have the Law Revision.

REP. RADCLIFFE: Right.

SEN. UPSON: Any other questions? Thank you very much.  
J. Michael Eisner.

MICHAEL EISNER: Good afternoon. My name is Mike  
Eisner. I'm here representing the Connecticut  
Hospital Association and I'm testifying on RB6786,  
which is a bill on professional contracts. My  
recollection is I think it's the third year that  
I've testified on this bill. I think it was a  
little bit different two years ago and I think it  
was the same bill last year.

I'm submitted written testimony that I'd like to  
briefly summarize. And I think the important thing  
of my message to you is that the important thing to  
understand is that this bill would benefit groups  
of physicians, for example, anesthesiologists and  
radiologists, typically these groups are large and  
they have a contract with the hospital. They're  
not employees, they're independent contractors,  
they provide services to the patients and then they

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SEN. UPSON: We'll hear from Betsy though and she'll tell us why we should vote for it.

ELIZABETH GARA: Actually Bonnie is going to address that a little later this evening.

SEN. UPSON: Who is?

ELIZABETH GARA: Bonnie Stewart.

SEN. UPSON: Alright.

ELIZABETH GARA: Senator Upson, members of the HB 6210 SB1012 committee, my name is Betsy Gara, I'm Assistant SB1013 SB349 Counsel for CBIA and I'd like to briefly address a SB681 number of bills except for the one that you've just heard of.

SEN. UPSON: Why?

ELIZABETH GARA: Well --

SEN. UPSON: Go ahead. (Laughter).

ELIZABETH GARA: The first bill I'd like to address is HB6784 regarding DE -- the Statute of Limitations and DES actions. This is the 16th year that this bill has been considered. It's been rejected in the past and I think for a good cause. By singling out one product, I think that this bill creates a very bad legal precedent for Connecticut. It does open the door for a patchwork of legislation that extends the Statute of Limitations for different products in various ways. And this does create confusion and concern for Connecticut's companies and it could potentially have a very chilly effect on our efforts to attract companies involved in R&D, something that we hope to be the cornerstone of our economic development plans.

Also, by eliminating the Statute of Repose, manufacturers of products could be faced with indefinite potential liability for passed over efforts over which they really don't exercise any more control.

As testified previous, this legislation would

ELIZABETH GARA: We'd also -- are interested in the apportionment of liability bills. We do have problems with SB1012 and are working with IAC and the Bar Association, the Trial Lawyers and other interested parties in developing language on SB1013.

Then very briefly, we also support SB349 which permits a defendant to offer into evidence the report of a defendant's physician without calling such physician as a witness. Currently plaintiffs are permitted to offer into evidence the report of a treating physician without having to bear the expense of calling the physician as a witness. This bill just extends that same courtesy to the defendants and we think that it will help resolve lawsuits much more expeditiously.

And finally, I'd like to briefly comment in support of SB681, which makes revisions to the law to protect volunteers who contribute their services for the good of their communities from unwarranted exposure to legal liability. And I think that this bill just extends current immunity provisions for directors, officers and trustees of non-profits to volunteers and I don't think there's any reason why we should deny them the same type of immunity.

Thank you. Are there any questions?

SEN. UPSON: Yes. Representative Knierim.

REP. KNIERIM: Thank you, Mr. Chairman. Betsy, on that last bill that you testified on, I've had a concern about that bill in the sense that it would mandate indemnifications as I read it on the part of non-profits for its' volunteers. I mean is there a concern at all about the exposure that that creates for the non-profit organization?

ELIZABETH GARA: I don't -- I didn't read it that way. I read it as extending the same type of immunity provisions that now non-profit directors and officers and trustees enjoys to those other volunteers.

I know that there are some problems with drafting

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**STATEMENT****INSURANCE ASSOCIATION OF CONNECTICUT****RB 1012 -- An Act Concerning Impleading and  
Rights and Remedies of Third Party Defendants****Judiciary Committee****Friday, March 3, 1995**

The Insurance Association of Connecticut opposes RB 1012 -- An Act Concerning Impleading and Rights and Remedies of Third Party Defendants.

It is generally agreed that apportionment of liability in negligence actions is good public policy, providing that a defendant in a negligence lawsuit will only have to pay the plaintiff an amount which represents the defendant's share of fault. It is also generally agreed that the apportionment procedure should be clarified for more consistent application in negligence cases. However, RB 1012 does not serve to improve the problems with apportionment.

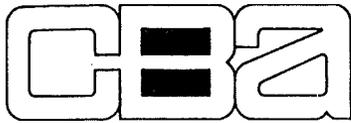
The major problem with this proposed legislation is that it attempts to address the issue of apportionment of liability in negligence actions by amending a statute which deals with impleader actions. This bill amends the impleader provision, section 52-102a, and in so doing, the bill confuses a person who can be "impleaded" into a lawsuit and who can ultimately be liable to pay damages with a person who can be named in the lawsuit only for the purpose of apportioning percentages of fault.

Another problem with this bill appears in subsections (g) and (h) of the bill, where the statute of limitations for negligence actions is automatically extended by a period of one year and sixty days, which will serve only to further delay the resolution of cases pending in the courts.

In addition, this legislation will not relieve the court system from the constant section 52-572h motions which clog the short calendar sessions every week, in every courthouse around the state.

The Insurance Association of Connecticut submits to the Judiciary Committee that the more appropriate manner to improve the apportionment process is to amend the actual apportionment statute, General Statutes section 52-572h. In this regard, the Insurance Association of Connecticut is currently working with the Connecticut Judicial Department, the Connecticut Bar Association, the Connecticut Trial Lawyers' Association, and the Connecticut Business and Industry Association on such language which would be acceptable to all parties. It is our hope to submit acceptable language to the Judiciary Committee within the next several days.

The Insurance Association of Connecticut respectfully requests the Judiciary Committee to reject RB 1012, and instead consider proposed legislation which amends section 52-572h.



**Connecticut Bar Association**

TESTIMONY OF  
THE CONNECTICUT BAR ASSOCIATION  
REGARDING

SB 1012, AN ACT CONCERNING IMPLEADING AND RIGHTS AND REMEDIES OF  
THIRD PARTY DEFENDANTS

AND

SB 1013, AN ACT CONCERNING APPORTIONMENT OF DAMAGES

March 3, 1995

The Connecticut Bar Association supports SB 1012, An Act Concerning Impleading and Rights and Remedies of Third Party Defendants. The association continues to discuss SB 1013, An Act Concerning Apportionment of Damages, which is a counterproposal to SB 1012.

Over the past two years, the Connecticut Bar Association's Litigation Section has worked on a bill to cure the procedural dilemma of bringing a party into a personal injury lawsuit for apportionment purposes. Tort Reform I and II left it unclear as to the appropriate method by which a defendant may bring a party into the action. Also of concern is how the statute of limitations applies to apportionment.

SB 1012 (the impleader bill) was designed by a subcommittee of three defense lawyers and two plaintiffs lawyers. It is intended to be neither pro defendant nor pro plaintiff. SB 1013 (the apportionment bill) is a counterproposal to the impleader bill. The CBA continues to work with the Insurance Association of Connecticut and the Connecticut Trial Lawyers Association to try to construct a resolution to this procedural dilemma without creating an unfair advantage for any party.

Presently, there exist no less than six different procedures by which the courts have ordered parties to appear in a case for purposes of apportionment. Superior court decisions also vary as to the appropriate state of limitations to impose. Some have held two years, others three years, others six years and still others that the statute of limitations does not apply.

As we continue to try to resolve this dilemma, we will focus on the issues of:

- \*     Timing.         When can a party bring another into the suit?  
                          What effect does the statute of limitations have?
- \*     Clarity.         What procedures shall be used?  
                          Will the new procedures and guidelines reduce the need to argue  
                          issues before the court?
- \*     Responsibility.         Does the party responsible to bring another into the  
                                  suit believe there is a claim against that person?  
                                  Does each party have the responsibility to  
                                  substantiate its claims?

The present situation continues to focus undue amounts of time and resources to the machinations employed when different statutes and different court opinions prevail at different times. We ask for your support in our attempt to refocus efforts on the issues of the cases.



Testimony of the  
Connecticut Conference of Municipalities  
to the  
Judiciary Committee  
March 3, 1995

SB1012 SB681

The Connecticut Conference of Municipalities is testifying on three bills before the Committee today which deal with municipal liability exposure.

CCM opposes R.B. 1014, "AAC Landowner Liability for Recreational Use of Land."

This bill would provide that the State and municipalities not be immune from liability when they make land available to the public without charge for recreational purposes.

The bill would *increase the liability exposure and costs for cites and towns*. It would eliminate the certain liability protection provided by CGS 52-557h, liability protection which has been upheld by the courts. R.B. 1014 would:

- (a) carve out a new liability niche in CGS 52-557h directed only at governmental entities (private landowners would enjoy special protection),
- (b) expand municipal liability exposure and increase municipal costs,
- (c) discourage municipalities from purchasing private land for open space or recreational purposes (cities and towns are the biggest purchasers of open space land in CT), and
- (d) make many municipalities think seriously about closing park and recreational facilities in order to avoid new and costly liability exposure.

Please see the attached excerpt from a document prepared by the CT Interlocal Risk Management Agency (CIRMA) for more detailed background information on this issue.

CGS 52-557g does not now protect municipalities (or other owners of recreational land) from "wilful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity..."

The present statutory protections and liabilities are appropriate and should remain in place. The last thing cities and towns need is expanded liability exposure.

*We urge you to take no action on R.B. 1014.*

**CCM opposes R.B. 1012, "AAC Impleading and Rights and Remedies of Third-Party Defendants."**

This bill would allow defendants to (1) add new parties to personal injury actions to apportion liability and (2) extend the time limit for impleading third party defendants to three years.

This proposal would encourage defendants to seek others to include in lawsuits for the purpose of apportionment, and would give more time (up to three years and sixty days) to do so.

As mentioned on the previous bill, the last thing that municipalities need is increased liability exposure.

*We urge you to take no action on R.B. 1012.*

**CCM supports C.B. 681, "AAC The Liability of Volunteers and Civil Actions Against Municipal Officials and Volunteers."**

This bill would provide liability protection for people who volunteer their time on behalf of municipalities.

Cities and towns need volunteers as members of boards and commissions, firefighters, and in other positions. The time and effort that these tasks demand of busy citizens are a disincentive to volunteerism. It is important that volunteers also are protected from personal liability as a result of their voluntary contributions to their community. Two sections of the bill should be clarified, however:

(a) lines 69 to 76 would provide an important cap on liability for volunteers. Yet volunteer firefighters already have broad liability protections under CGS 7-308. We urge you to reconcile any potential conflicts so that volunteer firefighters are protected to at least the same extent that they are at present;

(b) Lines 184-190 provide that if people lose suits for civil rights claims against municipal officers or employees the court can award the legal costs of the officers or employees. This needs to be clarified to provide for payment of legal fees and costs (a) by the losing plaintiff and (b) paid to the municipality to the extent that the municipality has incurred costs on behalf of the defendant employee or officer.

*We urge you to favorably report this bill, with the changes as indicated.*

XXXXXXX

Thank you for your consideration.

For more information: Gian-Carl Casa, Manager of Legislative Services, CCM.

Attachment

# CBIA

*Connecticut Business & Industry Association*

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TESTIMONY  
ELIZABETH E. GARA  
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION  
BEFORE THE  
JUDICIARY COMMITTEE  
LEGISLATIVE OFFICE BUILDING  
MARCH 3, 1995

Good afternoon. My name is Elizabeth Gara, Assistant Counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents over 7,400 companies across Connecticut that employ over 700,000 men and women. Our membership includes firms of all sizes and types, the vast majority of which are small businesses with fewer than 100 employees.

I am here to comment on behalf of CBIA regarding the following bills:

**HB-6784 - An Act Concerning The Statute of Limitations On Actions To Recover Damages For Injury Caused DES**

**HB-6210 - An Act Concerning Jurisdiction of Small Claims Court**

**SB-1012 - An Act Concerning Impleading and Rights and Remedies of Third Party Defendants**

**SB-1013 - An Act Concerning Apportionment of Damages**

**SB-349 - An Act Concerning Admissibility of Medical Reports**

**SB-681 - An Act Concerning The Liability of Volunteers and Civil Actions Against Municipal Official and Volunteers**

By singling out one product, HB-6784 creates a bad precedent for Connecticut. It opens the door for a patchwork of legislation extending the statute of limitations in various ways for various products. This would create confusion and concern for

Connecticut's companies, having a chilling effect on Connecticut's efforts to attract and retain high technology, high growth companies involved in new product development.

Manufacturers of products should not be forced to face indefinite potential liability for past efforts over which they no longer exercise control. This legislation would invite stale claims to be brought forward that would present impossible problems of proof and causation because of the death or disappearance of witnesses or the unavailability of documents. The current system strikes a balance between the interests of the plaintiff and defendants and should therefore be retained.

CBIA supports HB-6210 which increases the jurisdictional limits of small claims court from two thousand to three thousand five hundred dollars.

This bill would assist small businesses by providing greater access to small claims court. Small claims court permits litigants to resolve civil disputes in a fast and inexpensive manner. Many businesses now find that the time and expense involved in hiring an attorney to bring an action in superior court to recover debts or enforce contracts is more than the debt or value of the contract. Increasing the threshold of claims that can be brought to small claims court is a simple, cost-effective way of helping Connecticut's small employers.

CBIA also supports changes to improve the apportionment of liability in negligence actions. Currently, the apportionment procedure is not consistently applied in negligence actions. SB-1012, however, in attempting to correct this situation, will serve to further frustrate the resolution of cases by automatically extending the statute of limitations for negligence actions.