

Legislative History for Connecticut Act

PA15-67

HB6925

House	1746-1750	4
Senate	2478, 2491-2492	3
Judiciary	1288-1290, 1333, (1341-1342), 1387-1389	9
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Transcripts from the Joint Standing Committee Public
Hearing(s) and/or Senate and House of Representatives
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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2015**

**VOL.58
PART 6
1740 – 2092**

/ks
HOUSE OF REPRESENTATIVES

249
May 6, 2015

CLERK:

House Bill 6961 as amended by House "A"

Total Number Voting 147

Necessary for Passage 74

Those voting Yea 147

Those voting Nay 0

Those absent and not voting 4

SPEAKER SHARKEY:

The bill as amended, passes. [gavel] Will
the Clerk please call Calendar 459.

CLERK:

Calendar 459 on page 42, Favorable Report of
the Joint Standing Committee on Judiciary. House
Bill 6925 AN ACT CONCERNING THE STATUTE OF
RESPONSE IN HAZARDOUS CHEMICAL CASES RESULTING IN
THE DEATH OF A PERSON.

SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Good evening again, Mr. Speaker.

SPEAKER SHARKEY:

Good evening, sir.

REP. TONG (147th):

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I move acceptance of the Joint Committee's Favorable Report and passage of the bill. Will you remark, sir.

SPEAKER SHARKEY:

The question is acceptance of the Joint Committee's Favorable Report and passage of the bill. Will you remark, sir.

REP. TONG (147th):

Yes, thank you, Mr. Speaker. This bill contains statutes of repose, as respect to death cases that are the results of exposure to hazardous chemicals. Section 52577c of our general statutes provides for a statute of limitations with respect to personal injuries that results from exposure to hazardous chemical, substances, or hazardous pollutants. What it does not include is a statute of limitations with respect to wrongful death resulting from such exposure. Because of that, in wrongful death cases, it reverts to the general wrongful death statute of limitations which provides that a action must be brought within two years of the death of a person, or within five years of the act or omission that caused the death. In order to make it more consistent so that

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wrongful death cases have the same statute of limitations as a personal injury case, the Judiciary Committee passed this bill unanimously to ensure that that consistency is in our law and I urge passage of the bill.

SPEAKER SHARKEY:

Thank you, sir. Would you care to remark further on the bill before us? Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you. I do rise in support of the legislation that's before us, and as the good Representative had mentioned, it did pass the judiciary unanimously. Just for clarification purposes, just one question to the Representative.

SPEAKER SHARKEY:

Please proceed, madam.

REP. REBIMBAS (70th):

Thank you. For clarification purposes, you had indicated during your testimony that it certainly make it consistent, and this would be specifically expanding the statute of limitations, but only in those cases that the death is as a result of a hazardous chemical. Is that correct?

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SPEAKER SHARKEY:

Representative Tong.

REP. TONG (147th):

Through you, Mr. Speaker. That is correct.

SPEAKER SHARKEY:

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you to the Representative for his response, and I do rise in support of the legislation that's before us.

SPEAKER SHARKEY:

Thank you, madam. Would you care to remark further on the bill before us? Would you care to remark further? If not, staff and guests, to the well of the House. Members take your seats. The machine will be opened.

[bell ringing]

CLERK:

The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please report to the Chamber immediately.

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SPEAKER SHARKEY:

Have all members voted? Have all the members voted? Will the members please check the board to make sure your vote is properly cast? If all the members have voted - apparently not all the members have voted. But if all the members have voted, when they have voted, when that vote is finally cast, the machine will be locked, but not until all members have voted. And when they have, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally?

CLERK:

House Bill 6925

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

SPEAKER SHARKEY:

The bill passes. [gavel] Are there any announcements or introductions? Representative Tong, before you begin, could I just ask a - the Chamber - [gavel] - to keep conversations down.

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CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
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SENATE

213
May 28, 2015

The bill passes. [gavel] Senator Duff.

SENATOR DUFF:

Thank you, Madam President. Madam President, I'd like to mark a few items for our Consent Calendar.

THE CHAIR:

Please proceed, sir.

SENATOR DUFF:

Thank you. On Calendar Page 12, Calendar 474, House Bill 6925, I'd like to place that item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR DUFF:

Thank you. On Page 18, Calendar 514, House Bill 6787, I'd like to place that item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR DUFF:

Thank you, Madam President. On Calendar Page 30, Calendar 581, House Bill 6695, I'd like to place that item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR DUFF:

Thank you, Madam President. On Calendar Page 6, Calendar 389, House Bill 6914, I'd like to place that item on the Consent Calendar.

THE CHAIR:

May 28, 2015

SENATE

THE CHAIR:

Thank you. Mr. Clerk, will you please call the bills on the Consent Calendar?

CLERK:

On Page 3, Calendar 189, Senate Bill No. 23. Page 5, Calendar 330, Senate Bill 73. Page 8, Calendar 435, House Bill 6839. Page 10, Calendar 463, House Bill 6833. Also on Page 10, Calendar 461, House Bill 6403.

On Page 11, Calendar 470, House Bill 7007. On Page 12, Calendar 474, House Bill 6925. On Page 14, Calendar 490, House Bill 6952, and on Page 16, Calendar 507, House Bill 6946.

On Page 18, Calendar 514, House Bill 6787 and Page 24, Calendar 548, House Bill 6942. On Page 27, Calendar 568, House Bill 6973 and Page 30, Calendar 581, House Bill 6695. On Page 34, Calendar 138, Senate Bill 957 and also on Page 34, Calendar 92, Senate Bill 6, I'm sorry, Senate Bill 853.

Page 37, Calendar 249, Senate Bill 99, Page 38, Calendar 324, Senate Bill 451, and on Page 40, Calendar 401, Senate Bill 949.

THE CHAIR:

All the bills are called. At this time, Mr. Clerk, I'd call for a roll call vote and the machine will be open on the Consent Calendar.

CLERK:

Immediate roll call has been ordered in the Senate on today's Consent Calendar. Immediate roll call has been ordered in the Senate.

[pause]

THE CHAIR:

If all members have voted, all members have voted, the machine will be closed. Mr. Clerk, will you please call the tally.

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SENATE

227
May 28, 2015

CLERK:

On today's Consent Calendar

Total Number Voting	36
Necessary for Adoption	19
Those voting Yea	36
Those voting Nay	0
Absent/not voting	0

THE CHAIR:

The Consent Calendar is passed. [gavel] Senator Duff.

SENATOR DUFF:

Thank you, Madam President. Before we announce the time for tomorrow, I'll yield to any points of personal privilege or announcements.

THE CHAIR:

Are there any points of personal privilege or announcements? Senator Bye, are you standing for a reason? Senator Bye.

SENATOR BYE:

Thank you, Madam President, yes. I'm calling for purposes of an announcement.

THE CHAIR:

Please proceed, ma'am.

SENATOR BYE:

Tomorrow morning at 10 a.m., the Appropriations Committee will meet in Room 2C to consider bills. Thank you, Madam President. I should have said this morning.

THE CHAIR:

Yes, you're right. It is this morning, ma'am. Thank you very much.

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PART 2
730 – 1386**

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through that's not probably authorized under the law.

REP. DUBITSKY: Okay. But under -- okay. So under -- under this bill, once the child turns 18, would their options to file suit against the doctor change under this bill?

PAUL SLAGER: No. I think what -- well, no. I think what this bill would do under this scenario -- under the hypothetical you're describing, I think what it would do is if there was no claim filed on behalf of that child while the child was a minor and in the one year between the 18th and the 19th birthday of that child, that child would be allowed to evaluate his or her own condition and decide whether in fact that condition warranted bringing a lawsuit. So I don't think that changes and once the child is 18, the probate court no longer has jurisdiction over approving the claim. So I don't think the statute would change -- if I'm understanding what you're getting at would change that in any way.

REP. DUBITSKY: Okay. Thank you.

Thank you, Mr. Chairman.

SENATOR COLEMAN: Thank you.

Are there other questions?

Seeing none, thank you very much.

PAUL SLAGER: Thank you.

SENATOR COLEMAN: Chris Meisenkothen.

HB 6925

CHRISTOPHER MEISENKOTHEN: Good afternoon, Mr. Chairman, members of the committee. My name is Christopher Meisenkothen. I'm a lawyer with Early, Lucarelli, Sweeney and Meisenkothen in New Haven, Connecticut. I'm a resident of Durham. I'm here on my own behalf, on behalf of my clients, on behalf of the Connecticut Trial Lawyers Association. I testify today in

support of House Bill 6925 and urge its passage. With me today are two of my clients, Marsha Lagerberg and Jim Stempert who are presently being directly affected by what -- the fundamental unfairness of the current statute that exists today. Marsha Lagerberg is a resident of Brooklyn, Connecticut. She had been in Danielson, Connecticut, for many years before that. She's a constituent of Senator Flexer, who sits on this committee. Marsha's husband of 44 years, Erick Lagerberg, died from malignant mesothelioma in 2011 caused, in part, by his prolonged environmental exposure to asbestos pollution from a nearby factory that was using hundreds of tons of raw asbestos fiber over a period of decades in the vicinity of their house.

Jim Stempert is a resident of Oxford, Connecticut. He is a constituent of Representative Labriola, who also sits on this committee. Jim's father Chuck Stempert also died from malignant mesothelioma in 2012 caused in part by his prolonged environmental exposure to asbestos pollution from other factories in Connecticut around the areas he lived in the Bridgeport and Stratford area. H.B. 6925 resolves an important injustice with the existing statute of limitations for claims that arise from exposure of hazardous and substances such as asbestos contamination, fracing waste, polluted ground water, MTBE contamination, power plant emissions, smoke stack industries, even radiation exposures and other types of persistent toxic environmental pollution.

As it's currently written General Statute 52-577(c) provides a two-year discovery rule statute of limitations for personal injury and property damage and that's the language of the statute. It says personal injury and property damage. It noticeably omits the word "death" from the types of claims. And because 52-577(c) omits the word "death" all claims for death arising from exposure to hazardous chemicals and substances by default fall under the wrongful death statute, 52-555, which has a

five year statute of repose period. So no claims can be brought more than five years after the incident in question. So a victim who was exposed to hazardous chemicals and substances benefits from the two-year discovery rule under 577(c) and then as soon as that person dies, they are automatically shunted under the five-year repose period of 52-555 and their death claim is literally ejected from the courthouse.

The Connecticut Supreme Court itself in ruling on a version of this issue -- issue in the Greco case in 2006 said this is unfair. The Connecticut Supreme Court said, quote, that in applying the limitations period of 52-555 to the present case leads to what reasonably may be characterized as a harsh and even unfair result. It is not the function of the court to alter a legislative policy merely because it produces unfair results, thus the decedents could not have known that they had been injured prior to the expiration of the limitations periods does not warrant changes contrary to the Legislature. It's really unconscionable to think that claims for general personal injury and property damage benefit from the two-year statute of limitation discovery rule in 577(c) and yet the claim for the most serious injury of all, death, does not. And that's the unfairness that we seek to remedy with this amendment.

SENATOR COLEMAN: Thank you.

Are there questions from members?

Seeing no questions or comments, thank you very much for your testimony.

CHRISTOPHER MEISENKOTHEN: Thank you very much.

SENATOR COLEMAN: Thank you all for being here.

Carl Schiessl.

act. Thirdly, an enforcement of powers of attorney executed outside of Connecticut is already covered under the Connecticut power of attorney act currently under consideration. Finally, provisions of the act conflict with the common law. Under common law, institution will be liable for respecting an invalid power of attorney if the institution knew or should have known that the act was invalid.

Under the Act, actual knowledge is required. In this regard, the Act's legislative note states -- and I'll quote, "The enacting jurisdiction should examine its laws that authorize delegation of substitute decision-making authority for property, health care and personal care to determine whether those laws have different requirements." For all these reasons, Raised Bill Number 6928, entitled AN ACT CONCERNING THE UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENT ACT should not be allowed to leave the Judiciary until it's been extensively reworked by the bar association.

REP. TONG: Thank you very much.

Any questions?

Thank you for your testimony.

BARRY HOROWITZ: Thank you.

REP. TONG: Sharon Payne. Sharon Payne. Angelo Ziotas. Good afternoon.

ANGELO ZIOTAS: Good afternoon, Representative Tong, Senator Coleman, Senator Kissel, members of the committee. My name is Angelo Ziotas and I am the current president of the Connecticut Trial Lawyers Association and I'm here to offer my testimony in favor of Senate Bill 1028 and I also did want to mention our support for House Bill 6925. Those two statute of limitations bills we are strongly in favor of. One seeks to essentially correct a drafting error that our Supreme Court pointed out and the second is

liability. I am here to ask that you support a statute of limitations with the state for those in the design and construction industry. Our neighboring states have such statutes of limitations. A statute of limitations for design and construction services is a fair and reasonable contractual agreement for a state which wishes to foster and encourage small business growth and development.

The cost of doing business where liability is never ending is significant. It places an undue burden on architectural firms, the vast majority of which are small businesses. Insurance and archival storage expenses will only increase over time. I urge you all to vote in favor of this bill and send it to the full Legislature for an affirmative vote. Thank you for your time today.

SENATOR COLEMAN: Thank you.

Are there questions for Mr. Gill?

Seeing none, thank you very much.

HARRISON GILL: Thank you.

SENATOR COLEMAN: Mr. Gill is actually the last person who signed up to address the committee. If there is anyone else who hasn't signed but wants to address the committee, please come forward.

LAWRENCE TRUMAN: My name is Lawrence Truman. I have an engineering (inaudible) and I testified on this. There is no ethics. When you design something and somebody dies, where is the ethics. They're making hundreds of millions of dollars off the backs of the public. It's federal money so when a project goes bad and they want to limitation for protection but they have homes in the Bahamas, Hawaii or wherever and they're building all these beautiful luxury homes for their kids, but where is the liability -- where is the ethics behind their liability like the chemicals. We're dealing

(HB6925)
(SB1028)

with pesticides. We're dealing with -- we're dealing with diesel which is 100 percent (inaudible). We know it kills. We have so many autistics in this community that you can - - they just come in here. There is like hundreds of them. That's a state problem. When the court came down with a decision, which I also (inaudible), it was the right decision because we're all liable. When you sign your paper -- when you become an architect and engineer, you also have an OSHA and you have an obligation to the public that they're not going to die.

So you have -- you have -- also have the Middletown accident where people died in the building on the clean energy out of -- what is that -- so how many people have to die in clean energy, green energy, it's all the same, everybody dies. So thank you. There is no ethics.

SENATOR COLEMAN: Thank you.

Are there questions for the gentleman?

See none, thank you for your testimony.

Is there anyone else who hasn't signed our list who wants to address the committee today on any of the issues before the committee? If not, I declare this public hearing closed.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
1387 – 2150**

2015



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Raised Bill 6925
Public Hearing: 3-6-15

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION
DATE: MARCH 6, 2015

RE: SUPPORT RAISED BILL 6925 – AN ACT CONCERNING THE STATUTE OF REPOSE IN HAZARDOUS CHEMICAL CASES RESULTING IN DEATH OF A PERSON

Chairman Coleman, Chairman Tong and members of the Judiciary Committee:

My name is Christopher Meisenkothen and I am a lawyer with Early, Lucarelli, Sweeney & Meisenkothen in New Haven, CT. I am a resident of Durham, CT and I am here today on behalf of the Connecticut Trial Lawyers Association. I testify today in support of HB 6925 and urge its passage.

With me today are two of my clients – Marsha Lagerberg and James Stempert – who are presently being affected by the fundamental unfairness that HB 6925 is seeking to correct:

- Marsha Lagerberg is a resident of Brooklyn, CT, having moved there recently after a life spent in greater Killingly, CT. She is a constituent of Senator Flexer, who sits on this Committee. Marsha’s husband of forty-four years, Erick Lagerberg, died from malignant mesothelioma in 2011 caused, in part, by his prolonged environmental exposure to asbestos pollution from a nearby factory that was using hundreds of tons of raw asbestos fiber.
- Jim Stempert is a resident of Oxford, CT. He is a constituent of Representative Labriola, who also sits on this Committee. Jim’s father, Charles Stempert, died from malignant mesothelioma in 2012 caused, in part, by his prolonged environmental exposure to asbestos pollution from other local factories that also used hundreds of tons of raw asbestos fiber.

HB 6925 resolves an important injustice with the existing statute of limitation for claims arising from exposure to hazardous chemicals and substances, such as asbestos contamination, fracking waste, polluted groundwater, MTBE contamination, power plant emissions, radiation exposures, and other types of persistent toxic environmental pollution.

General Statutes § 52-577c provides a two-year “discovery rule” statute of limitation for *personal injury* and *property damage* arising from exposure to hazardous chemicals and substances that are released into the environment. The statute noticeably omits death from its

purview, however. Because § 52-577c omits the word "death," all claims for death arising from exposure to hazardous chemicals fall, by default, under the 5-year statute of repose in § 52-555 for wrongful death cases. This is particularly problematic given the long latency period associated with injuries caused by exposure to hazardous chemicals and substances. A victim who was exposed to hazardous chemicals and substances benefits from the two-year discovery statute in § 52-577c while he is still alive, but if that same victim dies, then his claims arising from his death and his loss of life are literally ejected from the courthouse by the application of the 5-year statute of repose in § 52-555. Section 52-577c should be amended to clarify that if death results from an exposure to a hazardous chemical or toxic pollutant, then claims arising from that death fall within the already-existing two-year discovery statute under 52-577c, just like claims for personal injury and property damage. HB 6925 is consistent with the well-established public policy of this State to allow claims for long-latent injuries to proceed on their merits.

The Connecticut Supreme Court itself has previously acknowledged this harsh, unfair result in 2006 when it dismissed wrongful death lawsuits for a group of workers who had sustained toxic chemical exposures and developed fatal conditions, such as brain cancers. While explaining the rationale behind statutes of limitation and statutes of repose, the Supreme Court acknowledged "that applying the limitation period of § 52-555 to the present case leads to what reasonably may be characterized as a harsh, and even unfair result. . . . It is not the function of the court to alter a legislative policy merely because it produces unfair results . . . Thus, the fact that the decedents could not have known that they had been injured prior to the expiration of the limitation period of § 52-555 does not warrant a result that is contrary to the expressed intent of the legislature." See Greco v. United Technologies Corp., 277 Conn. 337, 353-54 (2006).

Almost twenty years before *Greco*, in a different type of case, the Supreme Court had previously noted that the repose period of § 52-555 is "unfair at times." Ecker v. West Hartford, 205 Conn. 219, 240 (1987).

It is unconscionable to think that claims for general personal injuries and claims for property damage arising from environmental pollution fall under § 52-577c but claims for the most serious personal injury of all – death – do not.

This fundamental unfairness and injustice for deceased victims can be effectively remedied by simply making two small additions to the statute as noted in HB 6925. The word "death" should be added to the list of covered claims, which already includes "personal injury" and "property damage," and by adding a reference to "§ 52-555" so the statute is clear that the repose period of § 52-555 does not apply to death claims arising from exposure to hazardous chemicals and substances.

This Legislature has a long history of remedying unfair and arbitrary statutes of limitation and repose when it comes to latent injuries:

- In 1959, the Legislature eliminated the 5-year statute of repose for workers' compensation claims arising from occupational diseases, largely in response to concerns about long-latent injuries suffered by workers from radium poisoning in the factories of local watch manufacturers.

- In 1980, the Legislature extended the original 1-year workers' compensation occupational disease statute to 3 years in recognition of the fact that many occupational diseases are latent in nature.
- In 2011, the Legislature extended the Product Liability Act's statute of repose for asbestos cases to 80 years, again in recognition of the fact that asbestos-related injuries are latent in nature.

Thank you for your time and consideration. Please pass HB 6925.