2011 HOUSE JUDICIARY

HB 1365

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

HB 1365 January 26, 2011 13452

Conference Committee

Committee Clerk Signature Alencose

Minutes:

Vice-Chairman Klemin: We will open the hearing on HB 1365.

Jeb Oehlke, ND Chamber of Commerce: Support (see attached 1, 1a, 1b).

Rep. Onstad: In your testimony you talked about six years being too long and loss of evidence. Wouldn't that benefit your members because it seems to me if a claim is brought forward, the burden is on them to prove the case and if evidence is lost, it would be a factor? You're actually asking to shorten that up yet keeping it at the six years would benefit your situation.

Jeb Oehlke: In a way yes and in a way no. There's still the cost associated with defending the lawsuits. They are enormously expensive, litigation can last several years. Even without good evidence, the case can last a long time and take up a lot of resources.

Rep. Onstad: My understanding is that the state of ND is one of the top states in the nation for the least litigious. I think we're second or third in the nation. Wouldn't that be part of the fact that we have that longer statute in place?

Jeb Oehlke: I don't understand the question.

Rep. Onstad: We've currently had that longer statute in place by law, but because of that, parties have been able to resolve their differences, so ND has actually been one of the better states about not going to court because they have a longer time to resolve their differences. We're probably one of the least litigious states in the nation.

Jeb Oehlke: Once a claim is filed, that statute of limitations is stopped; it ceases to run; so there is an unlimited amount of time once a claim is filed in order to settle out of court.

Rep. Onstad: Our court systems are bogged down now, by shortening up the time are we going to increase the caseload at that point, so we're going to further tie up our court system.

Jeb Oehlke: I don't believe that will be the case. What I've heard from other attorneys, our court system isn't clogged. As you said, most of the cases are settled out of court. I really don't see a problem with the system becoming overcrowded.

Rep. Delmore: Was the idea for this bill something that came out of local Chambers here in North Dakota, or did this come from another place. Do we really have that many frivolous lawsuits going on because of this statute of limitations?

Jeb Oehlke: This bill was the idea of ND businesses. I was speaking with a member prospect that brought up the issue.

Rep. Delmore: It was brought to a regular meeting of the Chamber, a convention you had here in ND and it was spearheaded by North Dakotans, not with any other national movement.

Jeb Oehlke: That's correct. The way we develop our legislative policy, we have a subcommittee that deals with legal issues. This was handled by that committee. It went through the subcommittee process, and was approved by our full legislative affairs committee and approved by our Board.

Rep. Klemin: In your testimony you mentioned that ND and MN have the longest statute of limitation period. Is MN's the same as ND's.

Jeb Oehlke: Yes, ND, MN and ME all have the six year statute of limitations.

Vice Chair Klemin: Thank you. Further testimony in support.

Paul Sanderson, Property Casualty Insurers Association of America: Support (see attached 2 & 3).

Rep. Koppelman: I have a question relative to our position relative to other state with regard to this statute of limitations and I'm aware that there have been a lot of efforts around the country toward tort reform. It seems that this affects us in two ways. One is venue shopping, to the extent that occurs and I don't know if ND is prime for that based upon the requirements have for standing. The other question is our position among other states with regard to what we call a business friendly climate. In looking at states like MS was once called a judicial hell hole and I think they have a three year statute of limitations and TX has a two year statute of limitations now. Are those relatively recent changes in those states, and whether that puts ND at a disadvantage, not so much in terms of where a case might be brought but in terms of where a business might want to look at when they look at some of these factors, like the letter from Chrysler.

Paul Sanderson: To answer the first question, I did not put together this list that Mr. Oehlke has, to see when these went into place. The second question on the business climate, when you look at litigious states like MS, IL, NY that have shorter statute of limitations, I think that's the reason that the Chamber of Commerce is here. They realize this is a concern. When you see a flood of out-of-state plaintiffs from other states that missed the statute of limitations and are in ND solely because of a six-year statute of limitations, it doesn't look good for businesses and business owners. The slip and fall is a classic example and you're put in that position of defending yourself, figuring out employees, the cost, time; all of these things that go into litigation. It's not a business friendly bill.

Rep. Delmore: You said you've seen a lot of these cases; I like to think that this legislative body tries to err on the side of our citizens, rather than something convenient for other people. You're telling me that there haven't been any cases, to your knowledge, where it's been beyond those three years, before we really realize how serious something medical could be.

Paul Sanderson: I wouldn't say that I've never seen a case, but I can tell you honestly that I've never a case where the injured person did not know they were injured within three years of the accident and didn't discover it. I'm unaware of any single case where that has occurred. A vast majority of cases you'll see, after the slip and fall or the car accident, they're going to go to the emergency room. A lot of times they are transported by the ambulance, they set up physical therapy, chiropractic appointments. In a lot of our cases, we put together calendars, and we put in all their medical treatment. You'll see that shortly after the time of the accident, a huge grouping where they are seeking medical services on a regular basis. As time wanes, it starts to decrease. Usually we will see that pick up about 6 years later when they file their lawsuit and all of a sudden they start going to their chiropractor again and they need to get impairment ratings. If they didn't know that they were injured within 3 years, the discovery rule would apply. They would have three years from when they knew or should have known. Now, I think the distinction is the extent of their injury. I think you'll hear testimony on that area, okay are they permanently injured, is this going to affect them for the rest of their life. Sometimes that may not be known. I don't believe that any medical personnel or medical literature will come in and say that they cannot make that determination within three It's done on a routine basis. As I mentioned, all the good cases that these gentlemen have, for the vast majority are brought within a year or two. What that would be saying is that CA and IL they aren't able to determine whether they have a I just don't think that is the case. You permanent injury within three years. mentioned the good of the public. It's also the good of the injured party. I can tell you from experience that a lot of times, these injured parties would like these cases pursued and moved along faster. It's human nature, when you have a deadline, you wait until the deadline is close. A lot of times this is to the detriment of the injured party; these injured people want to move on with their lives.

Rep. Delmore: I understand what you're saying, but I think that we really don't have a lot of sue happy people. You can compare us to a lot of states and I would be willing to bet that our rate per capita is much lower. We're also fairly strong willed and strong minded, when we start in a physical therapy, chiropractic care, etc. we do seem to get better. But when you have neck injuries, spinal column injuries, etc. I think you may have to admit probably don't manifest themselves in two years, where someone can know how seriously they might have been injured, especially in a car accident situation.

Paul Sanderson: Absolutely. I think what you will find, a lot of times, is that there is a difference in medical opinion as to the extent of the injuries and know that that's often what these issues are litigated on.

Rep. Onstad: You make the claim that the vast number of cases are brought forward in one to two years. We're the least litigious state in the nation. Where's the problem.

Paul Sanderson: When I say the vast majority, I'm indicating that the vast majority of what are solid legitimate claims. We may have people who disagree with us. I think it's very safe to say that when a person is seriously injured, and the attorneys realize the injury and the extent of it, they move those cases along much quicker. The vast majority of solid claims, non-frivolous as we deem them. Those frivolous claims are the cases that we see more often near the six year statute of limitations.

Rep. Onstad: The burden of proof still lies on the person bringing forth the claim. You make reference to police departments destroying their material in five years and they can do that legally. How do you defend that portion?

Paul Sanderson: Two parts to this, they do carry the burden of proof, but if you're unable to provide evidence then the defense has missed their burden on their defense. The defense has a burden with respect to their defenses that they assert. I need to clear up that the Dickinson police department can destroy records after 5 years; the Bismarck and Minot police departments keep their records on microfilm, so they have them.

Rep. Onstad: I was injured and it was over 7 years before I was feeling better. It can take a long time for certain injuries to heal and have proof of that. Am I going to put in a claim in here now just in case. Isn't that going to affect the system a little bit, and bog down the court system because I don't know where I'm going to be at in 6 or 7 years from now after that particular accident? What's your response to that?

Paul Sanderson: With respect to your example, I think the position we're taking is that you know within a certain time frame with respect to whether the accident occurred and whether another party would be responsible for the damages. The extent of the damages is not always known. As indicated, a case can be filed or served on a party and not filed in the court. Discovery can go on for a number of

years to determine the extent of those injuries and often times, I'm sure, if there is a dispute it will center on the extent of those injuries. We're not here diminishing the injured party in any way. I don't think this bill has a negative impact on the injured parties.

Rep. Maragos: Did you happen to catch that portion of testimony from Mr. Oehlke concerning the cases that are pending, one in the Supreme Court and several in Grand Forks County where the plaintiffs are from LA, AL, FL, PA, CA, etc. Is the ND judicial system obligated to take those cases?

Paul Sanderson: I'm not familiar and I haven't done any research into the extent or what the issues were at the Supreme Court; I'm not familiar with those cases at all to be honest with you.

Rep. Maragos: Based on your own knowledge as an attorney, licensed in this state, if an event took place outside of the state, what would allow someone to bring a case to you to bring it into the ND judicial system and operate under the six year statute of limitations rather than where the event took place. I don't know if we have enough information, if these events actually happened in ND or where they happened and what gives them standing. I heard the term venue shopping and I would like some clarification.

Paul Sanderson: Again, I'm not familiar with those cases; when a plaintiff is injured, they can bring the action in the place they were injured. They also have the ability in certain circumstances to bring an action against the defendant in the location of where they do business. It may be that a national company has done business in ND; the argument is well you did business in ND, we can sue you in ND even though none of the plaintiffs were there. You also run into some choice of laws, it will be interesting to see how the Supreme Court decides that issue. I think there are situations where you have a ND corporation, let's say they manufacture a product, the product caused an injury, the plaintiff misses their statute of limitations in MS and all of a sudden decide that they'll sue in ND because we can still bring our claim.

Rep. Delmore: Do I have a better chance of getting a settlement from a company if I wait till 4 years after my accident, because you don't have a strong case on the other side.

Paul Sanderson: I wouldn't agree with that. I think that what you usually see are cases where the treatment diminishes, that these people naturally heal in a lot of cases. They've seen where you've gone two years without treatment, and the insurance company says you haven't been treated for two years, you must not be injured. Therefore they evaluate the claim differently. Pain is a subjective element to the person; I don't agree that if they wait six years they will receive a higher settlement. I think it works in reverse on a lot of those cases.

Rep. Delmore: With the six years, are there more cases, however, that are settled out of court that don't go to trial. What percentage do we settle now in comparison to other states that have shorter periods of time?

Paul Sanderson: I can't comment with respect to the settlements compared to other states that have shorter statute of limitations, but as a rule of thumb, I would tell you that close to 95% of our cases settle without ever going to trial. I handle files every day in injured parties and very few end in trial, they settle. With respect to how that compares with SD claims and their three year statute of limitations I don't know.

Rep. Delmore: Do the most serious of the cases usually go to court.

Paul Sanderson: I will tell you that the insurance companies in my experience settle the serious cases. The cases that go to trial are what they claim are frivolous cases. The insurance companies usually do a good job when there has been a wrongful death or serious injury; they do a good job evaluating risk and getting rid of the cases. We end up trying the frivolous cases more often than the serious cases. I think that's why you don't see a significant amount of multi-million dollar judgments in this state; you have seen more defense verdicts in this state.

Rep. Klemin: I had a question on testimony you gave about cases being served but not filed. Isn't there a procedure in the Rules of Civil Procedure, whereby the person that's been sued, the defendant, can demand that the plaintiff file the complaint, and if it's not filed within 20 days, then the complaint is dismissed?

Paul Sanderson: Yes that's correct. I believe it is Rule 5, demand to file complaint. You're correct, we're often served, but if we file or make a demand to file complaint or the defendant can actually file the complaint and pay the \$80 filing fee. But typically it's just an additional cost that the defense pays, the plaintiff pays the \$80 filing fee and the defense pays the \$50 filing fee.

Rep. Klemin: I think the point is that the defendant does have a remedy there if a defendant wants to have the complaint filed in the court that can be required.

Paul Sanderson: Yes, but only after the case is served. They don't have a right before they are served to demand a case be filed.

Rep. Klemin: Thank you. Further testimony in support of HB 1365.

Larry Boschee, ND Defense Lawyers Association: Support (see attached 4).

Rep. Delmore: I understand your reasoning, but because I miss a date, do I not deserve justice in this system.

Larry Boschee: Statute of limitations does set a date, a date by which you must sue. It's a process of balancing the interests that are involved; the interest in giving a fair

time for plaintiffs to sue is one of the things that is considered, but against that must be balanced for the factor of repose. Defendants should have the ability to close the book on a matter after a certain period of time has passed. Another thing is that some defendants may unwittingly make financial commitments that prove disastrous after a late claim is filed against them. Insurance companies, the longer that they have to insure or watch out for an event, to be wary if whether a lawsuit is going to be filed. The longer that the period of time is, the higher the cost of insurance, and higher costs of goods to society. Another factor that should be considered that when an event occurs, and it comes before a jury, it should be evaluated by a jury that has societal values that are contemporaneous to when the event occurred. All of these things need to be balanced in setting a limitation period, but there needs to be some period. Then the question is what should that period be. ND is alone now with only two other states with a six year limitation period. Most of the states have two or three year limitation period. With the three year limitation period, that would still be more than 1/2 the states because 26 states either have two year limitation periods or even 1 year limitation period.

Rep. Delmore: If I'm poor, not law trained, I don't know how seriously injured I am, do I not deserve justice because I haven't met that three year deadline to file something. I just worry that legitimate cases out there may deserve a state like to ND, where they have more time to do that.

Larry Boschee: There is the discovery rule, under which the time period doesn't even start until a person is aware of a claim and until they are aware that is was caused by another's conduct. So for a case where someone has a latent disease, the discovery rule would say in that case the limitation period doesn't even start until that person is aware of their claim. There are also protections for people who are minors and incompetent. The period for minors is held until they reach the age of 18, and then they still have one more year to sue. There is also tolling during a period of disability, being incompetent. For the run of the mill person, who is just deciding to sue during that period of time, for that case it would go past the time, but other states have drawn the line with two years and even one year statute of limitations and ND has drawn the line on other claims, including wrongful death and negligent malpractice claims against doctors and physicians of two years and it seems to be working well for those types of claims. I haven't heard any clamor that those types of claims should have six year statute of limitations. I think when you draw the line, three years is a fair period. It has to be drawn somewhere.

Rep. Delmore: I don't see a lot of facts that are listed in these documents from anybody that's testified that say there is a huge problem right now with our six years. I don't see a lot of statistics that show that's there a real problem with it. If I begin treatment for something and think I'm better, and I miss that statute of limitations, I think going to discovery or another way of doing it, I am still going to jeopardizing myself because I didn't get better, I didn't go to court, and now I don't have a recourse.

Larry Boschee: As far as facts justifying, moving from the six year limitation period, I think these out of state imported controversies are facts that would show that the current system is being abused by plaintiffs who are bringing lawsuits in ND trying to take advantage of our six year statute of limitations, when the statute of limitations of their home states have expired. As far as the instances you mentioned, I don't know if there are any hardcore statistics that exist regarding those types of matters.

Rep. Onstad: You mentioned the two cases from out of state taking advantage of ND's law. Why isn't legislation drafted to just deal with those out of state entities, but we're going to hamper all the citizens of ND if we adopt this bill.

Larry Boschee: The issue before the ND Supreme Court involves a statute that exists. It's called the Uniform Conflicts of Law Limitations Act. Under the statute, it's the position of the defendants in that case, that the statute of limitations of the states that actually has a connection to this lawsuit, apply. Under those statutes, the cases are time-barred; there is an exception, an escape clause in that statute, that the plaintiffs in that case argue, essentially swallows the rule and allows those plaintiffs to bring those cases in ND, even though the statute of limitations in the states that have a connection to the lawsuit have expired. There is legislation on that and the question is how it is being interpreted.

Rep. Maragos: You seem to have studied this a great deal. In terms of ND being a dumping ground, how do we relate to ME and MN? Are they also considered dumping grounds in this regard to the six year statute of limitations or is there something in our statutes that make ND more appealing than these other two states within which to try their cases.

Larry Boschee: I can't speak to ME, but I do know that MN does has a big problem; much larger than it is in ND. Minnesota has become a dumping ground for lots of medical device litigation in particular, because of their six year statute of limitations. Their court held that as a matter of common law, non-statutory law, that when a lawsuit is filed in the state, the state applies its own limitation period. So that in those cases, MN would apply a six year limitation period, allowing the lawsuits to proceed, even though they involve out-of-state interests, out-of-state controversies. The MN legislature passed the same statute recently that ND already has a Uniform Conflicts of Law Limitations Act. It's only going to be effective as to claims that have just arisen recently. There's no decision yet from the MN Supreme Court as to how that statute is applied.

Rep. Maragos: Are you aware of how many attempts they've made in the MN legislature to change that six year statute limitation down to two or three years. Have they tried to change it several times and it failed.

Larry Boschee: I don't know the answer to that.

Rep. Kretschmar: In your practice, do you have an idea of what percent of tort cases are brought within the three years as opposed to bringing them in within the six years.

Larry Boschee: I think most often the cases are brought within two or three years. It's the rarer cases that are brought five or six years later. It's my opinion that those are the cases that are the least solid.

Rep. Klemin: On the application of this act, should it pass the legislature, it would become effective on August 1, 2011. How would this apply to cases where claims have accrued prior to August 1, 2011, but are beyond the three year limitation, would this act have a prospective application?

Larry Boschee: This act would not affect a cause of action that arose before August 1, 2011. Any accident that happens on July 31, 2011, the parties in that lawsuit would have the full benefit of the six year statute of limitations.

Rep. Klemin: Do you have an opinion as to whether we should put in this bill as a separate section on prospective application.

Larry Boschee: Yes, I do think that the bill should expressly state that it is effective only as to causes of action arising on or after August 1, 2011, so that it's clear and so no one is misled.

Rep. Klemin: Thank you. Further testimony in support. Testimony in opposition to HB 1365.

David Maring, Maring Williams Law Office: Opposed (see attached 5). When I did defense work in 15-17 years, and still do some defense work, I think that I had one to two cases that was brought 5 years 300 days after the accident. That almost never happens in my experience. We've also had discussion about ND becoming a dumping ground. The statistics from ND show that there are some 35,000 civil filings each year, and that includes contracts, personal injury actions. With those 35,000 cases, we've heard testimony today about 2-4 cases where someone is trying to apply our six year statute of limitations; that hardly makes us a dumping ground. As Mr. Boschee testified, ND has a statute to resolve that very issue. It is NDCC 28-01.2-02, conflicts of laws limitation period. I'll read a small portion of it so we have this context. "If a claim is substantially based on a) the law of other state, the limitation period of that state applies; b) if it is more than one state involved, then we choose the law based on conflicts of interest." So we already have a law to prevent this so-called dumping. There is a case pending before the ND Supreme Court right now, on this dumping case, and the Supreme Court hasn't ruled on it yet. But the statutory framework is already there to handle this so-called dumping. Let's talk about in my experience both on the defense side and the plaintiff's side; what happens in most of these personal injury cases. There is a two year wrongful death statute of limitations. There are no issues in a wrongful death case about whether

someone was injured or not. They died. So the two year statute of limitations, people don't have to wait and decide whether they are going to bring a lawsuit, if they have grounds to bring one. In the typical personal injury case, a person who is injured will try to get by, will try to get better, and at some point they'll get frustrated and say that they need some help and contact an attorney. This may be one year, two years, etc. after the accident. Then the attorney that represents them is gathering information primarily on how the accident happened, but also from the medical doctors because if you are going to proceed to court you need to have something called MMPI, Maximum Medical Improvement. The doctors typically won't give you an opinion as to MMPI until some period of time after they've been treated, in fact typically until the treatment is basically finished. Then, the attorney in my office, as soon as we know about the claim and we've been hired, we give notice to the insurance company and the insurance company says, provide us with everything you've got and we start providing records and authorization for them to get the medical records, a negotiation process takes place and often times that process of providing information, communicating with the insurance company can take months, years, and eventually you will get to a point where there may be some negotiations with the insurance carrier, and indeed a large percentage, and I don't have statistics because they aren't kept on that, get resolved without ever having to go to a lawsuit. Sometimes they get resolved two years out, typically they don't get resolved within the first year. They sometimes get resolved between two and three years, sometimes between three and four years. Unintended consequences of changing the statute of limitations from six years to three years, is that you're going to have a number of lawsuits that are brought, simply because the three years is going to run or is about to run. Indeed, I can tell you from personal experience that statute of limitations is one of the scariest things in the mind of the plaintiff's attorney. I am constantly going through my files, is there a statute coming up, are we going to miss a statute. I don't wait for two years, 364 days, if there a 3 year statute of limitations, I'm going to start suing that out sometime after the two year mark. You don't know if the defendant is out of state, you don't know if you're going to be able to make service easily. So you start working on suing that case out earlier. What I call the unintended consequences of this particular legislation, if it's passed, is that we're going to have a number of cases that are simply sued out because you haven't had time for people to reach maximum medical improvement for the insurance company to have all the information is needs, and for the settlement negotiations to be complete. I also heard some testimony about cases being stale and we can't get the police reports, etc. Again, in rare cases that might happen. My questions to the proponent of this legislation is, there is no such cry for a three year statute of limitations in business cases; contract disputes; basically all other disputes, other than one that have been mentioned today, are a six year statute of limitations. So if a company wants to sue a company, or on a contract case or a business wants to sue another business, they've got six years. Are we saying that's terrible because the evidence is going to get stale in those cases? The reality is that once an attorney gets involved, there are negotiations going on, either with the insurance company or the other side. Most of the cases don't become stale and that isn't a problem. The problem, however, is that if we allow the

statute to be changed to 3 years and there are more lawsuits that have to be brought because of that, it's going to be an extra burden on the court system. That burden, in my opinion, is far greater than any kind of burden created by this dumping that we've heard about but not really seen. With respect to the benefit, yes there's some benefit in having finality if someone knows that well we haven't been sue in three years, we're not going to be sued; that's a nice benefit but when you weigh that benefit against the rights of the citizens of ND, I suggest that the benefit doesn't outweigh the harm that it does to our citizens.

Rep. Klemin: Thank you. Further testimony in opposition to HB 1365.

Alan Austin, Executive Director, ND Association for Justice: Our members are primarily trial lawyers. On behalf of our Association this morning, we will have Jeff Weikum present our testimony.

Jeff Weikum, member of the ND Association for Justice, ND Trial Lawyers: Oppose (see attached 6, 7a, 7b, 7c). I enjoy practicing in ND because ND people are great to work with. They are so patient, and they will come in and have such a devastating injury and they will say, I'm not sue happy, as they hold their shriveled arm. The time they come in, is when their insurance company has cut them off and said you know what, we disagree with your doctors, we've hired a doctor, we no longer want to pay your medical bills, and it's 3.5 years post accident. They're not doing it because they wanted to delay, they do it because they are trusting, they're non-litigious and what is going to happen is that you're going to get people, who unfortunately because of that, are going to be out of luck. That is a detriment to the citizens that is huge, particularly taking advantage of our citizen's good nature in not wanting to do this in the first place. The system isn't broken; I don't think we need to fix it. I urge you to vote "no".

Rep. Onstad: When they talk about court costs, you have the plaintiff and have the defendant, etc. Whoever wins or loses, who covers the court costs of that expense, and what to court costs really refer to, does that include the attorney's cost, or the judge and reporter?

Jeff Weikum: We talk about court costs; court costs actually as far as what can be taxed against the other side if you win. If you win, the loser has to pay court costs. Those are generally fairly small, hiring an expert, paying the filing fee, various exhibit costs. What I'm talking about from a standpoint of ratcheting up the costs, is not those court costs, although that is part of it, the bigger cost that adds serious dollars to everybody and the claim, that makes that \$15,0000 claim suddenly \$50,000 of expended time, energy and money, including insurance money. The payment that you have to pay the attorneys who are now necessarily involved because of the litigation process. We don't need that. It's not necessary in ND.

Rep. Beadle: One of the pieces you passed out, indicated that ND ranked 2nd among all 50 states in its fairness of its litigation environment. Number one from

2002 to 2010 is Delaware as reported on this information. Delaware's statute of limitations is for two years. I don't see the link here as to why we need the six year statute of limitation if Delaware, which is no. 1 in fairness and has been for nearly a decade, has two year statute of limitations.

Jeff Weikum: I believe, and this isn't the overall evaluation, it's not just statute of limitations; in part I think Delaware gets it ranking because that is where everyone is venuing their business. They've got an incredibly pro business environment and I don't know all the reasons for that. I know that because a ton of businesses reside there from a corporation standpoint, that is probably why they have the no. 1 ranking. That would be my guess. My understanding would not be that it's the statute of limitations issue; the primary reason for that is because even though the vast majority of businesses are not getting sue in Delaware, they are going to be getting sue in other places where they are actually located even though they are registered in the state of Delaware.

Rep. Klemin: Thank you. Further testimony in opposition to HB 1365. We will recess this hearing until next week.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

> HB 1365 February 2, 2011 13854

Conference Committee

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will open the recessed hearing on HB 1365.

Mark Behrens, American Tort Reform Association: Support. I serve as outside counsel to the group. I understand that the committee heard testimony already, so I will try to be as brief as possible to avoid redundancy. I want to speak to a few key points. Speaking from the National perspective, over the years ND has done a remarkable job to do what it needs to do to be competitive with other states in the legal environment. The ND legal system is very favorable. You are doing a lot of things right. There is one aspect of your current legal system that does stand out as far, far outside the mainstream of what virtually every other state in this country is doing, and that is your six year statute of limitations. I think there are some problems with it that I'll suggest and ATRA would support those being fixed the way that the current bill does so, in a way I think is fair. One of the reasons we think this legislation is a good idea, is that the very purpose of statute of limitations is to prevent stale claims and to get to the search for truth and justice. That's what trials are really about. You have he said/she said, let's say it's an automobile accident, you have one person that says the light was green, another one says maybe it was yellow. Over six years, memories fade, witnesses move and you can't find them, people die, you can't find documents, emails deleted; not because people on either side are trying to do anything bad, it's just what happens over six years. I was thinking about what happened six years ago, and had my secretary ask me some questions and I didn't know the answers (then he related several events that took place 6 years ago and the answers). A statute that goes out 6 years really inhibits the real essence of trials, which is to get to the search for the truth and justice. It can hurt plaintiffs because after all it's the plaintiffs that have the burden of proof to bring their case. If they can't muster the evidence to bring their case, they're not going to win. It can also hurt defendants because I've been involved in cases early on when I did product liability work, where after six years, things change. I had one case was a jeep rollover down in Jefferson City, MO. They had a 3 year statute of limitations. The case was filed, we went out to the accident site, the dirt road where the jeep had flipped, had been graded and paved. It's pretty hard to see the accident site when it didn't look anything like it did at the time of the accident. It

made it pretty hard to put on a defense when the other side said this is the way the accident happened and it was physically impossible for us to find out whether that was true of not. May it was. We couldn't find out. When you start getting out into 6 years, you really impede the search for truth and justice. That's not something that should be pro-plaintiff or pro-defendant, that's just about having a justice system that works the way it is supposed to. The other problem with having six years here, this comes from my experience as an amicus, in a case that's now before the ND Supreme Court, at least in asbestos cases has become a dumping ground for cases from other states by people who have absolutely no connection to the state whatsoever, but in their home states, like AL, MS, LA, they waited too long. The statute of limitations ran and their claims are time-barred. My best guess as to why the time ran out was because the attorney goofed up and now being afraid of being sued for malpractice, look around for a state to bring the cause of action. There are only three states that have a 6 year statute of limitations for personal injury claim. They are ME, MN and ND and so the attorney brings the cases here. What happens, people pay taxes in your state to support a court system that is being used by people who have no connection here. If these cases go to trial, you're going to have people taking time off work to serve on juries for cases that don't belong here. I think also that ND needs to do this to bring itself into the mainstream and again reinforce the image that this is a good place to do business, because in all other aspects of your law that I can think of, you've done all the right things over the years. You may have questions, if MN has t his, is it a problem in MN. It occurred to me that I remember reading something about that in the ABA Journal. I looked on the internet and sure enough, I found an article from December 2007, lawsuits travel up north. Land of ten thousand lakes is flooded with thousands of out-of-state filings. Their litigation problem is much larger than yours. But this is the kind of thing that happens when you have a statute of limitation that's far outside the mainstream of what everyone else in the country is doing. Forum shoppers are going to look to come here and they are doing it. It resulted in a national article that went out, in the ABA Journal; every general counsel, every lawyer in America probably saw it at the time. Now, fortunately for ND, this article hasn't appeared yet, talking about out-ofstate lawsuits coming into ND, but if a similar article like this did appear about ND, it would undermine many of the really good things you have done over the years to make your legal system competitive. All people will remember, even though you did 10 things right and nobody remembers, is that you did one thing wrong that the people have a problem with and that's what everyone is complaining about. the same thing can happen to your legal system here. You could do 20 things right, but if an article appears like this in a national journal, that talks about the lawsuit problem in ND, that's make it hard to attract jobs. I think it's unnecessary and something that should be fixed.

Rep. Delmore: Do you have a copy of written testimony for us today.

Mark Behrens: No I do not.

Rep. Delmore: In the book To Kill a Mockingbird, it tells us that the courts are great levelers. They make everyone man equal, whether you're a pauper or a prince. I guess my bottom line in this bill, I want to err on the pauper and the prince's sides. You used the 6 years as a long time. Might I offer that I could ask you the same questions about 3 years ago and you pretty couldn't answer those either.

Mark Behrens: Rep. Delmore that is a great question. I anticipated that that would come up.

Rep. Delmore: The things that you can most vividly remember are those personal to you. If I'm a victim of a personal injury, it may be 3, 6, 20 years later, that I'm still paying the price for that. I think there is a difference between what happened in the world versus what happened to you personally, or being a witness to an accident, because I've done it. There are certain things about that that will never leave you. I think we need to be cognizant of that, that personal matters are really personal matters to us. Do you not think that there would be more lawsuits filed if I only had three years rather than six. I think, right now, that a lot of things settle out of court, especially injuries with accidents that you've got somebody to work with and somebody will say, rather than go through the expense of the court, and it is an expensive procedure, but it also guarantees me equality. Don't you think more things are settled now within 6 years, than would be in 3 years.

Mark Behrens: I disagree with that. The way lawyers tend to work is that they wait to the last minute. My experience in the way the law works is not that way. If you give someone three years to file a claim, they will file their claim letter with the insurer within 3 years, if you give them 6 years they will wait 5 years 11 months and 29 days. I don't see that you're going to have a proliferation or reduction in litigation, all it will do is make the lawyers file the claims they know about it in a timely fashion.

Rep. Delmore: Don't you think that there are cases where in those first three years I may not know how bad my injury is. ND is not a suit-happy state. I don't think there is a person in here that would disagree with me. We don't have very many frivolous lawsuits because ND citizens go to court when they really want to redress a situation.

Mark Behrens: On an individual basis I don't know, but if someone was wronged and they know it, three years is more than adequate enough time to find a lawyer and bring a case. It's what 43 out of 50 states in the US are doing. When you have a system where 4 out 5 states are doing and it's working fine, it will work fine here too. When I look at the experience of other states that have had longer statutes, TX or MS are a couple of examples, they've moved them down to be in the mainstream of what everyone else is doing. I can't think of any instance where somebody has said, let's go from two to six years. Obviously, the movement has been to go join the mainstream. No one is saying it isn't working and that we need to go back to five or six years. If there were instances of people being poured out of the legal system

because they couldn't find a lawyer in three years, there would be efforts to change these laws in other states, and that's simply not happening anywhere.

Rep. Klemin: Rather than changing the statute of limitations for everybody in ND to resolve one problem that you discussed, is there some way we could tighten up the venue requirements so that would apply instead of changing the statute of limitations.

Mark Behrens: That's a good question. I think that would solve one of the issues that is occurring here. One of the things I talked about in my testimony is the gaming of the system that's going on; people who waited too long to sue in their state, so they look for another state where they could file and then come here. Obviously, it is attractive when their claim is either worth nothing someplace else, and it's worth something here, of course they are going to come. Many states, I was in Harrisburg yesterday, they are looking at venue reform in PA. I gave a speech about the need for venue reform and said that what a lot of states have done is to say that before you can sue in the state, you either have to be a resident or prove that your claim has a logical connection, like if it was an auto accident that the accident occurred here. If it is an asbestos exposure, that the exposures occurred here. I think that might be something the committee look at. But apart from that, the 6 years are still problematic in terms of going toward the search for truth and iustice. You can't create memories just by fixing the venue statute. I would suggest that both of those ideas be looked at by the committee, one of them is not mutually exclusive to the other.

Rep. Klemin: One thing about this troubles me a little bit, that we're leaving a six year statute of limitations on a whole lot of other things, like contracts. I'm not sure why anybody has to wait six years for a breach of contract action, but why shouldn't we do three years on that too.

Mark Behrens: That might be something for the committee to look at. I don't have an objection to say why it should be six years. I would like, in that situation, to leave that determination to the ND Chamber. They know local businesses better than I do. Another is to look at what the statute of limitation experience of other states is, in those other areas like contracts. I know in the personal injury law, six years is way outside the mainstream. I think in most other states they probably have four years on contracts. I think usually the contract statute is longer in other states than the personal injury cases. To really form an answer to that, I would really like to know what the mainstream is on those other issues.

Rep. Koppelman: On the issue of the other states, and you alluded to this earlier, my first session in the ND legislature was 1995, I remember that session specifically because we did a lot of tort reform and many states were starting to move in that direction and I think ND was a leader in that movement at that time. It occurs to me, as I look at this list, that maybe this statute of limitations issue is something we kind of forgot or something that other states have moved toward since then. I'm

reminded that Victor Schwartz, who wrote the law school textbook, Schwartz on Torts, I think, coined the phrase judicial hell holes. There were places in the country were as you described, places that had very open venue requirements and they were perceived to have plaintiff friendly juries, and folks from around the country, you could be injured in New Jersey, but they would take you to MS or to wherever it was to have a lawsuit heard. I agree that venue is an issue. In looking at states like MS and TX, TX is 2 years according to the list we were given. MS I believe it now 3 years, I can't help but wonder if those aren't recent changes and if other states have done this and we're one of the few that has not. Can you comment on that.

Mark Behrens: Yes I can. To go to your point, TX and MS are two places that had a notorious reputation for being dumping ground states, or magnet jurisdictions. Dickey Scruggs, who is the famous MS plaintiff's lawyer that was in the movie "The Insider", he called it a magic jurisdiction, because it was easy for people to get money down there. The law made it that way. Both of those states addressed venue and statute of limitations as part of their overall efforts to reform their legal system and make it fairer. TX in 2005 passed a comprehensive tort reform bill that dealt with a lot of things, punitive damages, non-economic damages I think. They included the two year limitations period in there. I think there was also venue reforms in the legislation as well. MS passed a statute of limitations reform in 1990 and they made their statute of limitations run for 3 years. Then they found out that that component by itself wasn't enough, that they were still a dumping ground for cases from other states, but maybe for different reasons than ND. People are coming to ND because of the statute of limitations issue. In MS there were other elements of their legal system which were really bad; elements that ND legislature's already addressed. MS did the statute of limitations reform, they realized that they were still a dumping ground because other aspects of their legal system were a mess and then they passed venue reform after that. But all of these states, the states that you have looked at where this has been a problem, they have done it in a one-two fashion, where they fixed statute of limitation reform and venue reform.

Rep. Koppelman: The other issue that I was wondering about, the question of what a statute of limitation really means. My understanding of it is, it takes into consideration the time period between the time the injury is discovered and the time the action is brought. In other words, if you had an injury and you didn't know about it for 3 or 5 years and a medical problem cropped up and it was traceable to that injury, that you could bring suit later. If that's true, with this bill, you would have three years to begin your legal action and it might take another few years before the matter would be resolved. We could potentially stretch this matter out into who knows how many years even with a three year statute of limitations, is that true.

Mark Behrens: I believe so. I would assume that ND has a discovery rule statute of limitations so that the limitation would begin, not only when you suffer an injury, but when you knew or should have known that you suffered. That can happen, with somebody who has a latent disease, a cancer let's say, that's certainly in them long before symptoms start to become manifested and they get a diagnosis. The statute

of limitations doesn't begin to run until they actually know that they're sick. From that point, they would have 3 years to bring a claim.

Rep. Delmore: Are you saying, I can take a case from any state to ND and I don't need to have some kind of relationship with ND. I can take a case from TX and just move it here because I want to, there are no rules or procedures that apply.

Mark Behrens: There would have to be some defendant with some sort of connection. There has to be some connection to the state.

Rep. Delmore: So not just anyone can dump a case here in North Dakota simply because they ran out of time in TX and so they can bring it up here and dump just because they want to, there are some provisions in the law that govern that?

Mark Behrens: The law does not say that the plaintiff has to have any connection to the state. The plaintiff may never have been here in his/her life. All they need to do is find a defendant that would have some sort of connection to the state, and in my experience in some of these asbestos cases, they'll name 30-40 defendants in a case. You can find a defendant in almost any jurisdiction, any state in the country that has a connection to something. I saw that Philadelphia was just named the #1 judicial hellhole in the US, for instance. Asbestos lawsuits are pouring into Philadelphia because the local lawyers found one company that was a distributor there. They get named in every case but that's enough to get all the lawsuits there. I don't want to create confusion that someone can come where nobody on either side has a connection. My understanding is that these plaintiffs have no connection at all to the state. Really, if they could file in MS, they would. They are only coming here because they sat on their cases too long, maybe their lawyer committed malpractice and they're looking, the alternative of no money if they sue in at home or get some money if they come here. That's the only reason they are coming here.

Rep. Delmore: How long if I'm a business and I want to go after a citizen, how long do I have to bring my case right now, as a business person against somebody for a contractual violation.

Mark Behrens: It depends on what the claim is, if it is a tort claim, if somebody's committed a tort against the business, then I am assuming it would fall under the same 6 year statute of limitations. If you have a business suing business over a contractual dispute, then it would be different. But if a business is bringing a tort claim, they are subject to the same statute of limitations that an individual would be, the law in that regard is blind in that instance.

Rep. Delmore: So it could be 6 years for a business to do that, and we wouldn't change that but we would change the time for a citizen to file their suit.

Mark Behrens: I don't think that is what the bill does. The bill is to take the general six years down to three. It all depends on the category, if the business fits the category that would go into the three years, then they would have 3 years.

Rep. Delmore: So we're taking one part of society out of the equation.

Mark Behrens: The bill would deal with any injury to the person or rights of another not arising by contract. I look at that and it's not limited to personal injury cases, it would be rights of another. If you would have a business claim against an individual, a person makes disparaging comments about a business, if they would fit that rights of another, then they would fall within the same statute of limitations that a personal injury plaintiff would. Businesses bring torts against each too. Taco Bell is going after somebody because they claimed their tacos didn't have beef in them. There suing them, that's a trade disparaging claim. It's not a personal injury claim, but if that would fit into the rights of another, under this bill, they would go from having six years to bring their claim, to having three years to bring claim. The bill does not say that we're going to treat personal injury plaintiffs one way and treat everyone else another way. It says if you have this type of claim, you're going to get three years, regardless of whether you are an individual or an entity.

Rep. Klemin: Go back to the venue aspect. We have venue statutes talking about actions having venue where the cause arose, or in motor vehicles where the accident here, or where the subject matter is located, or real property located here. You had mentioned such things as the plaintiff having a connection to the state. Are there any constitutional or other legal principles that would say that we couldn't put in a requirement that the plaintiff have a connection to this state, in our venue laws.

Mark Behrens: None that I'm aware of. Other states have done that; there are a number of states that say the plaintiff has to have a logical connection to the state in order to bring a lawsuit there.

Rep. Klemin: So if the plaintiff was injured here, he would have a connection to this state or if the property is located here, obviously it could be.

Mark Behrens: If the plaintiff is a ND resident would be the strongest connection, but it could be a MN resident that is here on vacation and gets in an auto accident, they would be able to bring a claim, or a worker who is traveling around, maybe they're in military service and they are exposed to something during the time they are here, their exposure occurred here in the state during that time period.

Rep. Klemin: A ND resident couldn't start a lawsuit in ND based on an accident he had in a car in California, he probably couldn't do that in ND, you would have to do that in CA.

Mark Behrens: I think they would be able to bring a lawsuit here, the question that the courts would have would be what law would apply in that situation. If all of the

events occurred in another state, then you may have choice of law questions. I'd be reluctant to answer those questions, because I'm not a ND lawyer, and I don't want to get into areas that I'm not an expert in.

Rep. Klemin: But in any event, I think what you've said is that some change in our venue law may resolve part of the problem you were talking about.

Mark Behrens: Yes it would.

Rep. Onstad: I'm not sure where you're coming from, but obviously you're not from ND. You testified twice and basically said ND is doing things right. Statistical information is not lining up in your favor and so you're asking us to fix something that isn't broken. Is that correct.

Mark Behrens: I think it is broken. Last week I understand that you heard from attorney Larry Boschee, for the ND Defense Lawyers Association; he's involved in these cases and he could tell you the facts more than I can. But from our perspective, we filed an amicus brief in this case, it's now before the ND Supreme Court saying that ND should not become a dumping ground for cases from around the United States, and we got the ND Chamber, the Chamber of Commerce of United States of America, the National Association of Manufacturers, the NFIB, the American Tort Reform Association, the Property/Casualty Insurers, the American Insurance Association. All of those groups felt strongly enough to weigh in on something that was going on up here. I can't think in twenty years of a case where we filed an amicus brief in the ND Supreme Court. We did in this one, and pretty much every major group in Washington and in ND jumped on board, because they said it was problem in this state and it does need to be fixed.

Rep. Onstad: ND is considered the second best state as ranked by the Chamber of Commerce, within which to do business and not have concerns about litigation, so I have to disagree wholeheartedly with your statement.

Mark Behrens: We may have to agree to disagree, but rather than settle for the silver medal, I'd suggest that if you passed the law and tighten up your venue, you can get the gold.

Dave Thompson, Attorney at Law: I think it is important to correct the record. Our writings are now before the ND Supreme Court in a case known as Vicnar II. In that case, there are issues that I think address a lot of the subject matter which has been raised here in questions and in direct testimony, not just today but the testimony from the original hearing. ND already has a statutory package to address so-called forum shopping. It's called the Uniform Conflicts of Laws Limitations Act. This says that if a case is filed in ND, but the facts of the case occur in part in other places, or in total in other places, then the general rule is that the law of that other jurisdiction, including the statute of limitations should be applied to the case. Now there is an exception provision to that statutory package. It's NDCC 28-01.2, there are four

sections to the chapter 01 through 04. 04 says if a person did not have a reasonable opportunity to sue upon the claim in the other jurisdiction and that's a factual issue that's directed specifically to the individual case. Simply blowing the statute of limitations is not satisfactory. The person has to be determined by our court not to have had a reasonable opportunity to sue on the claim. That's not an easy test to meet. I'd like to address the allegation that ND is somehow a dumping ground. Mr. Behrens will also acknowledge that he uses the phrase dumping ground pretty much wherever he testifies. He wrote about California, he said that California is a dumping ground. ND does not have many cases whose plaintiffs are from other states. I know this because there are two lawyers that do asbestos litigation in ND, I do it and my former law partner out of Fargo, Jeanette Beckler, does. The cases, with the exception of maybe one or two cases, certainly less than 10, that have out-of-state plaintiffs came to our courts on two occasions, in 2002 and 2006. In the 2002 case, one of the plaintiffs was named Vicner and the widow of James Vicner is still involved in the current case, it's up in the Supreme Court again for the second time. That case was filed in 2002 and there were about 16 cases at the time that were filed on that basis in Morton County. The second occasion occurred in 2006 when the author John Grisham got in touch with me, and told me that he had a good friend, Bob Wilson, and I already knew Bob for many years, having done this type of work; had approximately 40 cases of widows whose husbands had died from asbestos related diseases and the MS Supreme Court had completely changed in its composition, it had substantive law changes and as a result the decisions that were being made by MS Supreme Court judges who were supported by the folks that Mr. Behrens is associated with. I talked with Bob Wilson. Bob asked me if I would be able to file 40 cases on the basis of transitory jurisdiction in ND. I told him that there wasn't anything in our laws that would prohibit it; but I don't want to make a practice of this. Those cases were filed in 2006, going on 5 years ago. Since that time, we haven't seen Mr. Behrens or other people like him come in here and ask for a change in our law in the 2007 session, although it was completely known to all the defense lawyers that this was the case. In 2009, it didn't happen. Since 2006, there have been less than 5, certainly less than 10 transitory jurisdiction cases filed in ND. Why is ND not a dumping ground for cases like this. I like to say in ND you file a lawsuit, and members of the jury want to know first of all, why are they not getting any money and why did you file a lawsuit to begin with. It's a tough crowd to win a plaintiff's case. In 1987, there was a big tort reform package; that was the first big round of tort reform in ND, several liability was imposed. Several liability, as you all know, that there is no joint and several liability. In other words, at the end of a case a jury apportions fault to the tort feasors, those who are found to be at fault, and also finds where there shouldn't be fault. If the plaintiff is over 50% at fault, there is no recovery at all. If a defendant is found at fault, that defendant only pays that percentage of fault, in other words of the verdict amount even if the plaintiff does prevail. That's different than most jurisdictions in this country. I have situations where I have a pipe fitter that is dying of lung cancer, and by the way if you are only a cigarette smoker and no asbestos exposure, you have a 10 times greater chance of contracting lung cancer than the background population. In occupational asbestos, no cigarettes, five times, you put

them together, 70-90 times. I get panicked calls from widows to get over to the hospital, her husband just died, I come over and the door is closed. I walk in and my client is sitting up cold, gray and dead. I've lived this. I've been in situations where pathologists will not do autopsies unless I strap on the scrubs and go in there with them, and get them to do the autopsy. I've been doing this for 27 years now. That's the reality, these aren't fake cases, you don't have fake cases in ND because juries and judges won't listen to you if you do. Judges will dismiss them. Juries will not even see them if their case had no merit. So today we have a group of 16 cases filed in 2002 and about 40 cases filed in 2006. Have I been out there with this great avalanche of out-of-state cases since that time, no, there have been a couple here and there. The worst thing that could happen would be diminish the statute of limitations from 6 years to 3 years. That will affect businesses that are evaluating whether they have a claim or determining whether their economic injury is severe enough over time if it is a tort claim, because that would be three years, unless it is a contract based claim, a warranty issue, or a contract based claim. The three years would apply; so you're going to hurt businesses that don't want to sue somebody, perhaps might not, and often don't sue somebody. You might have a plaintiff that won't sue somebody, but wants to wait and determine how severe the injury is. Changing the statute of limitations from six years to three, would be the absolute worst thing that you people can do in connection with this proposed legislation in my Venue requirements, I think if they're fairly addressed, would not be something I would oppose. I don't make my living off transitory jurisdiction cases. I did it as a favor. I wanted to find out how long this statute of limitations had been on the books, so I went to the LC library and made a copy of the Revised Codes of the Territory of Dakota (see attached). The answer is 1887 but probably earlier. The very language we have in NDCC section 28-01-16 that relates to the six year statute, and a lot of history about our laws. The first place this language comes from was in the Revised Codes, 1877. It was published by Pioneer Press in 1883, you can scroll up, I marked in pen, the portion that says in section 54 where it talks about that you have six years to bring a lawsuit if certain criteria are met. The law stays the same from then to now (see the attached for additional places where he marked the references). These laws were made mostly by Republican legislatures, a vast majority of them were, that's the history of our state. I'm sure that there were people who didn't like 6 years, for one reason or another. There might be people coming in from out-of-state trying to lobby a particular position for the moment and say it should be cut, but this is a big panorama of time. This is where the law comes from. It doesn't come from some source, off-hand stray thought by a single legislature in an exercise of ill-advised judgment at one time. This is our law, it is our history. I wonder why the Chamber of Commerce wants to cut this statute down from six years, rather than focus on venue issues. Because it's going to hurt businesses. If a ND business had transactions with a company in MN or TX and is aggrieved and for other reasons, there were torts, in other words where there was either intentional interference with a contract, that's a tort. So that out-of-state company interfered with a ND contractual relationship between two ND corporations or that ND Corporation and another corporation out of state, that's a tort, that's three years. Believe if defendants in civil litigation can make a motion to dismiss a case for

summary judgment on the alleged basis of statute of limitations, they will do it. They get paid to do it by the insurance company or get paid by the manufacturer, they are well funded. They make the motions and they do. So you're going to take rights away from ND corporations by enacting this bill. It should not be done. As far as statistics, there is no evidence in front of this committee about a dumping ground. There is no evidence before this committee that there is a wide or broad large number of people who've come into this state to litigate. Why would they? Today, because of our climate, which is ranked 2nd by the National Chamber of Commerce for the business climate and our substantive law, not only are our Supreme Court decisions that are precedent but our statutory law. When I have a mesothelioma case today, that's worth a lot of money. I don't file it in ND. It goes both ways. That case will be filed in Philadelphia or Delaware or some other place. I will work with those lawyers to ensure that my client gets the best possible return. This is not the place and in my opinion, you could change the law all you want, but you're not going to change the people who sit on the juries and want to know why you are suing somebody. I have an obligation to do what I can for my clients. I do file cases here, but they're legitimate cases. I do get concerned with bills like this that explicitly express a distrust for our court system. We have a good court system, most of the judges that have been appointed are state's attorneys, etc. A high percentage of them have been appointed in the first instance by a Republican governors, this is not a liberal court system. This is not some fuzzy headed liberal democratic court system. We have a conservative jury here in ND, we have conservative judges, we have a supreme court which is certainly even-handed, professional and fair. They don't bend to do the business of certain interests one way or the other. There is a populism that they do recognize, that is part of our culture. I came to ND more than 31 years ago, and I've always been impressed with the populist strain that exists in this state, and I've staved here for that reason. When I hear that this is a dumping ground from people like Mr. Behrens, I tell folks, we scratch the frozen tundra up here as plaintiffs' lawyers. It's tough. If you're contemplating looking at venue, I don't know whether an interim committee study might be the best way to look at that, it can get complex, as Rep. Klemin recognizes. If you perceive or accept as a fact what Mr. Behrens says, and it's not factual about a dumping ground, and I think he probably doesn't even know that less than 10 transitory jurisdiction cases with people who lived out of state were filed here since 2006. He doesn't know that only about 40 of them were filed in 2006 and that the other 16-20 cases were filed in 2002. When you start taking peoples' rights away and if there is the effort to look at this in a microscopic situation, where this is what we should be doing today, I respectfully submit that it is very important to understand that this statute of limitations has stood the test of many years, since our territorial days predating our statehood. I urge a Do Not Pass. If the committee would like a copy of all the transitory jurisdiction cases that are filed. I will be able to provide that, but it will take some time. I'm happy to do it, the numbers I'm giving you are approximates.

Chairman DeKrey: Thank you. We will close the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

HB 1365 February 7, 2011 14144

Conference Committee

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will take a look at HB 1365. Rep. Klemin has a proposed amendment.

Rep. Klemin: This is a hog house amendment of HB 1365. HB 1365 took a 6 year statute of limitation for personal injury and made it into a three year statute of limitation. As you recall during the hearing there was discussion well, what about the other six year statute of limitations; or what about the venue requirements because they could be tightened up without changing any of the statute of limitations. We've got a statute of limitation in this case that looks like it's been in effect since 1877, word for word unchanged. I think that before we jump into doing something like that just on the "what if?" we should look at it a little more closely and in more detail. Not only would that be the personal injury statute but also with other statutes of limitation and venue requirements. This amendment hog housed, instead of changing the statute of limitations in this one specific area, this would provide for a Legislative Management in the next Interim of those issues. I don't see any particular reason to hurry with changing a statute of limitations that's been in effect since 1877; if we want to change it, certainly we could do that two years from now, when we have a lot more information.

Chairman DeKrey: Rep. Klemin moved the Klemin amendment on HB 1365.

Rep. Hogan: Second the motion.

Rep. Koppelman: I agree that this is an area that should be studied in a broader fashion. I don't oppose that effort. I don't like the idea that we're hog housing the bill with that, so that we remove the intent of the bill. I think it does make sense, and when you look at the fact that we are 1 of only 3 states that has this statute of limitations for this type of claim. I think SD had their statute of limitations since statehood too, but they changed it obviously for good reason. We did tort reform in ND over the years in the 90's, and I think in my discussions with those of us who were involved back then and looking at what we did, what other states have done since that time, I frankly this was just something that was missed in that effort. We

didn't look at statute of limitations as being the necessarily operative issue when it comes to tort reform. We've since learned that issues like venue shopping and statutes of limitation actually are very important issues. We heard testimony that venue shopping wasn't an issue in ND, yet we're told that 60—70 cases in the past 8 or 9 years are exactly that, as I read the testimony. I think it is something we should do, so I'm going to oppose the amendment, although I don't oppose the intent of the study.

Rep. Klemin: Well, I believe that the amendment is germane to the issue that's in HB 1365. Secondly, I served on the ND Tort Reform Coalition in the 1980's in which we adopted Modified Comparative Fault. I wasn't in the legislature; I was actually working on the Coalition. I don't believe this was anything that was missed at the time. We weren't focused on the statutes of limitation, rather we focused on fault and that's the result of those things that happened from that tort reform. Some of the cases that came in the asbestos area could have, and may still have been barred by the other act, the Uniform Conflicts of Law Limitations Act. The UCLLA is currently before the ND Supreme Court, which may take care of that particular issue, but certainly some venue changes would also have taken care of it. I don't think anything is going to happen on those cases that had come in, the asbestos cases. It's not something from a broader area that's affecting us. As far as anything else is of concern, since 1877, this hasn't been too much of an issue but we could certainly put it off for two years I think.

Rep. Koppelman: I didn't say that the amendment was not germane; I think it's very germane to the bill, but I said I didn't think it was the best way to handle it. Exclusion of a hog house, I would prefer that it would be both, maybe change the statute of limitations and then look at other statutes of limitations and then look at other statutes of limitations and then look at other statutes of limitations and the venue issue. As to the coalition that you were part of in the 1980's, I can't speak to that, I wasn't part of that. I was here in the 1990's, though, when we did some tort reform, and I know it wasn't only limited to fault. We did things like caps on awards, and different things. We've continued to do other things in tort reform over the years. It wasn't just that one effort, that was a sweeping effort, but we've done other things including asbestos litigation reform. We continue to do that, I just think this was a good next step.

Rep. Delmore: I think this is a very good compromise. If you look at the testimony given on both sides, there wasn't a lot of detail of gee we've got a huge problem with dumping and some of those things. What if and maybe it will happen, I think this will give us some answers and if it isn't a problem, and it's not broken, we don't need to fix it. If we fix it up and it hasn't been a problem, I don't know if that is the most prudent move we could make as a committee. I certainly like the idea of Rep. Klemin to take a look at it in detail, see if there is a problem, see where we need to go.

Chairman DeKrey: We will take a roll call vote on the Klemin amendment.

9 YES 5 NO 0 ABSENT

KLEMIN AMENDMENT MOTION CARRIED.

Chairman DeKrey: We now have the bill before us as amended. What are the

committee's wishes in regard to HB 1365?

Rep. Maragos: I move a Do Pass as amended.

Rep. Delmore: Second the motion.

12 YES 2 NO 0 ABSENT DO PASS AS AMENDED

CARRIER: Rep. Maragos

11.8206.01001 Title.02000

Adopted by the Judiciary Committee

2/1/11

February 7, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1365

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of statutes of limitation and venue requirements for civil actions in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATUTES OF LIMITATION AND VENUE REQUIREMENTS FOR CIVIL ACTIONS. During the 2011-12 interim, the legislative management shall consider studying statutes of limitation and venue requirements for civil actions in North Dakota. The study must include a review of the limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, and the extent to which claims are filed in North Dakota courts for claims otherwise prohibited in other states due to the relevant statute of limitation having expired. The study also must review the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date:	2/1/1	/
Roll Ca	all Vote#_	

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. 1365

House JUDICIARY		 		Comm	nittee
Check here for Conference C	Committe	е			
Legislative Council Amendment Nu	mber _	11.80	206.01001	.020	00
Action Taken: Do Pass	Do Not	Pass	☑ Amended ☐ Add	pt Amen	dment
Rerefer to A	ppropriat	tions	Reconsider		
Motion Made By Rep. Klemin Seconded By Rep. Hogan					
Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	i i		Rep. Delmore	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	
Rep. Klemin	<u></u>		Rep. Guggisberg	V	<u> </u>
Rep. Beadle		V	Rep. Hogan	V	\vdash
Rep. Boehning		V_	Rep. Onstad	- V	
Rep. Brabandt		1			
Rep. Kingsbury	V				
Rep. Koppelman					↓
Rep. Kretschmar					1
Rep. Maragos		V			1
Rep. Steiner					
					
		<u></u>			
					
		<u> </u>	1 12 12		
Total (Yes)	9	N	lo _ <u>5</u>		<u> </u>
Absent		0			<u></u>
Floor Assignment					
If the vote is on an amendment in	riefly indic	cate inte	ent [.]		

Klemin amendment Carried

Date:	2/7/11	
Roll Cal	Vote #	

House JUDICIARY				Comr	mittee
☐ Check here for Conference C	ommitte	ee			
Legislative Council Amendment Num	nber _	11.8	206.01001	.02	2000
Action Taken: Do Pass	Do Not	Pass	Amended Add	pt Amen	dment
Rerefer to Ap	propria	tions	Reconsider		
Motion Made By <u>Rep. Maraey</u>	g-s	Se	conded By Rep. De	lme	TL.
Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	ı		Rep. Delmore	V	<u> </u>
Rep. Klemin	V		Rep. Guggisberg	4	
Rep. Beadle			Rep. Hogan	V	
Rep. Boehning		1/	Rep. Onstad	V	
Rep. Brabandt		1			
Rep. Kingsbury	V				
Rep. Koppelman	V				<u> </u>
Rep. Kretschmar	V				
Rep. Maragos	V				1
Rep. Steiner	1/				
		<u> </u>			
			<u></u>		
Total (Yes)	12	N	。2		
Absent		Ø			
Floor Assignment	lep.	ma	12/15		
If the vote is on an amendment, brie	fly indica	ate inte	nt:		

Module ID: h_stcomrep_25_011 Carrier: Maragos

Insert LC: 11.8206.01001 Title: 02000

REPORT OF STANDING COMMITTEE

HB 1365: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1365 was placed on the Sixth order on the calendar

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of statutes of limitation and venue requirements for civil actions in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATUTES OF LIMITATION AND VENUE REQUIREMENTS FOR CIVIL ACTIONS. During the 2011-12 interim, the legislative management shall consider studying statutes of limitation and venue requirements for civil actions in North Dakota. The study must include a review of the limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, and the extent to which claims are filed in North Dakota courts for claims otherwise prohibited in other states due to the relevant statute of limitation having expired. The study also must review the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 SENATE JUDICIARY

HB 1365

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee Fort Lincoln Room, State Capitol

HB1365 3/8/11 Job #15099

☐ Conference (Jommittee					
Committee Clerk Signature						
Explanation or reason for introduction of bill/resolution:						
Provides for a legislative management stud requirements for civil actions in ND	y of statutes of limitation and venue					
Minutes:	There is attached testimony					

Senator Nething - Chairman

Representative Klemin – Introduces and explains what they did on this bill in the House Judiciary committee. He explains this bill was introduced to change the statute of limitations on civil action for personal injury from 6 years to 3 years. He says most of the other states have a statute limitation that is for 2 or 3 years. ND has had the 6 year limitation since 1897. He explains how some from other states file action in ND when the statute of limitations has run out in their own state. He gives examples of the asbestos cases coming to ND and the Vick-Nair case in which the District Court had dismissed those cases brought to ND. They appealed to the Supreme Court and the Supreme Court interpreted or referred to the Uniform Conflicts of Laws Limitations Act. They decided in the Vicknair case that the statute of limitations period in ND does not apply to those plaintiffs; rather they are still governed by the statutes in their home states which they have missed. He said that was one of the reasons for reducing the statute to begin with but now it doesn't look like they can do that because of the Supreme Court case on that issue. He says the House Judiciary committee decided to hog house the bill which now makes it a study of both the statute of limitations and the venue requirements.

Jeb Oehlke – ND Chamber of Commerce – See written testimony.

Senator Olafson – Said he was pleased to see the language of the study addressing the issue of non-residents filing in this state when they have no connection to the state.

Larry Boschee – ND Defense Lawyer Association – In support of the study - He said he would like shorter limitation periods. He explains how this would benefit cases by preventing stale claims. He says it would level the playing field giving everyone the opportunity to get fresh evidence. It would also bring ND into the main stream. Most states have 2 o 3 year limitation period. He said he gets phone calls from other states inquiring on statute of limitation. Currently there are 29 Alabama plaintiffs suing in Grand Forks

Senate Judiciary Committee HB1365 3/8/11 Page 2

County along with plaintiffs from Illinois, Louisiana, Texas and Nova Scotia Canada. He explains how the Vicknair case took ten years and how all cases that come here from out of state depletes the judicial resources of the state that could be used and better serve cases that do belong here.

Allen Austad – ND Association for Justice – He says this study will be a valuable one and they are in support of this study.

Opposition - 0

Close the hearing on HB1365

Senator Lyson moves a do pass Senator Sitte seconds

Roll call vote - 6 yes, 0 no

Senator Sitte will carry

Date:	3	18/11	
Roll Call Vote	#		

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. __/365_

Senate Judiciary				Comn	nittee
☐ Check here for Conference Co	mmitte	е			
Legislative Council Amendment Num	ber _				
Action Taken: Do Pass 🔲	Do Not	Pass	☐ Amended ☐ Ad	opt Amen	dment
☐ Rerefer to App	propriat	tions	Reconsider	,	
Motion Made By Senator	0 450 r	Se		Sitte	
Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X_	
Curtis Olafson – V. Chairman	X				
Stanley Lyson	 				
Margaret Sitte Ronald Sorvaag	 				
Ronald Solvaag	1	 -			
		 			
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		ļ			+
	 	 			
Total (Yes)			0 -		
Floor Assignment Senator	Six	te			

If the vote is on an amendment, briefly indicate intent:

Com Standing Committee Report March 8, 2011 11:59am

Module ID: s_stcomrep_41_002 Carrier: Sitte

REPORT OF STANDING COMMITTEE

HB 1365, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends

DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1365

was placed on the Fourteenth order on the calendar.





HB 1365





HB 1365

REVISED CODES

TERRITORY OF DAKOTA.

A. D. 1877

Andrew 1994 - The Committee of the Manager of the Committee of the Committ COMPRISING THE CODES AND GENERAL STATUTES PASSED AT THE TWELFTH SESSION OF THE CEGISLATIVE ASSEMBLY AND ALL OTHER GENERAL LAWS TREMAINING IN FORCE

GEORGE H. HAND,

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

PIONEER PRESS CO., PRINTERS,

PREFACE

Lite The Termtory of Dakotariscone of a lew remnants of that vasterablic domain the title of which was acquired by the United States having he the domain the title of which was acquired by the United States having he the domain the title of which was acquired by the United States having he the domain the level of the ordinance of the ordinance of the ordinance of the ordinance of the Ohio, which was organized under the provisions of the ordinance of the Ohio, which was organized under the provisions of the ordinance of the Ohio, which was organized under the provisions of the ordinance of the Ohio, which was part of that territory, and the being provisions of that historic enactment have practically been applied to its government and law was a long to the ordinance of the Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of this domain the great western and north western states of Missouri 162 Out of the Ohio North Missouri 162 Out of the O

more remote states and several quiet for the boundaries and extent of ritories. Eluring their existence as territories, the boundaries and extent of ritories eliginal their existence as territories, the boundaries and new these divisions have been subjects to frequent and marked changes, and new these divisions have been subjects to frequent and marked changes, and new mames have appeared and old ones have disappeared or decome permanent in mames have appeared and old ones have disappeared or decome permanent in the mame of the states of the maps soft of the territories more like the figures in the skale doscope. To hit he maps soft forty years ago this was noted as the Mandan region or the Mandan territory, and afterwards the tony full became once a part of the Mishon region or the Mandan territory. In the came once a part of the Mishon river. After the organization of Wisconsin and Towaras states. Minnesota, while a territory emphaced to Wisconsin and Towaras states. Minnesota, while a territory emphaced the besides its present area, all that portion of Takota east of the Missouni river, and the boundaries tof Nebraska territory from 1854 to 1861 included that portion bying west to the Missouni river.

The admission of Minnesota as a state in May, 1858, effiall the country west of its diminished boundaries and of Northwest Iowa along the Big Sioux west to the Missouni river on the west modelined in any organization and river to the Missouni river on the west modelined in any organization and

besides its presentarea; all that point of Dakota east of the Missouri ryelat and the boundaries of Nebraska tenrifory, from 1854 to 1861 included that portionallying west for the Missouri river that the Large of the Missouri river that the Large of the Missouri river that the Large of the Missouri river on the West in other was low along the Big Sioux west of its diminished boundaries and of Northwest Iowa along the Big Sioux west to the Missouri river on the West in other was with propriety and by common consent occupied by the Indians. This part was with propriety and by common consent designated by the mane of Dakota from the great associated tribe of Indians known in their own language and among themselves as Dakotas and recognizing the French word. Sioux "only when learned by long communication with the whites. The first cession of lands within Dakota was made in 1858 with the whites. The first cession of lands within Dakota was made in 1858 with the whites. The first cession of lands within Dakota was made in 1858 within and with the Poncas, a bands of another hation, tribe and dialect yankton and with the Poncas, a bands of another hation, tribe and dialect yankton and with the Poncas, a bands of another hation, tribe and dialect yankton and with the Sioux or Dakotas, until mearly all that least of the Missour treaties with the Sioux or Dakotas, until mearly all that least of the Missour it reaties with the Sioux or Dakotas, until mearly all that least of the Missour it reaties with the Black Hills in Western Dakota; already celebrated for its wealth

and opened the Black Hills in Western Dakota, already celebrated for its wealth in the precious metals and in timber.

White settlement was begunin 1859, but, by reason of the critical and disturbed condition of national affairs, the act of congress organizing the Ter-

ritorygor: Dakota swas notapassed auntil March 27.1861. President: Lincoln alpointed the mecessary executive and judicial difficers at an early day there rater, and they came promptly to their posts. so that lafter June 1861. Dakota had a government. The original boundaries as declared by this act, included besides the present areas of the territory all that region how embraced in Idaho, Montana, and Wyoming each of which has been created by successive acts leaving the western boundary of Dakota the 27th meridian of longitude west from Washington. Strong efforts are making to secure the erection of a new territory out of the northern half of Dakota while at the same time, an organized movement is growing for the organizations and admission of Dakota the southern half of the present territory into the Union as a state of The growth of the ferritory in wealth and population was practically deteated for several years by the Indian stroubles, and 1862—3, the effects of which long deterred active development if the southern half, including the Black Hills has now a population of 38,000 organize and with vast areas for the menestic farming and best grazing lands, and mines of wonderful richness, as most delignful and surprise and law abiding the Doulation, withinstitutors and laws interior to none, promises a rapid growth and development hencefor if the surprise of the menestic laws in the long of the large and development hencefor if the surprise of the menestic laws in the long of the large and the legislative.

population, with institutions and flaws interior, comone, promises a rapid growth; and development henceforth.

""" The first general election was held in September. It 861; and the legislative assembly convened in its first session in March. 1862; Alticontinued for sixty days, and passed as carefully hiprepared and good abody of slaws. Since that eleven other sessions have been held, and at leach various acts were passed an ended repealed or re-enacted, and throughout the course of this legislation seach of the codes how revised and printed has had a more for less distinctive history, and are abriefly referred to in their order.

The Political Code embraces the results of a large number of miscellance of sacts passed with evarous sessions, but now brought into an orderly arrange ment, and amended into a harmonious and practical systems. It from prises those matters which we late to other government of the territory, under the organic laws by congress the powers and duties of its officers and subordinate municipal corporations, and the nature and management of its institutions.

unicipal corporations, and the market powers and duties of its officers and substitutions and the corporations and the market powers and duties of its officers and substitutions. The Civil Code temperature and management of its institutions and their relations to property for levery kind, and to obligations to persons and their relations to persons and property and uning the entire subject to private corporations, and as a code for written law whad its originain the private corporations, and as a code for written law whad its originain the unicompleted labors of a commission appointed by the State of New York. This partiof their work was not specific daily the fifth session of the legislative assembly of Dakota and approved January. 12, 1866, thus having been in force here, though not in accomplete form, over eleven years. It was then taken an acted as the flaw of that state in 1873 and was now been again revised and are enacted by Dakota assist appears herein.

The Code of Civil Procedure embraces together with the Probate Code and the Justices Code, which are properly parts of it, the jurisdiction of the courts of justice and the judicial and other officers thereof and all the actions, special proceedings, writs and process, and the methods and means generally which may be employed for the enforcement of rights, and the remedies for their violation. A code of a different origin was senacted by the first session in 1862, and was repealed by implication in 1868, and expressly in 1873. The present code originated also in New York, where it was enacted into law of Infants an abridged form it was enacted; in Dakota in 1868, and took effect on the first of day of June in that year. It was also amended and adopted by the State of

omitted and the whole gode is thus revised factording to the latest and best level and the whole gode is thus revised factor in the latest and best level and the level of the level of the latest and the level of t

Examples of legislation in the most enlightened states in Afewsin repealed and miscellaneous enactments are inserted in the volume in their appropriate considerations and the general repealing actains plant during the public and general laws and statutes now inforces in the termion. The public and general laws and statutes now inforces in the termion of the public and general laws and statutes now inforces in the termion. The provide for recking and confirm the laws of Dakofa territory and the provide for recking and confirm the laws of Dakofa territory and the law to provide for recking and confirm the laws of Dakofa territory and the law to revise and coulfy the laws of this territory and duty to select and appoint a commission of three completent and world'y persons learned in the law to revise and coulfy the laws of this territory and and for that purpose the act gave the commission of authority to add to or take and for that purpose the act gave the commission of authority to add to or take and for that purpose the act gave the commission of authority to add to or take from the laws now interpretable provided the laws for this derintory. The commission was fulfill will a Excellence of laws for this derintory. The Honorable B. C. Shannon, clied sioned the stollowing gentlemen aviz. The Honorable Granville Granville Bennett associate justice for the supreme court, and The Honorable Bartieri.

closing February 1/4/1877; and until the last from thereof. 253. The Bradles is Besides his abort assectory of the commission. Gen W.H. H. Bradles was also a member of the clouds of representatives rand therein served as was also a member of the clouds of representatives rand therein served as was also a member of the committee; which had original charge of all there charman of the judiciary committee; which had original charge of all there several bills comprising the codes.

By The Revised Codes; as now enacted and printed; save a very few and zunimportant blemishes vare believed to embrace the best results of legislation in this country, and also to express the weight of the latest and most enlight. ened judicial learning, and judgment. In them the territory, or the future state has an invaluable public heritage which should be changed only with intelligent conservation, and the general integrity of which should be preserved with conscientious fidelity G.H. H.

judgment or a decree, land shall be deemed to have been spossessed and cupied in the sfollowing cases; \\ \tau_i \t

2. Where it has been protected by a substantial enclosure: 34.5 Where although not enclosed at has been used for the supply of fue or of fencing timber for the purposes of husbandry, or the ordinary use occupant.

4. Where a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country shall be deemed to have been occupied for the same length of time as the part im proved and cultivated:

§ 47. Actual appear that there has

been an actual continued occupation of premises, under a claim of title exclusive of any other right; but not founded upon a written instrument or a judg ment or decree the premises so actually occupied, and no other shall be deemed to have been held adversely.

\$ 48. Under chaim not written. For the purpose of constituting idverse possession, by a person claiming title not founded upon a written trument, or judgment or decree; land shall be deemed to have been posse and occupied in the following cases only:

1. Where it has been protected by a substantial enclosure

22. Where it has been usually cultivated or improved. \$149: Ilandcord and tenant.] Whenever the relation of landlord and femants shall have: existed between any opersons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or, where there has been no writ en lease, until the expiration of twenty years from the time of the last pay. ments of rents notwithstanding that such tenant may have acquired another itle for may have claimed to hold adversely to his landlord. But such pr imptions shall not be made after the periods herein limited.

§ 50. EFFECT OF DESCENT. The right of a person to the possession of invareal property shall not be impaired or affected by a descent being cast in onsequence of the death of a person in possession of such property.

51 a Disabilities extend time. If a person entitled to commence any action for the recovery of real property, or to make an entry or defense founded on the title to real property; or to rents or services out of the same e, at the time such title shall first descend or accrue, either:

22: Insane; or; va.
38: Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than for life.

The time during which such disability shall continue shall not be deemed portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced; or entry or defense made, after the period of twenty years; and withit ten years after the disability shall cease; or after the death of the person en titled who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY

t \$152; OTHER PERIODS I SThe periods prescribed in section 37 for the commencement of actions other than for the recovery of real property shall be



8 588. Twenty typars [a.Withingtwentykyears;] at Africaction upon a judgment or decrees of any court of the United ates, or of any state of the runtory within the United States. es, or ottally space and a sealed instrument.

Sp4! Six years; ... Within six years; ... It was a specific of the specific of

An action for taking, detaining or injuring any goods of chatters in a hidding actions for the specific recovery of personal property

The Anaction for criminal conversations of for any other injury, touther person or rights of another not arising on contract and not hereinater enumerated

The Anaction following for the ground of fraids in cases which heretofers the solely cognizable divithe courts of schancery the scause of action in such that more to be deemed to have accused antil the discovery; by the aggree of the solely cognizable and have accused antil the discovery; by the aggree of the solely cognizable and have accused antil the discovery; by the aggree of the solely cognizable and the solely cognizab

party, of the facts constituting the fraud surface with bloom a same same same surface with the system of the same surface with the system of the same surface with the surface with the surface of the same surface with the surfa unred by the doing of an act in his official capacity, and inventue of this office suby the comission of an cofficial duty, including the non-payment of mone

Silvy the romission of anisofficial duty, including the non-payment of money followed upon an execution. But this section shall not apply to an action for the secapest of the section upon a statute, for a penalty or forfeiture; where the action of pively to the party aggreed for to such party and the specific bins armiony except where the statute imposing it prescribes a different limitation of the party and the specific bins armiony except where the statute imposing it prescribes a different limitation of the party and the specific bins armiony except where the statute imposing it prescribes a different limitation of the party and the specific bins are such as a different limitation of the party of the second statute of the statute of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party of the people of the party of the party

An action against a sheriff for other officer, for the secapeous biggs of electric states of a minimum action brought to recover a stalkness the tipon a mutual, opens and current account, whose there have been recipiocally demands between the parties, the cause of action shall, be deemed to the action of a from the state of the last item proved in the account of soliders and the last item proved in the account of soliders and the last item proved in the account of soliders and the last item proved in the account of soliders.

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The chapter shall apply to actions brought in the iname of the territory, or for its benefit, in the same manner, as to actions by private parties:

THE

REVISED CODES

OF THE

STATE OF NORTH DAKOTA

1895

TOGETHER WITH

THE CONSTITUTION OF THE UNITED STATES AND OF THE STATE OF NORTH DAKOTA

WITH THE AMENDMENTS THERETO

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

BISMARCK, NORTH DAKOTA
TRIBUNE COMPANY, PRINTERS AND BINDERS
1895

PREFACE

The year 1776 marks an event in our system of jurisprudence hardly less important than was the Declaration of Independence in civil government. In that year Jeremy Bentham published his criticism of Blackstone, which was in fact a criticism of "judge-made" law and an argument in favor of codification. From that time until his death in 1832, in a series of publications covering almost every department of law, Bentham marshalled the arguments in favor of reducing all law to a statutory form. Though codification has been the most prominent subject of legal discussion during the century, it is safe to say that not an argument in its favor has been made which cannot be found in the writings of its first advocate. Unheeded for a quarter of a century, toward the close of his life, Bentham drew to his support a brilliant school, composed of such men as Austin John Stewart Mill, father and son, Macauley, Romilly, Brougham and Langdale. The extreme conservatism of England and the reaction against all innovation, caused by the atrocities of the French Revolution, prevented the early success of codification. The immediate effect of the teachings of Bentham and his associates was limited to comprehensive reforms in the existing system of law, instead of resulting in the adoption of that system for which he contended.

The writings of Bentham and Austin made a profound impression in the United States and were potent factors in producing great reforms in the law of practice and evidence. Codification, however, received only a casual and theoretical consideration at the hands of the great masters of American jurisprudence in the early part of this century. No person appeared among them to take up the subject with the zeal of a reformer. In the thirties it found such an advocate in David Dudley Field. He brought to this cause an enthusiasm akin to that of Garrison in the anti-slavery movement. To it he consecrated his life, placing it above personal gain or professional success. His first pamphlet was published in 1837 and so vigorous was the campaign which he carried on in the state of New York that his reform was made a part of the constitution of 1846. Section 17 of article 1 of that constitution, providing for a commission to codify the substantive law, read as follows:

"The legislature at its first session after the adoption of this constitution, shall appoint three commissioners whose duty it shall be to reduce into a written and systematic code, the whole body of the law of this state, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient; and the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the legislature when called upon to do so; and the legislature shall

pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of said commissioners, and shall also provide for the publication of the said code, prior to its being presented to the legislature for adoption."

Section 2 of article 6 of the constitution, providing for a commission on the

subject of practice and pleadings, read as follows

"The legislature at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time."

Pursuant to these constitutional provisions the legislature of New York in 1847 passed an act creating the two commissions, and the commissioners were appointed that year. Mr. Field was not a member of either commission as originally constituted, but one of the first appointees resigned immediately, and Mr. Field was appointed in his place as one of the commissioners on practice and pleading. This commission in 1848 reported the code of civil procedure which was adopted that year and which has been enacted in most of the states of the Union. The code of criminal procedure, which the commission reported the

following year, was not adopted in New York until 1881.

More difficulty was experienced in securing commissioners to codify the substantive law. The first commission appointed in 1847 resigned. In 1849 a new act was passed providing for another commission, but John C. Spencer, one of its most prominent members refused to serve and in 1850 the commission was abolished by an act of the legislature. In 1857 another act was passed under which David Dudley Field, Wm. Curtis Noyes and Alexander W. Bradford were appointed commissioners to continue in office for five years and to prepare codes of all the law not covered by the work of the commission on practice and pleading. In April, 1862, the term of office of these commissioners was extended to 1865. In the last named year they reported to the legislature the draft of a political code, a penal code and a civil code. Of these the penal code alone has become a law in the state of New York though it was not adopted there until 1882. The civil code has twice passed the legislature and each time been vetoed, owing to the opposition of the bar.

This state is so largely indebted to California for modifications in its system of codes that it is proper to give a brief sketch of codification in that state. Stephen J. Field, a brother of David Dudley Field, was his law partner in New York City from 1841 to 1848, during the period of the latter's greatest activity in the cause of codification. In 1848 he removed to California. As a member of the judiciary committee of the first legislative assembly of that state he exercised a controlling influence over its legislation. He framed two acts on the subject of criminal and civil practice which became laws and were thereafter known in that state as the Civil and Criminal Practice Acts. They were modeled upon the codes of civil and criminal procedure drafted by the New York commission. In 1868 a commission was appointed to revise the laws of the state. This commission apparently did not accomplish much, for the next legislature passed an act creating another commission upon the same subject. The latter commission

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reported to the legislature of 1872 four codes; the civil, political, penal and civil procedure, and the same were adopted March 12th, 1872, after having been revised by a joint committee of the legislature. "Adopt the codes and amend them afterwards," was the motto of the commission and of the legislative committee. The codes were to go into effect January 1st, 1873. In June, 1872, a commission was appointed to examine them and propose amendments for the consideration of the next legislature. Stephen J. Field, then a justice of the supreme court of the United States, was appointed one of the members of this commission. The commission organized at once and worked steadily at their task until October, 1873, when they reported to the governor what is known as "The Report of the Examiners of the Codes." This consisted of a draft of four acts, one to amend each of the codes. Their proposed amendments to the civil code covered eighty-eight pages, to the code of civil procedure one hundred and eight pages, to the penal code twenty-three pages and to the political code twenty pages. These amendments were adopted in 1874. The codes as thus amended, are the ones which are now familiar to the profession in this state.

In the early days of the territory of Dakota, the legislative assembly was as active on the subject of codification as the most ardent reformer could ask. Hardly a session passed during the first ten years—and the sessions were then annual—in which one or more codes were not introduced and adopted. These codes were taken either from those prepared by the New York commissioners, or from other states in which codes based on the work of the New York commissioners, had been adopted. The following is a record of the various enactments of this kind:

A code of civil procedure taken from Ohio was adopted at the first session of the legislative assembly in 1862. In 1868 this code was repealed and the code of civil procedure of New York adopted in its place.

A code of criminal procedure was also passed at the first session of the legislative assembly in 1862. The code thus adopted was repealed in 1869 and replaced by the code of criminal procedure prepared by the New York commissioners. This code was again amended and re-enacted in 1875.

A justices code was adopted at the first session of the legislative assembly in 1862. This was repealed at the next session of the legislative assembly in 1863 and a new code adopted in its place. This again was repealed in 1866 and another complete code on the subject enacted.

A penal code was adopted at the second session of the legislative assembly in 1863. It was repealed in 1865 and the penal code drafted by the New York commissioners adopted in its place.

A probate code was adopted in 1865.

The civil code prepared by the New York commission was adopted in 1865, taking effect January 12th, 1866. The territory of Dakota was the first English community to adopt a codification of its substantive law. It has been quite generally supposed that California took the lead in this matter. This is a mistake, however, as the civil code was not adopted there until 1872.

All the above codes were adopted by the legislative assembly of Dakota without any revision by a commission and with only such adaptation to the other laws of the

territory as could be given by the legislative committees. Having been prepared with respect to a system of laws in New York and in many cases referring to other statutes of that state, the codes; as adopted by the territory, were incomplete and contained many provisions wholly inapplicable to the conditions of our people.

In 1875 an act was passed providing for a commission of three to revise the codes and statutes of the territory, (chapter 23 of the laws of 1874-5). Pursuant to this act the governor appointed P. C. Shannon, then chief justice of the supreme court of the territory, Granville G. Bennett, an associate justice of the supreme court, and Bartlett Tripp, as commissioners. They prepared the revision of 1877. In their work this commission was greatly aided by the system of codes which had just been adopted in California and most of the changes made by them were taken from that source.

Chapter 83 of the laws of 1887 provided for a commission to compile the laws of the territory. E. W. Caldwell and Charles H. Price were appointed as commissioners pursuant to this act and prepared the compilation of 1887. The act under which they served limited their powers to compilation and for this reason nothing was done by them either to supply deficiencies in the law or remove its repugnant provisions. By chapter 36 of the laws of 1889, this compilation was declared to be admissible in the courts of the territory as legal evidence of the

statutes therein printed.

Upon the admission of the state of North Dakota, the necessity was at once felt of a commission to adapt the laws then in force to the constitution of the state and harmonize the large body of statutes which had been passed since the revision of 1877. Chapter 82 of the laws of 1891 provided for a commission of three to accomplish this object—two of the commissioners to be attorneys at law and one an experienced business man. The governor of the state appointed as commissioners under this act, P. H. Rourke of Lisbon, Robert M. Polleck of Casselton and J. G. Hamilton of Grand Forks. The commission organized at once, appointing J. F. Philbrick of Bismarck, secretary, and on the meeting of the legislative assembly in January, 1893, presented a report showing in detail those provisions of our statutory law which should be continued in force and those which should be repealed. They also prepared a large number of bills, for the purpose of supplying deficiencies in the system of laws then in force and adapting those laws to the new constitution. Owing, how ever, to the protracted contest for the election of a United States senator during this session of the legislative assembly, nothing was done towards carrying the recommendations of the commission into effect.

The same session of the legislative assembly, (chapter 74 of the laws of 1893), provided for the present commission. The appointments were made in March of that year and soon after the commission organized and appointed Charles J. Fisk of Grand Forks, secretary. In carrying out the work, certain codes were assigned to each member. The probate and justices' codes were assigned to Mr. Corbet, the penal code and code of criminal procedure to Mr. Newton, and the civil code and code of civil procedure to Mr. Amidon. The political code was reserved for the joint action of the entire commission, with the assistance of its secretary. When the legislative assembly convened in January, 1895, the commission reported to

that body seven bills providing for seven different codes, embracing the entire statutory law of the state. A special joint committee was appointed to take charge of this work. Many changes were made by the committee and the legislative assembly in the report of the commission. The most important of these changes was the substitution of an entirely new system of revenue and taxation in the political code, which was made by the legislative assembly too late in the session for careful consideration.

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In printing the codes the commission has indicated in the margin opposite each section the origin of any statute embraced in the codes, taken from the laws of the territory of Dakota or the state of North Dakota. Where entirely new matter was introduced by the present commission no reference whatever is contained in the margin.

In preparing this revision the commission has undertaken a task of great magnitude and difficulty. It involved much more than a mere compilation or rearrangement of pre-existing statutes. Not only have many changes been made in the form of existing law, but in each of the new codes a large number of provisions wholly new in this jurisdiction have been added. The period since our last revision in 1877 has been marked by great activity in legislation and codification. The codes embraced in that revision have been enacted in many other states, and before such enactment were subjected to careful revision and have since been largely modified by amendment. It has been the aim of the commission to bring the codes of this state down to date—to embody in them the improvements of other states, and add such new provisions as were necessary to give effect to our constitution and harmonize and complete our system of law. While fully expecting that experience will discover many imperfections in our work, we also trust that experience will show the revision to be a substantial improvement in the honorable work of our commonwealth in the cause of codification.

BURKE CORBET, GEO. W. NEWTON, CHARLES F. AMIDON.

ARTICLE 3. TIME OF COMMENCING OTHER ACTIONS

s 52; C. Civ. P. . § 5199. Other periods. The following actions must be on menced within the following periods after the cause of actions accrued.

§ 53, C. Civ. P.

§ 5200. Ten years. Within ten years:

1. An action upon a judgment or decree of any court of United States or of any state or territory within the United States

2. An action upon a contract contained in any conveyant mortgage of or instrument affecting the title to real property as a covenant of warranty, an action upon which must be coming within ten years after the final decision against the title of the enantor.

§ 5201. Six years. Within six years:

1. An action upon a contract, obligation or liability, eximplied, excepting those mentioned in section 5200.

2. An action upon a liability created by statute, other than alty or forfeiture, when not otherwise expressly provided.

3. An action for trespass upon real property.

4. An action for taking, detaining or injuring any goods of tels, including actions for the specific recovery of personal professions.

5. An action for criminal conversation, or for any other in the person or rights of another not arising on contract, and in after enumerated.

6. An action for relief on the ground of fraud in cases whit tofore were solely cognizable by the court of chancery, the action in such case not to be deemed to have accrued discovery by the aggrieved party of the facts constituting the

§ 5202. Three years. Within three years:

1. An action against a sheriff, coroner or constable upon a liable incurred by the doing of an act in his official capacity and by it of his office, or by the omission of an official duty, including the payment of money collected upon an execution. But this sect shall not apply to an action for an escape.

2. An action upon a statute for a penalty or forfeiture when action is given to the party aggrieved, or to such party and the except when the statute imposing it prescribes a different limitation.

§ 5203. Two years. Within two years:

1. An action for libel, slander, assault, battery or false implement.

2. An action upon a statute for a forfeiture or penalty at state.

3. An action for the recovery of damages resulting from practice.

4. An action for injuries done to the person of another, we death ensues from such injuries; and the cause of action shall deemed to have accrued at the time of the death of the party-injuries.

§ 5204. One year. Within one year:

1. An action against a sheriff or other officer for the escape prisoner arrested or imprisoned on civil process.

§ 5205. Balance of open account. In an action brough recover a balance due upon a mutual, open and current account there have been reciprocal demands between the parties, the cause

§ 54, C. Civ. P.

§ 55, C. Civ. P.

56, C. Civ. P. 1, c. 87, 1893. am'd.

§ 58, C. Civ. P.

§ 57, C. Civ. P.

THE

REVISED CODES

OF THE

STATE OF NORTH DAKOTA

1899

TOGETHER WITH

THE CONSTITUTION OF THE UNITED STATES AND OF THE STATE OF NORTH DAKOTA

WITH THE AMENDMENTS THERETO

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

BISMARCK, NORTH DAKOTA TRIBUNE COMPANY, PRINTERS AND BINDERS 1899

ARTICLE 3.— TIME OF COMMENCING OTHER ACTIONS.

§ 5199. Other periods. The following actions must be com-52, C. Civ. P. menced within the following periods after the cause of action has

§ 5200. Ten years. Within ton years: § 53, C. Civ. P.

1. An action upon a judgment or decree of any court of the United States or of any state or territory within the United States.

2. An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor.

§ 5201. Six years. Within six years:

1. An action upon a contract, obligation or liability, express or implied, excepting those mentioned in section 5200.

2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.

3. An action for trespass upon real property.
4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.

5. An action for criminal conversation, or for any other injury to the person or rights of another not arising on contract, and not hereinafter enumerated.

6. An action for relief on the ground of fraud in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

§ 5202. Three years. Within three years:

· 1. An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute for a penalty or forfeiture, when the action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribes a different limitation.

§ 5203. Two years. Within two years:

An action for libel, slander, assault, battery or false imprisonment.

An action upon a statute for a forfeiture or penalty to the state.

An action for the recovery of damages resulting from mal-3. practice.

4. An action for injuries done to the person of another, when death ensues from such injuries; and the cause of action shall be deemed to have accrued at the time of the death of the party injured.

§ 5204. One year. Within one year:

An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

§ 5205. Balance of open account. In an action brought to recover a balance due upon a mutual, open and current account, when there have been reciprocal demands between the parties, the cause of

2 § 54, C. Civ. P. am'd.

28 55, C. Civ. P.

56, C. Clv. I c. 87, 1893. am'd.

: § 57, C. Clv. P.

: § 58, C. Clv. P.

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action shall be deemed to have accrued from the time of the last item proved in the account on either side.

statute for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same must be commenced within one year after the commission of the offense; and if the action is not commenced within the year by a private party; it may be commenced within two years thereafter in behalf of the state by the attorney igeneral, or by the state's attorney of the county where the offense was committed.

hereinbefore provided for must be commenced within ten years after the cause of action shall have accrued.

§ 5208. Same to state and persons. The limitations pre- \$ 61, C. Civ. P. scribed in this chapter shall apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties.

ARTICLE 4.—GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

S 5209. When action deemed commenced. An action is set C. C. C. P. am'd.

S 5209. When action deemed commenced. An action is set commenced as to each defendant when the summons is served on him, or on a codefendant who is a joint contractor or otherwise funited in interest with him. An attempt to commence an action is deemed equivalent to the commencement thereof within the meaning to this chapter, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants, or one of them usually or last resided; or, if a corporation is defendant, to the sheriff or other officer of the county in which was situated the principal place of business of such corporation, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt in ust be followed by the first publication of the summons, or the service thereof, within sixty days.

S 5210. Exception. Absentee. If, when the cause of action sexually shall accrue against any person, he shall be out of the state, such faction may be commenced within the terms herein respectively dimited after the return of such person into this state; and if after such cause of action shall have accrued such person shall depart from and reside out of this state or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commence-timent of such action.

\$ 5211. Same. Disabilities. If a person entitled to bring an \$ 51 C. Civ. P. action other than for the recovery of real property, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, is at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or,

2. Insane; or, 3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life, the time of such disability is not a part of the time limited for the commencement of the action; provided, that the period within which the

THE

REVISED CODES

OF THE

STATE OF NORTH DAKOTA

1905

TOGETHER WITH .

Annotations of Such Sections as Have Been Construed by the Supreme Courts of the Territory of Dakota and the States of North and South Dakota, also the Constitution of the United States and of the State of North Dakota with the Amendments Thereto

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

BISMARCK, NORTH DAKOTA
TRIBUNE COMPANY, STATE PRINTERS AND BINDERS
1905

PREFACE

Inspublishing this volume of the revised codes of North Dakota it is deemed proper to give briefly a sketch of the enactment and codification of the codes of Morth Dakota.

The legislative assembly of the territory of Dakota at its first session in 1862 adopted a code of civil procedure taken from Ohio. In 1868 this code was repealed, and the code of civil procedure of New York was adopted in its place HAt: that session there was also adopted a code of criminal procedure. de was repealed in 1869 and a code of criminal procedure that had been prepared by a New York commission for that state adopted in its stead This code was again amended and re-enacted in 1875. A justices' code was adopted in 1862, which was repealed and a new code adopted in 1863. This was again repealed in 1866, and another complete code on the subject enacted. A penal code was adopted at the second session of the legislative assembly in 1863, which was repealed in 1865 and the code drafted by the New Morkecommission for that state, adopted in its place. A probate code was adopted in 1865. A civil code taken from that prepared by the New York commission was adopted in 1865, and took effect January 12, 1866. The New Work commission referred to was composed of David Dudley Field, William Curtis Noyes and Alexander W. Bradford. It was created in 1857 and reported to the New York legislature in 1865. Of these the penal code alone became a law in that state and it was not adopted until 1882. The territory of Dakota was the first English speaking community to adopt a codification of its substantive law.

in 1875 an act was passed providing for a commission of three to revise and compile the codes of the territory of Dakota, which commission consisted of E. Shannon, Granville G. Bennett and Bartlett Tripp. They prepared the revision of 1877. In 1887 E. W. Caldwell and Charles H. Price were appointed commissioners pursuant to chapter 83 of the laws of 1887, and prepared the compilation of 1887, known as the compiled laws. This compilation was in 1889 declared by the legislative assembly to be admissible in the courts of the territory as legal evidence of the statutes therein printed.

Upon the admission of the state of North Dakota it became necessary to adapt the laws then in force in the territory to the constitution of the state, and harmonize the various laws passed by succeeding sessions of the legislative assembly since the revision of 1887. Under chapter 82 of the laws of 1891 the governor appointed as commissioners R. M. Pollock, P. H. Rourke and J. G. Hamilton, who upon organization appointed J. F. Philbrick secretary. This commission reported to the legislative assembly in January, 1893, showing in detail those provisions of our statutory law which should be continued

in force and those which should be repealed. No legislative action was taken upon this report, but chapter 74 of the laws of 1893, passed at the same session, authorized the appointment by the governor of a new commission on codification, and Charles F. Amidon, Burke Corbet and George W. Newton were appointed as such commissioners. On organization they appointed Charles J. Fisk as secretary. When the legislative assembly convened in January, 1895, this commission reported bills providing seven different codes, which comprised the entire statutory law of the state. A special joint committee of the house and senate was appointed, to whom all these bills, together with all other bills making changes in existing laws, were referred. Many changes were made by the committee and the legislative assembly in the reported bills of the commission. All laws in force in the state of North Dakota, previous to the taking effect of the enactments of the legislative assembly of 1895, and in conflict therewith, were specifically repealed by reference to sections and chapters. After the adjournment of the legislative assembly, the revised codes of 1895 were printed by the commission, and by virtue of the governor's proclamation, which had been provided for by law, they became the complete body of laws in force in the state of North Dakota.

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The edition of the revised codes of 1895 being exhausted, the legislative assembly in 1899 provided for a new codification to be known as the revised codes of 1899, the secretary of state being authorized to supervise such codification and publication. In pursuance of this authority R. N. Stevens, a member of the Burleigh county bar, and M. H. Jewell, editor of the Bismarck Tribune, were employed to compile and edit this edition. A STATE OF THE STA

The edition of the revised codes of 1899 being exhausted the legislative assembly, by chapter 41, laws of 1905, cauthorized a new codification to be known as the revised codes of 1905; giving the secretary of state authority to supervise such codification and publication. Under the law of 1905 it was provided that this edition of the revised codes should contain, by appropriate references, annotations to each section, so far as construed by the supreme courts of the territory of Dakota and the states of North and South Dakota. This involved an enormous amount of work not included in former revisions of the codes and has required more time than originally contemplated. The contract for codification, annotation and publication, under the supervision of the secretary of state, was awarded to M. H. Jewell, who associated with him, in charge of the annotation features, R. N. Stevens, and in general codification J. G. Hamilton, member of a former revision commission; and R. D. Hoskins, clerk of the supreme court of this state. This volume is the result of their work.

An effort has been made to improve and greatly expand the index to this volume. The cross-indexing has been elaborated and by a system of sub-catch lines in boldface type it is believed that the subject desired may be located much more readily in this volume than in any other similar work published. The main subjects are printed in capital letters, the sub-titles or "catch-lines" in boldface and the subdivisions thereof alphabetically arranged so as to present quickly to the eye the various divisions or minor, subjects. For

PREFACE.

instance the subject of liability of directors of corporations for creating debts illegally appears in the index as follows:

· CORPORATIONS.

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dir	ectors, action against, for what 7366	-7368
•	liability, bonds, for illegally issuing	
	debts, for creating illegally	4221
	number	4208
	officers, election of	

The first word in each line is the "catch word" of the subject matter and relates and must be construed in connection with the line above having a different indenture. Thus, in the example cited above, line three transposed would read: "Liability of directors for illegally issuing bonds." Line three is indented to the right, and the first word, "liability," relates to "directors." Line four cites another section, but relates to the same subject, and when coupled with the "catch words" of lines preceding, rounds out the sentence: "Elability of directors of corporations for creating debts illegally." In lines five and six the "catch words" "number" and "officers, election of," relate to "directors," and are therefore indented the same as "liability" in line three, relating to the same subdivision. Thus a vast amount of verbiage and repetition is omitted and the scheme of the index is simplified. The "catch words" also being arranged alphabetically, obviates the necessity of looking through the entire references made under a main head to find what is desired. Where citations are made to collateral subjects the section numbers have been enumerated wherever it has been possible to do so. In some instances, however, the collateral subject referred to embraces so many different sections in different chapters of the code that it has been found impossible to give, in the index, the numbers of the sections. These citations enable one to turn immediately to the sections in the code comprising the subject matter referred

At the end of each section is indicated the origin and history of the provision embraced therein—the former session law; chapter and section, or code, from which the subject matter was taken or by which it was revised. Reference is made to revised codes of 1899, except where a section originated with or was changed by the revision of 1895.

Abbreviations used: "R. C.," revised codes; "Pol. C.," political code; "Civ. C.," civil code; "C. Civ. P.," code of civil procedure; "Pro. C.," probate code; "Justices' code; "Pen. C.," penal code; "C. Cr. P.," code of criminal procedure.

Under the provisions of the law authorizing this codification, after proclamation by the governor, the revised codes of 1905 shall be in full force and effect and be received as evidence of the laws of this state in all courts thereof. An effort has been made to avoid errors in this codification but inasmuch as codification only and not revision was authorized, there appear some conflicting provisions which as occasion may demand the courts must construe.

E. F. Porter, Secretary of State.

§ 6781. Under claim not written. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

When it has been protected by a substantial inclosure

2. When it has been usually cultivated or improved. [C. Civ.P.1877] R. C. 1899, § 5195.]

Actual possession of land consists in subjecting it to the will and dominion of the occupant! Pendo v. Beakey 15 S. D. 344, 89 N. W. 655. Adverse holding by party knowing he has no title is not in good faith. Defiebach v. Hawke, 115 U.S. 393.

§ 6782. Landlord and tenant. Whenever the relation of landlord and tenant shall have existed between any persons the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty. years from the termination of the tenancy; or, when there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presump tions shall not be made after the periods herein limited. [C. Civ. P. 1877] \$.49 fift: C. 1899, §.5196.] THE WAR THE WAR TO

§ 6783. Effect of descent: The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property. C. Civ. P. 1877, § 50; R. C. 1899, § 5197.]

\$ 6784: Disabilities extend time. If a person entitled to maintain any of the actions mentioned in this article, or to interpose a defense or counterclaim thereto, or to make an entry upon real property, is, when his title first descends or his cause of action or right of entry first accrues, or when such defense or counterclaim might be interposed either.

1. Within the age of twenty one years, or 2. Insane: or.

3. Imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term less than for life, the time of such disability is not a part of the time in this article limited for the commencement of such action or the making of such entry, or the interposing of such defense or counter. claim; but the time so limited cannot be extended more than ten years after the disability, ceases or after the death of the person so disabled in C. Civ. P. 1877, § 51; R. C. 1895, § 5198.] willia.

Time of commencement of actions for the recovery of real property applies to actions at law only and not to equitable actions. Houts v. Hoyne 14 ShD 176. 84 N. W. 773.

Same of the property of the property of ARTICLE 3.—TIME OF COMMENCING OTHER ACTIONS

and the west and the same and the same § 6785. Other periods. The following actions must be commenced within the periods, set forth in the following five sections after the cause of action has accrued:

No limitation of action to foreclose tax lien. Wells County vi McHenry, 7 N.

Computation of time under statute shortening limitation. Bank v Braithwaite,

Computation of time under statute shortening limitation. Bank v. Braithwaite, 7. N. D. 358, 75 N. W. 244, Mosborne v. Lindstrom 90 N. D. 1.81 N. W. 72; Power v. Kitching, 10 N. D. 254, 86 N. W. 737.

Statement Did not accive within six years from commencement of action is a good pleas of statute of limitations. McConnell W. Spicker, 15, 32 D. 98, 87 N. W. 574, 415.

6786. Ten years. Within ten years.

3 0700. Len years within ten years and court of the United States of the United States or of any state or territory within the United States

2 An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property; except a covenant of warranty an action upon which must be commenced within ten years after the final decision against the title of the covenantor

3 Any proceeding by advertisement or otherwise for the foreclosure of a mortgage upon real estate... [C. Civ. P. 1877, § 53; R. C. 1899, § 5200; 1901,

ch. 120:1

Legislature may lesson statutory period within which action can be brought. Bank v. Braithwaite, 7, N. D. 358, 75 N. W. 244; Osborne v. Lindstrom, 9 N. D. 1, 81

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County warrant's sealed instrument and action may be brought at any time within twenty years. Heffeman v. Pennington County, 3 S. D. 162, 52 N. W. 851; Stewart v. Custer County, 14 S. D. 155, 84 N. W. 764.

8 6787 Six years. Within six years:

An action upon a contract, obligation or liability, express or implied,

excepting those mentioned in section 6186.

2 Angaction upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.

4 Anzaction for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.

An action for criminal conversion, or any other injury to the person or rights of another not arising on contract and not hereinafter enumerated.

6. An action for relief on the ground of fraud in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such cases not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

An action for the foreclosure of a mechanic's lien; provided, that this subdivision shall not apply to any mechanic's lien filed prior to July 1,

1908 [C Civ P 1877, § 54; R. C. 1895, § 5201; 1903, ch. 2.]

Where cause of action barred in foreign state, bar available here. Rathbone v. Coe. 6 Dak. 91, 50, N. W. 620.

Tax lien is not barred in six years. Wells County v. McHenry, 7 N. D. 246, 74

N. W. 241, Pland Co. V. Douglas County, 8 S. D. 491, 67 N. W. 52.

Krump v.

N. W. 241 Land Co. V. Douglas County, 8 S. D. 491, 67 N. W. 52.

Action may be maintained to recover money obtained by fraud. Krump v. Bank 8 N.D. 175 766 N.W. 995.

A payment by one joint debtor will not interrupt running of statute as against another joint debtor. Grovenor v. Signor, 10 N. D. 503, 88 N. W. 278.

A verment that cause of action did not accrue within six years of commencement sufficient pleasof interstation. Searls v. Knapp, 5 S. D. 325, 58 N. W. 807.

Under a pleasof the statute of limitation on a note showing limitation on its face burden of proof that it is not barred, is on plaintiff. Dielmann v. Bank, 8 S. D. 263 666 N. W. 311; McConnell v. Spicker, 15 S. D. 98, 87 N. W. 574.

School warrants subject for six years limitation. Coler v. Sterling, 15 S. D. 415, 89 N. W. 1022 M. S. D. 185, 95 N. W. 291.

Musselman et al. 17 S. D. 185, 95 N. W. 291.

Suitjeannot be commenced on registered township warrant until there are funds

Suitteannot be commenced on registered township warrant until there are funds for payment in treasurer shands or sufficient time elapsed for collecting them; six syears limitation does not begin until that time. Brannon v. White Lake Twp:// 17 S. D: 83, 95 N. W. 284.

8 6788. Three years Within three years:

Ant action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. Anaction upon a statute for a penalty or forfeiture, when the action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribes a different limitation [C. Civ.P., 1877, § 55 R. C. 1899, § 5202.]

Usurious interest paid may be set up as counterclaim. Wilson v. Selby, 7 S.

D. 494, 64 N. W. 537. Limitation does not apply to action brought against sureties on sheriff's bond, when. Connor v. Corson, 13 S. D. 550, 83 N. W. 588.

§ 6789. Two years. Within two years:

An action for libel, slander, assault, battery or false imprisonment.

An action upon a statute for a forfeiture or penalty to the state. An action for the recovery of damages resulting from malpractice.

An action for injuries done to the person of another, when death ensues from such injuries; and the cause of action shall be deemed to have accrued at the time of the death of the party injured. [C. Civ. P. 1877, § 56; 1893, ch. 87, § 1; R. C. 1895, § 5203.

§ 6790. One year. Within one year:

I. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process. [C. Civ. P. 1877, § 57; R. C. 1899, § 5204.]

8 6791. Balance of open account. In an action brought to recover a balance due upon a mutual, open and current account, when there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

[C. Civ. P. 1877, § 58; R. C. 1899, § 5205.]

6792. Forfeiture by person. State. An action upon a statute for a penalty or forfeiture given in whole or in part to any person who will prosecute or the same must be commenced within one year after the commission of the ffense; and if the action is not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the state by the attorney general, or by the state's attorney of the county where the offense was committed. [C. Civ. P. 1877, § 59; R. C. 1895, § 5206.]

§ 6793. Other relief ten years. An action for relief not hereinbefore proded for must be commenced within to vided for must be commenced within ten years after the cause of action

shall have accrued. [C. Civ. P. 1877, § 60; R. C. 1899, § 5207.]

Action for accounting under a mortgage and to redeem may be commenced in ten years. Houts v. Hoyne, 14 S. D. 176, 84 N. W. 773; Houts v. Olson; 14 S.D. 475, 85 N. W. 1015.

Person voluntarily paying mortgage to be subrogated to rights of mortgagee barred if action not brought within ten years from payment. Pollock y Wright. 15 S. D. 134, 87 N. W. 584

§ 6794. Same to state and persons. The limitations prescribed in this chapter shall apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties. [C. Civ. P. 1877, § 61; R. C. 1899, § 5208.]

Proceedings to enforce taxes not barred. Land Co. v. Douglas County, 8 S.D. 491, 67 N. W. 52; Coler v. Sterling, 15 S. D. 415, 89 N. W. 1022

ARTICLE 4.—GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

§ 6795. When action deemed commenced. An action is commenced as to each defendant when the summons is served on him; or on a codefendant who is a joint contractor or otherwise united in interest with him. An attempt to commence an action is deemed equivalent to the commencement thereof within the meaning of this chapter, when the summons is delivered with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants, or one of them usually or last resided or, if a corporation is defendant, to the sheriff or other officer of the county in which was situated the principal place of business of such corporation, or where its general business was transacted workwhere it kept an office for the ransaction of business. But such an attempt must be followed by the

THE

COMPILED LAWS

OF THE

STATE OF NORTH DAKOTA

1913

TOGETHER WITH

Annotations: (1) Explanatory and Critical Notes of the Compiler;
(2) Notes of Judicial Decisions by Which the Various Sections
Have Been Construed; (3) References to Pertinent and Important Notes in Annotated Reports. Also the Constitution of the United States and of the State of North Dakota with the Amendments Thereto.

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

VOL. II

ROCHESTER, N. Y.
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1914

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§ 7371. Effect of descent. The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property. [R. C. 1905, § 6783; C. Civ. P. 1877, § 50; R. C. 1899, § 5197.]

Does the continuation by a life tenant, or his grantee, of an adverse possession initiated by the creator of the life estate, inure to the benefit of the remaindermen? 24 L.R.A.(N.S.)

Must ancestor have been in possession to give heirs the benefit of his color of title?

42 L.R.A.(N.S.) 403.

§ 7372. Disabilities extend time. If a person entitled to maintain any of the actions mentioned in this article, or to interpose a defense or counterclaim thereto, or to make an entry upon real property, is, when his title first descends or his cause of action or right of entry first accrues, or when such defense or counterclaim might be interposed, either:

1. Within the age of twenty-one years; or,

3. Imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term less than for life, the time of such disability is not a part of the time in this article limited for the commencement of such action, or the making of such entry, or the interposing of such defense or counterclaim; but the time so limited cannot be extended more than ten years after the disability ceases or after the death of the person so disabled. 1905, § 6784; C. Civ. P. 1877, § 51; R. C. 1895, § 5198.]

Time of commencement of actions for the recovery of real property applies to actions at law only and not to equitable actions. Houts v. Hoyne, 14 S. D. 176, 84 N. W. 773. The title to land becomes valid by ten years' adverse possession and payment of taxes under section 5471 as against minors as well as adults. Schauble v. Schulz, 137 Fed.

Does the disability of one person inure to the benefit of another? 49 Am. St. Rep. 710.

Disabilities which protect from the statute of limitations. 36 Am. Dec. 68.

ARTICLE 3 .- TIME OF COMMENCING OTHER ACTIONS.

The following actions must be commenced within § 7373. Other periods. the periods set forth in the following five sections after the cause of action has accrued. [R. C. 1905, § 6785.]

No lapse of time will bar remedy to enforce tax lien against land. Wells County v. McHenry, 7 N. D. 246, 74 N. W. 241. Statement that cause did not accrue within six years before commencement of action segond pleading of statute. McConnell v. Spicker, 15 S. D. 98, 87 N. W. 574.

As to when limitation period begins to run against right to maintain foreclosure action.

Paine v. Dodds, 14 N. D. 189, 116 Am. St. Rep. 674, 103 N. W. 931.
Action against county segregated from another county for indebtedness of latter made a charge upon it by statute is not within the statute of limitations. Burleigh County v. Kidder County, 20 N. D. 27, 125 N. W. 1063.

Judgment, dead so far as it relates to liens and for purposes of execution, will support action against judgment debtor after ten years have elapsed. Union Nat. Bank v. Ryan,

23 N. D. 482, 137 N. W. 449. Limit of time for interposing defense of usury against national bank. 56 L.R.A. 686.

§ 7374. Ten years. Within ten years:

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1. An action upon a judgment or decree of any court of the United States

or of any state or territory within the United States.

2. An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property, except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor.

3. Any proceeding by advertisement or otherwise for the foreclosure of

a mortgage upon real estate. [R. C. 1905, § 6786; C. Civ. P. 1877, § 53; R. C.

Legislature may lessen statutory period within which action can be brought. Bank v. Braithwaite, 7 N. D. 358, 75 N. W. 244; Osborne v. Lindstrom, 9 N. D. 1, 81 N. W. 72. Legislature may shorten limitation for action upon judgment. Mer. Nat. Bank v. Braithwaite, 9 N. D. 358, 75 N. W. 244, 66 Am. St. Rep. 653.

Braithwaite, 9 N. D. 358, 75 N. W. 244, 66 Am. St. Rep. 653. 1899, § 5200; 1901, ch. 120.]

Action on county warrant may be brought at any time within twenty years. Heffleman v. Pennington County, 3 S. D. 162, 52 N. W. 851; Stewart v. Custer County, 14 S. D. 155,

Distinction between scaled and unscaled instrument is abolished except as to statute of limitations. Gibson v. Allen, 19 S. D. 617, 104 N. W. 275.

As to effect of issuing execution on judgment ten years after entry, where debtor has been absent from state. Weisbecker v. Cahn, 14 N. D. 390, 104 N. W. 513.

Right to sue on justice's court judgment within ten years. Holton v. Schmarback, 15 N. D. 38, 106 N. W. 36.

As applied to running of statute in proceeding to foreclose by advertisement. Clark v. Beck, 14 N. D. 287, 103 N. W. 755.

Action to foreclose mortgage on real property must be commenced within ten years, Colonial & U. S. Mortg. Co. v. Northwest Thresher Co., 14 N. D. 147, 70 L.R.A. 814, 116 Am. St. Rep. 642, 103 N. W. 915, 8 A. & E. Ann. Cas. 1160.

On right to foreclose security after action on debt is barred. Satterlund v. Beal, 12

Judgment, dead so far as it relates to liens and for purposes of execution, will N. D. 122, 95 N. W. 518.

support action against judgment debtor after ten years have elapsed. Union Nat. Bank v. Ryan, 23 N. D. 482, 137 N. W. 449.

Mortgage reciting, "In witness whereof, the said parties of the first part have hereunto set their hands and seals" and in which word "seal" follows name of mortgagor, is sealed instrument. Green v. Frick, 25 S. D. 342, 126 N. W. 579.

Limitation of actions against county and like warrants. 8 Am. St. Rep. 206. Bar of statute of limitations as ground for quieting title as against incumbrance.

1. Effect of statute of limitations upon judgments. 133 Am. St. Rep. 60. L.R.A.(N.S.) 516.

Effect of bar of statute of limitations against action to enforce judgment upon right to issue execution thereon. 23 L.R.A. (N.S.) 1096.

Applicability of state statute of limitations to lien of judgment of federal court. 47

2. Effect of void proceedings under which real property is sold, to start statute of limitations running in favor of purchaser in possession. 8 L.R.A.(N.S.) 354.

3. Effect of statutory bar of principal debt on right to foreclose a mortgage or deed of trust securing the same. 21 L.R.A. 550.

Right to enjoin sale under a power in a mortgage against which the statute of limitations has run. 6 L.R.A. (N.S.) 510.

Effect of bar of other remedies to prevent a sale of property under a power in a trust deed or mortgage. 13 L.R.A.(N.S.) 1210.

Effect of debt becoming barred by statute of limitations upon rights and remedies under conveyance absolute on its face, but intended as a mortgage. 11 L.R.A. (N.S.)

Effect of statutory bar of action for purchase money on right to enforce lien where vendor takes mortgage which shows that it is given for the purchase money. 39 825; 24 L.R.A.(N.S.) 840.

Effect of mortgagor's absence from the state to toll the statute of limitations as L.R.A. (N.S.) 1176. against foreclosure proceedings against his grantee. 26 L.R.A.(N.S.) 898.

Effect of acceleration provision in mortgage or note to start the statute of limitations inning. 12 L.R.A.(N.S.) 1190; 22 L.R.A.(N.S.) 1110.

running. 12 L.R.A.(N.S.) 1190; 22 L.R.A. § 7375. Six years. Within six years:

1. An action upon a contract, obligation or liability, express or implied, excepting those mentioned in section 6762.

2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.

3. An action for trespass upon real property.

4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.

5. An action for criminal conversation, or any other injury to the person or rights of another not arising on contract and not hereinafter enumerated.

6. An action for relief on the ground of fraud in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such cases not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.





7. An action for the foreclosure of a mechanics' lien; provided, that this subdivision shall not apply to any mechanics' lien filed prior to July first, 1903. [R. C. 1905, § 6787; C. Civ. P. 1877, § 54; R. C. 1895, § 5201; 1903, ch. 2.]

Where cause of action barred in foreign state, bar available here. Rathbone v. Coe, 6 D. 91, 50 N. W. 620.

Tax lien is not barred in six years. Wells County v. McHenry, 7 N. D. 246, 74 N. W. 241; Land Co. v. Douglas County, 8 S. D. 491, 67 N. W. 52.

Action may be maintained to recover money obtained by fraud. Krump v. Bank, 8 N. D. 75, 76 N. W. 995.

A payment by one joint debtor will not interrupt running of statute as against another joint debtor. Grovenor v. Signor, 10 N. D. 503, 88 N. W. 278. School warrants subject to six years limitation. Coler v. Sterling, 15 S. D. 415,

89 N. W. 1022. Failure to state residence in state for six years not fatal to defense. Saxton v.

Musselman et al., 17 S. D. 35, 95 N. W. 291.

Pleading limitations on note easts burden of proof on holder. Dielmann v. Bank, 8 S. D. 263, 66 N. W. 311; McConnell v. Spicker, 15 S. D. 98, 87 N. W. 574.

Averment that cause of action did not accrue within six years of commencement, sufficient. Searls v. Knapp, 5 S. D. 325, 58 N. W. 807, 49 Am. St. Rep. 873.

Limitation will not run on town warrants until funds are provided or time to provide has elapsed. Brannon v. White Lake Twp., 17 S. D. 83, 95 N. W. 284.

Six years limitation applies to civil action to enforce statutory obligation of father to support illegitimate child. State ex rel. Berge v. Patterson, 18 S. D. 251, 100 N. W.

Inapplicable to equity action to recover deceased partner's interest in partnership.

McPherson v. Swift, 22 S. D. 165, 133 Am. St. Rep. 907, 116 N. W. 76.

On application of section to action for recovery of money paid for tax sale certificate, subsequently declared void. Sherwood v. Barnes County, 22 N. D. 310, 134 N. W. 38. When does statute of limitations begin to run against action to recover money collected

by attorney. 17 L.R.A.(N.S.) 667.

against action to recover money collected by agent not an attorney. L.R.A.(N.S.) 660.

against action to recover money paid on a judgment subsequently reversed or modified. 25 L.R.A.(N.S.) 31.

against action on certificate of deposit. 29 L.R.A.(N.S.) 685.

against action to enforce liability of member of mutual fire insurance company. 32 L.R.A. 508.

against an action by a surety against a cosurety for contribution. 18 L.R.A.(N.S.) 585; 42 L.R.A. (N.S.). 1131.

against action on contract payable on demand. 32 L.R.A.(N.S.) 486; 136 Am. St. Rep. 469.

against right of action on promise to pay as soon as convenient. 1 B. R. C. 113. against an action for negligence or misconduct of an attorney in performance of professional duties. 12 L.R.A.(N.S.) 1005.

in favor of abstracter of titles. 12 L.R.A.(N.S.) 454; 15 L.R.A.(N.S.) 160.

against action to recover money paid by mistake. 11 L.R.A.(N.S.) 1191.

against action for injury to lateral support. 68 L.R.A. 693. against action for injuries from taking of water supply by right of eminent domain: 58 L.R.A. 258

against action for damming back waters of stream. 59 L.R.A. 888. in actions against stockholders and officers of corporations. 96 Am. St. Rep. 972. in action against stockholders for unpaid subscriptions. 3 Am. St. Rep. 827.

Bar of debt to corporation as bar to enforcement of its lien therefor upon stock. 39

L.R.A.(N.S.) 301. Accrual of right of action to put statute of limitations into operation as to stock-

holder's liability for corporate debts. 10 L.R.A. (N.S.) 897. When does the statute of limitations begin to run against the unpaid balance of a stock subscription. 1 L.R.A. (N.S.) 901.

Does statute of limitations commence to run at time of breach of contract or at time actual damages are sustained in consequence thereof. 15 L.R.A.(N.S.) 156. Effect of statute of limitations on the trust relationship arising from the taking of title in the husband's name, to lands inherited by, or purchased with the money of, the

wife. 12 L.R.A. (N.S.) 493.

Limitation of actions on bank checks. 22 L.R.A. 110. Necessity for demand to set statute running against action on certificate of deposit.

L.R.A. (N.S.) 1130. Necessity of demand in order to start statute against action for a bank deposit. 2 L.R.A. (N.S.) 571.

Breach by promisor during lifetime of contract to compensate for services upon death, as starting the statute of limitations. 36 L.R.A.(N.S.) 922.

When right of accommodation party who has been obliged to pay bill or note accorded to recover amount so paid from accommodated party. 37 L.R.A.(N.S.) 787.

Effect of running of limitation since original assessment for local improvement upon a reassessment ordered because of invalidity or original. 28 L.R.A.(N.S.) 735. Effect of statutory bar of action for purchase money upon right to enforce vendor's

lien. 39 L.R.A. (N.S.) 1171.

Right to recover for services rendered beyond statutory period of limitation upon breach of paroli contract to make provision by will. 6 L.R.A. (N.S.) 703. Effect of executor's promise as to payment of legacy to terminate trust and start limitations running. 9 L.R.A. (N.S.) 214.

Effect of acceleration provision in note to start statute of limitations running. L.R.A. (N.S.) 1190; 22 L.R.A. (N.S.) 1110.

Applicability of statute of limitations governing action for trespass, to actions for damages to real property. 26 L.R.A.(N.S.) 1047.

Effect of continued occupancy by trespasser for less than limitation period to estop owner to maintain trespass q. c. f. 23 L.R.A.(N.S.) 270.

Running of dimitations against action to recover stolen property. 29 L.R.A.(N.S.) 120; 34 L.R.A.(N.S.) 621.

Limitation of action for damages from nuisance. 20 Am. St. Rep. 176.

Fraud at law as preventing the operation of statute of limitations. 60 Am. Dec. 511.

Is action based on fraud governed by statute of limitations applicable to injury to property or injury to person. 28 L.R.A.(N.S.) 353.

Effect of right to attack property fraudulently conveyed, to start statute of limitations running as against right to file creditors bill. 2 L.R.A.(N.S.) 988.

Failure to patity other party of mistake made by him as fraud which will tall the

Failure to notify other party of mistake made by him as fraud which will toll the statute of limitations. 21 L.R.A.(N.S.) 950.

Concealment of identity by change of name as interrupting statute of limitations. 39 L.R.A.(N.S.) 741.

Effect of public records as notice or evidence of notice which will set statute of limitations running against action based on fraud. 22 L.R.A.(N.S.) 208.

7376. Three years. Within three years:

1. An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute for a penalty or forfeiture, when the action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribes a different limitation. [R. C. 1905, § 6788; C. Civ. P. 1877, § 55; R. C. 1899, § 5202.]

Right to set up usurious interest paid as a counterclaim. Wilson v. Selby, 7 S. D. 494, 64 N. W. 537

Statute not apply to action against sureties on sheriff's bond, if cause reduced to judg-

ment within three years. Connor v. Corson, 13 S. D. 550, 83 N. W. 588.

Right to set off usurious payments to national bank when right to recover penalty barred by limitation. 56 L.R.A. 699.

§ 7377. Two years. Within two years:

- 1. An action for libel, slander, assault, battery or false imprisonment.
- 2. An action upon a statute for a forfeiture or penalty to the state.
- 3. An action for the recovery of damages resulting from malpractice.
- 4. An action for injuries done to the person of another, when death ensues from such injuries; and the cause of action shall be deemed to have accrued at the time of the death of the party injured. [R. C. 1905, § 6789; C. Civ. P. 1877, § 56; 1893, ch. 87, § 1; R. C. 1895, § 5203.]
 - 3. When statute of limitations begins to run in case of negligence or malpractice
 - of physicians and surgeons. 15 L.R.A.(N.S.) 161.

 4. Necessity of pleading limitation as a bar to statutory action for death. 26 L.R.A. (N.S.) 1121. Effect, upon action for death, of bar against action for injury. 34 L.R.A. 797.

7378. One year. Within one year:

1. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process. [R. C. 1905, § 6790; C. Civ. P. 1877, § 57; R. C. 1899, § 5204.]

NORTH DAKOTA REVISED CODE

ог 1943



COMPRISING STATUTES OF A GENERAL AND PERMANENT NATURE
INCLUDING THOSE ENACTED BY THE TWENTY-EIGHTH
LEGISLATIVE ASSEMBLY, 1943

REVISED BY THE CODE REVISION COMMISSION UNDER THE DIRECTION OF THE SUPREME COURT

PUBLISHED BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

VOLUME III

JUDICIAL PROCEDURE, CIVIL

28-0114. Disabilities Extend Limitations on Actions Affecting Real Estate. If a person who is entitled to maintain any of the actions affecting real estate mentioned in this chapter, or entitled to interpose a defense or counterclaim to such an action, or entitled to make an entry upon real property is:

1. Under the age of twenty-one years; or

2. Insane: or

3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than for life,

at the time his title first descends or his cause of action or right of entry first accrues, or when such defense or counterclaim might be interposed, the time of such disability is not a part of the time in this chapter limited for the commencement of such action, or the making of such entry, or the interposing of such defense or counterclaim. However, the time so limited cannot be extended more than ten years after the disability ceases or after the death of the person so disabled.

Source: R.C. 1895, s. 5198; R.C. 1899, s. 5198; R.C. 1905, s. 6784; C.L. 1913, 7372.

28-0115. Actions Having Ten Years Limitations. The following actions must be commenced within ten years after the cause of action has accrued:

1. An action upon a judgment or decree of any court of the United States or of any state or territory within the United States;

2. An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor; and

3. Any proceeding for the foreclosure of a mortgage upon real estate.

Source: R.C. 1895, s. 5199; R.C. 1899, s. 5199; R.C. 1905, s. 6785; C.L. 1913, s. 7373. R.C. 1895, s. 5200; R.C. 1899, s. 5200, am'd. S.L. 1901, c. 120, s. 1; R.C. 1905, s. 6786; C.L. 1913, s. 7374.

28-0116. Actions Having Six Years Limitations. The following actions must be commenced within six years after the cause of action has accrued:

- 1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of section 28-0115;
- 2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided;

3. An action for trespass upon real property;

- 4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;
- 5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided;
 - 6. An action for relief on the ground of fraud in all cases both at law and in equity, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud; and
- 7. An action for the foreclosure of a mechanic's lien.

Source: R.C. 1895, s. 5201; R.C. 1899, s. 5201, am'd. S.L. 1903, c. 2, s. 1; R.C. 1905, s. 6787; C.L. 1913, s. 7375, am'd. S.L. 1935, c. 233, s. 1.

28-0117. Actions Having Three Years Limitations; Exceptions. The following actions must be commenced within three years after the cause of action has accrued:

1. An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of





JUDICIAL PROCEDURÉ, CIVIL

money collected upon an execution. However, this section shall not apply to an action for an escape; and

2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.

Source: R.C. 1895, s. 5202; R.C. 1899, s. 5202; R.C. 1905, s. 6788; C.L. 1913,

28-0118. Actions Having Two Years Limitations. The following actions must be commenced within two years after the cause of action has accrued:

- 1. An action for libel, slander, assault, battery, or false imprisonment;
 - 2. An action upon a statute for a forfeiture or penalty to the state;
- 3. An action for the recovery of damages resulting from malpractice; and
- 4. An action for injuries done to the person of another, when death ensues from such injuries, and the cause of action shall be deemed to have accrued at the time of the death of the party injured.

Source: R.C. 1895, s. 5203; R.C. 1899, s. 5203; R.C. 1905, s. 6789; C.L. 1913, s. 7377.

28-0119. Actions Having One Year Limitations. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process must be commenced within one year after the cause of action has accrued.

Source: R.C. 1895, s. 5204; R.C. 1899, s. 5204; R.C. 1905, s. 6790; C.L. 1913, s. 7378.

28-0120. Limitations on Actions for Forfeitures Brought by Persons or State. An action upon a statute for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same must be commenced within one year after the commission of the offense and if the action is not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the state by the attorney general, or by the state's attorney of the county where the offense was committed.

Source: R.C. 1895, s. 5206; R.C. 1899, s. 5206; R.C. 1905, s. 6792; C.L. 1913,

28-0121. Limitations on Actions Founded on Right of Homestead. No action, defense, or counterclaim founded upon a right of homestead in property conveyed or encumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or encumbrance, and for which no declaration of homestead shall have been filed previous to the execution of such conveyance or encumbrance, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed, within two years after the execution of such conveyance or encumbrance. Such limitation shall not apply if the homestead claimant, at the time of the execution of such conveyance or encumbrance, was in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action, or the interposing of such defense or counterclaim.

Source: S.L. 1905, c. 3, s. 1; R.C. 1905, s. 5054; C.L. 1913, s. 5610.

28-0122. Limitations on Actions Not Specifically Provided for. An action for relief not otherwise provided for must be commenced within ten years after the cause of action shall have accrued.

Source: R.C. 1895, s. 5207; R.C. 1899, s. 5207; R.C. 1905, s. 6793; C.L. 1913, s. 7381.

Cross References: Action to annul marriage, limitation of time, see s. 14-0402. Time limitation on bringing action for injuries on street, see s. 40-4203.



Testimony of Jeb Oehlke North Dakota Chamber of Commerce HB 1365 January 26, 2011

Chairman DeKrey and members of the House Judiciary Committee, my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes trade associations, local chambers of commerce, economic development organizations, convention and visitors bureaus, and public sector organizations.

HB 1365 shortens the statute of limitations – the time in which a claim for damages must be filed – on general tort claims from six years to three years. The business community believes this move is necessary because of the wide disparity in the length of the statutes of limitations in the majority of states and North Dakota. As you can see in the first attachment to my testimony, nearly half of the states (23) allow plaintiffs two years to file a claim. Slightly fewer states (17) allow a period of three years to file general tort claims. The statute of limitations periods for all 50 states is provided in the first attachment.

Currently North Dakota, along with Minnesota and Maine, has the longest statute of limitations in the country for general tort claims, and as odd as it might sound this six year statute of limitations is actually a disservice for plaintiffs. As others will testify, when an accident or injury happens and is allowed to age for four, five, or nearly six years before an action for damages is brought the evidence of the accident or injury becomes stale, is lost or discarded, and memories of witnesses fade. As a result the claims become harder and harder to prove. By shortening the length of time in which a claim must be brought we are helping to ensure the evidence of an accident or injury is still available.





Another reason the North Dakota Chamber asked for the introduction of this legislation is because of an emerging trend of non-resident plaintiffs with no connection to North Dakota opting to use our court system to bring claims for injuries sustained in other states. These plaintiffs made this decision because their ability to file a claim in their home states, or the states in which the injuries occurred, no longer existed. They were time-barred from pursuing the action because the statute of limitations had run, so they brought their claims to North Dakota intending to breathe new life into their claims by taking advantage of the longer limitations period we have in this state.

Currently there is one such case pending in the North Dakota Supreme Court and other actions are pending in Grand Forks County Court. The plaintiffs in these suits are residents of Louisiana, Alabama, Florida, Pennsylvania, California, South Carolina, Mississippi, New Jersey, Illinois, Kansas, South Dakota, Tennessee, Texas, and even Nova Scotia Canada.

Our intent with this bill is not to discount the injuries or other damage sustained by the plaintiffs in these or other cases. However, the business community of this state does not believe that North Dakota should be the forum of last resort for civil actions in which the claims have expired in 47 other states.

Thank you for the opportunity to appear before you today. We respectfully ask the committee for a do pass recommendation on HB 1365. I am happy to answer any questions you may have.

Attachments (2)

NORTH DAKOTA'S STATUTE OF LIMITATIONS IS FAR OUTSIDE THE MAINSTREAM AND NEEDS TO BE REFORMEDTO STOP GAMESMANSHIP AND PREVENT STALE CLAIMS

North Dakota law provides plaintiffs with perhaps the most lengthy general tort statute of limitations in the country. North Dakota is far outside the mainstream. N.D. Cent. Code § 28-01-16(5), the state's general tort statute of limitations, gives a plaintiff 6 years to file a claim—double or triple the amount of time provided by most other states. The vast majority of states —42 out of 50 plus the District of Columbia—provide 3 years or less to file a general tort claim. Most states (23) provide plaintiffs with 2 years to file a claim; slightly fewer states (17) provide plaintiffs with 3 years to file a claim; and a few states (3) give plaintiffs only 1 year to file a claim. Four states provide a plaintiff with as long as four years. Only one, Missouri, provides five years. Maine and Minnesota are the only other states with a comparable six-year statute of limitations for general tort claims.

STATE	STATUTE OF LIMITATIONS
Alabama	2 years.
	Ala. Code §§ 6-2-30, 6-2-38.
Alaska	2 years.
	Alaska Stat. § 09.10.070.
Arizona	2 years.
	Ariz. Stat. § 12-542.
Arkansas	3 years.
	Ark. Code Ann. § 16-56-105.
California	2 years.
	Cal. Code Civ. Proc. § 335.1
Colorado	2 years.
	Colo. Rev. Stat. § 13-80-102.
Connecticut	2 years.
	Conn. Gen. Stat. § 52-584.
Delaware	2 years.
	Del. Code tit. 10, § 8119.
District of	3 years.
Columbia	D.C. Code § 12-301.
Florida	4 years.
	Fla. Stat. § 95.11(3)(a).
Georgia	2 years.
	Ga. Code Ann. § 9-3-33.

STATE	STATUTE OF LIMITATIONS
Hawaii	2 years. Haw. Rev. Stat. § 657-7.
Idaho	2 years. Idaho Code § 5-219(4).
Illinois	2 years. 735 Ill. Comp. Stat. 5/13-202.
Indiana	2 years. Ind. Code § 34-11-2-4.
Iowa	2 years. lowa Code § 614.1(2).
Kansas	2 years. Kan. Stat. § 60-513.
Kentucky	1 year. Ky. Code § 413.140.
Louisiana	l year. La. Civ. Code art. 3492.
Maine	6 years. Me. Rev. Stat. Ann. tit. 14, ch. 205, § 752.
Maryland	3 years. Md. Cts. & Jud. Code Ann. § 5-101.
Massachusetts	3 years. Mass. Gen. Laws, Art. 260, §§ 2A, 4.
Michigan	3 years. Mich. Comp Laws § 600.5805(10).
Minnesota	6 years. Minn. Stat. § 541.07 subd. 1(5).
Mississippi	3 years. Miss. Code Ann. § 15-1-49.
Missouri	5 years. Mo. Stat. § 516.120(4).

STATE	STATUTE OF LIMITATIONS
Montana	3 years.
	Mont. Code Ann. § 27-2-204.
Nebraska	4 years.
	Neb. Rev. Stat. § 25-207.
Nevada	2 years.
	Nev. Rev. Stat. § 11.190(4)(e).
New Hampshire	3 years.
пашряше	N.H. Rev. Stat. § 508:4.
New Jersey	2 years.
	N.J. Stat. Ann. § 2A:14-2.
New Mexico	3 years.
	N.M. Stat. Ann. § 37-1-8.
New York	3 years.
	N.Y. Civ. Prac. R. § 214(5).
North Carolina	3 years.
Caronna	N.C. Gen. Stat. § 1-52(16).
North Dakota	6 years.
	N.D. Cent. Code § 28-01-16(5).
Ohio	2 years.
	Ohio Rev. Code § 2305.10.
Oklahoma	2 years.
	Okla. Stat. Ann. tit. 12, § 95(3).
Oregon	2 years.
	Or. Rev. Stat. § 12.110.
Pennsylvania	2 years.
}	42 Pa. Con. Stat. § 5524.
Rhode Island	3 years.
	R.I. Gen. Laws § 9-1-14(b).
South	3 years.
Carolina	S.C. Code Ann. § 15-3-530(5).

STATE	STATUTE OF LIMITATIONS
South Dakota	3 years. S.D. Comp. Laws Ann. § 15-2-14(3)
Tennessee	1 year. Tenn. Code § 28-3-104.
Texas	2 years. Tex. Civ. Prac. & Rem. Code §§ 16.003, 16.0031.
Utah	4 years. Utah Code § 78-12-25.1.
Vermont	3 years. Vt. Stat. Ann. tit. 12, § 512(4).
Virginia	2 years. Va. Code Ann. § 8.01-243.
Washington	3 years. Wash. Rev. Code Ann. § 4.16.080(2).
West Virginia	2 years. W. Va. Code § 55-2-12.
Wisconsin	3 years. Wis. Stat. § 893.54.
Wyoming	4 years. Wyo. Stat. Ann. § 1-3-105(iv)(c).



Ross G. Good State Relations Sacramento

January 25, 2011

Representative DeKrey Chairman House Judiciary Committee 4323 27th Street SE Pettibone, ND 58475-9357

Support of HB 1365

Representative DeKrey,

Chrysler is writing support of HB 1365, a bill you introduced to amend sections of the North Dakota Century Code relating to statutes of limitations for civil actions. As you may know Chrysler, through our affiliate Global Electric Motorcar (GEM) located in Fargo, is a large employer and contributor to the economy of North Dakota. As such, we feel that the general tort statute of limitations in North Dakota is far too long, in most cases doubling or tripling that of most nearby states. This makes your state a magnet for "forum shoppers" whose claims are time-barred in their home states. This serves to burden the North Dakota court system in an effort by outsiders to seek "Jackpot Justice."

Chrysler applauds you for introducing this legislation. Your vocal support and leadership in protecting manufacturers and others who conduct business in your state is very much appreciated.

Chrysler is investing hundreds of millions of dollars to keep American manufacturing competitive in the world market. Good public policies, such as those in HB 1365, must be extended to provide business the competitive advantage necessary to protect manufacturing jobs in North Dakota.

Kindest Regards,

Ross Good

Sr. Manger – State Gov't Relations External Affairs & Public Policy

Chrysler Group LLC

TESTIMONY OF PAUL SANDERSON IN SUPPORT OF HOUSE BILL 1365 HOUSE JUDICIARY COMMITTEE JANUARY 26, 2011

Chairman Dekrey and Members of the House Judiciary Committee, my name is Paul Sanderson. I am an attorney in the Bismarck law firm of Zuger Kirmis & Smith. I represent the Property Casualty Insurers Association of America ("PCI") in support of House Bill 1365. PCI is the nation's premier insurer trade association, representing over 1,000 companies that write over \$180 billion in insurance premiums for automobile, homeowners, and business insurance.

PCI supports reducing the statute of limitations in personal injury actions from six years to three years. The statute of limitations is the period of time within which a certain claim may be filed. After that period of time has passed, the claim is barred and the would-be plaintiff may not pursue his claim.

The North Dakota Supreme Court has stated that the purpose of a statute of limitation is to prevent "plaintiffs from sleeping on their legal rights to the detriment of the defendants." <u>Hanson v. Williams County</u>, 389 N.W.2d 319, 321 (N.D. 1986). There are a number of public policy reasons for reducing the statute of limitations in personal injury actions from six to three years:

The diminishing value of evidence - The best time to bring a lawsuit is as close to the event as possible so as to have the best evidence available to prove a lawsuit or claim and to defend a lawsuit or claim. As time passes it becomes increasingly difficult to gather evidence as over time memories fade and important evidence may be lost or disappear. It is not uncommon for businesses to get rid of records after a certain period of time. In addition, witnesses are often

no longer available in the jurisdiction. A shorter statute of limitations will allow evidence to be gathered more easily.

Fairness - The injured party should be required to pursue an action diligently with speed and efficiency, both because of the diminishing value of evidence and because of the importance of closure for all parties. People want to get on with their lives and not have legal battles from their past come up unexpectedly. The injured party has a responsibility to quickly bring their case so that the process can begin.

Finality - The rationale for having a statute of limitations period is to ensure that actionable claims are resolved as quickly as possible and also add a sense of finality to the legal system.

HB 1365 will ensure that the best evidence is available for both the plaintiff and defense. In addition, it will move personal injury cases through the civil justice system in a more efficient manner.

PCI recognizes that not all injuries are known immediately and a shorter statute of limitations could be harsh. However, in these circumstances when an injury is not immediately known, the courts have adopted the "Discovery Rule" under which the statute of limitations period does not begin to run until the plaintiff discovers or reasonably should have discovered the injury. Nothing in HB 1365 would affect the current application of the discovery rule. An injured party would have three years to bring a claim once they discover they have been injured.

In addition, HB 1365 will not affect the statute of limitations applying to claims of minors or the disabled as N.D.C.C. § 28-01-25 extends the statute of limitations in those circumstances.

HB 1365 will also lessen the current disparity that exists between personal injury actions and other statute of limitations. It is difficult to understand why a person who is injured by a doctor can be aware of the injury and commence their action within two years, yet a person injured by the actions of a businessman needs six years to determine whether they are injured and to commence their claim. The federal maritime statute of limitations governing claims occurring on the Missouri River is three years, yet a person injured on other bodies of water in North Dakota have six years. Plaintiffs in 42 other states are able to evaluate their injuries and commence an action in three years or less.

We anticipate that one of the arguments will be that HB 1365 will increase litigation and flood the court system. We do not believe this is a legitimate concern. Plaintiffs who have been injured and have a legitimate claim will still commence a personal injury action. However, instead of being permitted to wait six years, they will commence their action within three years.

For the foregoing reasons, the Property Casualty Insurers Association of America supports HB 1365 and urges a Do Pass on this bill.

STRATEGIC PUBLIC POLICY
VALUABLE MEMBER SERVICES

122 C Street N.W., Suite 540, Washington, D.C. 20001 Phone: 202.628.1558 | Fax: 202.628.1601

www.namic.org

January 24, 2011

The Honorable Duane DeKrey Chairman Judiciary Committee North Dakota House of Representative State Capitol Building 600 East Boulevard Bismarck, North Dakota 58501

Re: Letter in Support of House Bill1365 January 26, 2011 Hearing

Dear Chairman Dekrey:

Founded in 1895, the National Association of Mutual Insurance Companies (NAMIC) is a full service national trade association with more than 1,400 member companies that underwrite over 40% of the property/casualty insurance premium in the United States. In North Dakota, we have 104 member companies, including 18 domiciled companies, which underwrite 85% of the state's homeowner coverage and 72% of the state's automobile insurance business.

NAMIC writes to express its strong support for House Bill 1365, which would bring the state's statute of limitations for most tort actions to three years. This is a positive step to help North Dakota keep its reputation for maintaining a healthy, pro-jobs environment.

A three year statute of limitations for tort actions is well within the mainstream of American jurisprudence, with over forty states having a statute that is either that length or lesser. Reducing the statute will not harm North Dakotans who have suffered injury but it will prevent marginal, out of state cases that are unconnected with North Dakota from flooding the court system. HB 1365 will not benefit tortfeasors who engage in wrongful acts to conceal their liability, as the Century Code provides appropriate relief for such acts.

We appreciate your effort to give this issue the serious attention it deserves. If there is anything NAMIC can do to assist you, or if you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,

Mark Johnston

State Affairs Manager - Midwest

4

HOUSE JUDICIARY COMMITTEE Wednesday, January 26, 2011 – 9:00 a.m.

HOUSE BILL NO. 1365

Testimony of:

Larry L. Boschee, appearing on behalf of the North Dakota Defense Lawyers Association.

Chairman DeKrey and Members of the Committee,

My name is Larry Boschee and I am appearing on behalf of the North Dakota

Defense Lawyers Association in support of HB 1365. The North Dakota Defense

Lawyers Association is a state-wide association whose member lawyers are primarily engaged in defending civil lawsuits.

HB 1365 would shorten the limitation period for general-torts, personal-injury claims from six years to three years. The North Dakota Defense Lawyers Association *supports* this bill for the following reasons:

1. A three-year limitation period will help prevent stale claims.

A shorter limitation period will help prevent stale claims. Over time, evidence disappears, witnesses die, or their memories fade. This loss of evidence impairs both a defendant's ability to defend and the truth-finding function of the court.

A lengthy limitation period is not needed to allow time for people to become aware of their claims. The North Dakota Supreme Court has adopted a discovery rule for general-tort claims. The limitation period does not start under the discovery rule until

"the plaintiff knew or with the exercise of reasonable diligence should have known, of the wrongful act and its resulting injury." <u>Dunford v. Tryhus</u>, 2009 ND 212, ¶ 9, 776

N.W.2d 539 (quoting <u>Wells v. First Am. Bank W.</u>, 1999 ND 170, 598 N.W.2d 834).

The overall effect of shortening the limitation period will be to cause plaintiffs to file their claims earlier. That will help level the litigation playing field by allowing both sides access to fresher evidence.

2. A three-year limitation period will bring North Dakota into the mainstream.

A three-year limitation period will bring North Dakota into the mainstream. The listing in the addendum shows the general-torts limitation periods for all 49 other states.

Most states – 39 in all – have three or two-year limitation periods.

The number of states with six-year limitation periods has been shrinking. In 1992 a case reported that seven states had six-year general-torts limitation periods. Am. Gen. Fire & Cas. v. Walmart Stores, Inc., 791 F.Supp. 763, 765 (W.D. Ark. 1992). With its six-year limitation period, North Dakota is now tied with only Minnesota and Maine for having the longest general-torts, personal-injury limitation period in the nation.

Neighboring states South Dakota and Montana have three-year general-torts limitation periods. North Dakota should join those two states and the fourteen additional states that have three-year limitation periods.

With a three-year limitation period, North Dakota's general-torts, personal-injury limitation period would still be longer than the limitation periods for those types of claims

in more than half the other states. Twenty-six states have general-torts limitation periods of two years or less.

North Dakota already has a two-year limitation period for wrongful death claims, claims brought by a decedent's survivors for the death's impact upon them. N.D. Cent. Code § 28-01-18(3) (2006). It also has a two-year limitation period for malpractice claims, claims brought against doctors, lawyers, and other professionals for their negligence. Id. § 28-01-18(4) (2006). A three-year limitation period for general-torts, personal-injury claims would be more in line with those limitations periods.

3. A three-year limitation period will help prevent forum shopping.

A three-year limitation period will help prevent forum shopping. The six-year limitation period has started to attract foreign controversies to this state.

Currently in the North Dakota Supreme Court is a Morton County case involving 13 plaintiffs whose asbestos product-liability claims have no connection to North Dakota. Vicknair v. Phelps Dodge Induss., Inc., Supreme Court No. 20100029 (N.D. filed Jan. 22, 2010). Hailing from Alabama, California, Florida, Kansas, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, and South Dakota, these plaintiffs missed the limitation periods of the appropriate forums before suing here. They sued here only to take advantage of North Dakota's lengthy six-year general-torts limitation period.

Many more plaintiffs whose claims have no connection to the state have sued here to take advantage of North Dakota's six-year limitation period. Right now, 29 Alabama plaintiffs are suing asbestos product-liability claims in Grand Forks County. Plaintiffs

from Illinois, Louisiana, Tennessee, Texas, and even the Canadian province of Nova Scotia, are also suing asbestos claims there.

North Dakota taxpayers should not have to fund the resolution of out-of-state disputes. Nor should North Dakota jurors have to take time off work and away from families to set in potentially lengthy trials involving exclusively out-of-state interests.

For all the above reasons, the North Dakota Defense Lawyers Association urges a DO PASS on HB 1365.

Addendum

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General-Torts Limitation Periods Forty-Nine Other States

	State	Statute
One	-year limitation period	
1.	•	Ky. Code § 413.140
2.	Louisiana	La. Civ. Code art. 3492
3.	Tennessee	Tenn. Code § 28-3-104
Two	-year limitation period	
1.	Alabama	Ala. Code §§ 6-2-30, 6-2-38
2.	Alaska	Alaska Stat. § 09.10.070
3.	Arizona	Ariz. Stat. § 12-542
4.	California	Cal. Code Civ. Proc. § 335.1
5.	Colorado	Col. Rev. Stat. § 13-80-102
6.	Connecticut	Conn. Gen. Stat. § 52-584
7.	Delaware	Del. Code tit. 10, § 8119
8.	Georgia	Ga. Code Ann. § 9-3-33
9.	Hawaii	Haw. Rev. Stat. § 657-7
10.	Idaho	Idaho Code § 5-219(4)
11.	Illinois	735 Ill. Comp. Stat. 5/13-202
12.	Indiana	Ind. Code § 34-11-2-4
13.	Iowa	Iowa Code § 614.1(2)
14.	Kansas	Kan. Stat. § 60-513
15.	Nevada	Nev. Rev. Stat. § 11.190(4)(e)
16.	New Jersey	N.J. Stat. Ann. § 2A:14-2
17.	Ohio	Ohio Rev. Code § 2305.10
18.	Oklahoma	Okla. Stat. Ann. tit. 12, §95(3)
19.	Oregon	Or. Rev. Stat. § 12.110
20.	Pennsylvania	42 Pa. Con. Stat. § 5524
21.	Texas	Tex. Civ. Prac. & Rem. Code § 16.003
22.	Virginia	Va. Code Ann. § 8.01-243
23.	West Virginia	W. Va. Code § 55-2-12
Thre	e-year limitation period	
1.	Arkansas	Ark. Code Ann. § 16-56-105
2.	Maryland	Md. Cts. & Jud. Code Ann. § 5-101
3.	Massachusetts	Mass. Gen. Laws, Art. 260, § 2A
4.	Michigan	Mich. Comp Laws § 600.5805(10)
5.	Mississippi	Miss. Code Ann. § 15-1-49

State

6. Montana 7. New Hampshire 8. New Mexico 9. New York 10. North Carolina 11. Rhode Island 12. South Carolina 13. South Dakota

14. Vermont

Washington 15.

16. Wisconsin

Four-year limitation period

Florida 1. 2. Nebraska

3. Utah

4. Wyoming

Five-year limitation period

Missouri

Six-year limitation period

1. Maine

2. Minnesota

Statute

Mont. Code Ann. § 27-2-204 N.H. Rev. Stat. § 508:4 N.M. Stat. Ann. § 37-1-8 N.Y. Civ. Prac. R. § 214(5) N.C. Gen. Stat. § 1-52(16) R.I. Gen. Laws § 9-1-14(b) S.C. Code Ann. § 15-3-530(5)

S.D. Comp. Laws Ann. § 15-2-14(3)

Vt. Stat. Ann. tit. 12, § 512(4)

Wash. Rev. Code Ann. § 4.16.080(2)

Wis. Stat. § 893.54

Fla. Stat. § 95.11(3)(a) Neb. Rev. Stat. § 25-207

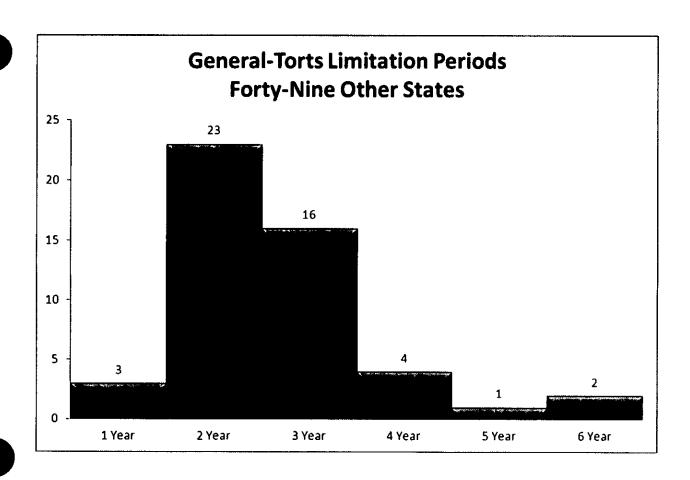
Utah Code § 78-12-25.1

Wyo. Stat. Ann. § 1-3-105(iv)(c)

Mo. Stat. § 516.120(4)

Me. Rev. Stat. Ann. tit. 14, ch. 205 § 752

Minn. Stat. § 541.07 subd. 1(5)



- N.D. Cent. Code § 28-01-18. Actions having two-year limitations. The following actions must be commenced within two years after the claim for relief has accrued:
 - 1. An action for libel, slander, assault, battery, or false imprisonment.
 - 2. An action upon a statute for a forfeiture or penalty to the state.
 - 3. An action for the recovery of damages resulting from malpractice; provided, however, that the limitation of an action against a physician or licensed hospital will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or licensed hospital. This limitation is subject to the provisions of section 28-01-25.
 - 4. An action for injuries done to the person of another, when death ensues from such injuries, and the claim for relief must be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the claim for relief is deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.
 - 5. An action for recovery of damages arising under chapter 5-01, and the claim for relief is deemed to have accrued at the time of the alleged offense. This limitation does not apply to any claim for relief existing at the time of the enactment of this subsection.

Vicknair v. Phelps Dodge Induss., Inc.

Supreme Court No. 20100029

	Plaintiff	Decedent	Residence States	Other States of Claimed Exposure		
1.	Joseph M. Vicknair		LA	Various – Air Force		
2.	Anthony Whitaker		AL	MI, IN, NJ		
3.	Theresa Zefiretto	Liborio Zefiretto	FL FL	NY, LA		
4.	Raymond Brunet	Eugene P. Brunet	LA LA	MS		
5.	Lisa Sangerman	Richard A. Christofretti	PA PA	NY		
6.	Violet Cooper	William H. Cooper	PA PA	Marshall Islands/Japan		
7.	Janice F. Hilborn	August Freeman	LA LA	LA, Southeast U.S.		
8.	Mildred Pastva	John G. Pastva	CA CA	PA, MD		
9.	Cheryl Pernell	Eddie Pernell, Sr.	MS MS	LA		
10.	Margaret G. Swygert	Cromwell W. Swygert, Jr.	SC SC	HI, NM, GA		
11.	Ruby J. Todd	David Dean Todd	KS KS	NJ, OK, TX		
12.	Robert W. Ulshafer		NJ	TX		
13.	Rona Pourier	Hobert Ecoffey	SD SD			

Grand Forks County Asbestos Litigation

	Plaintiff	Decedent	Residence State	Other States of Claimed Exposure
1.	Patricia F. Aldridge Civ. No. 18-07-C-1910	Dudley B. Aldridge	TN	MS
2.		Douglas C. Barker	NS Canada	
3.	Robert E. Buckner Civ. No. 18-07-C-1913		AL	
4.	David G. Clemmons Civ. No. 18-07-C-1915		AL	
5.	Charles E. Clifton Civ. No. 18-07-C-1916		AL	
6.	Edward W. Clifton Civ. No. 18-07-C-1917		AL	
7.	Charlie Coffey Civ. No. 18-07-C-1917		TX	MS
8.	Anna Mae Cortez Civ. No. 18-07-C-1919	Floyd J. Cortez	LA	
9.	George L. Couch Civ. No. 18-07-C-1917		AL	
10.	Rufus Cox Civ. No. 18-07-C-1920		AL	
11.	George Curtis Civ. No. 18-07-C-1923		IL	MS
12.	Steven W. Daugherty Civ. No. 18-07-C-1913		AL	
13.	Elizabeth K. Denson- Myers Civ. No. 18-07-C-1924	John E. Denson	AL	
14.			AL	
15.	Civ. No. 18-07-C-1913		AL	
16.	John Gargis Civ. No. 18-07-C-1929		AL	
17.	Velma Gilbreath Civ. No. 18-07-C-1913		AL	

	Plaintiff	Decedent	Residence State	Other States of Claimed Exposure
18.	William Hayes, Jr. Civ. No. 18-07-C-1913		AL	
19.	Fred L. Huff Civ. No. 18-07-C-1933		AL	
20.		Walter H. Jackson	AL	IL
21.		John W. Jones	AL	
22.	Lloyd Jones Civ. No. 18-07-C-1935		AL	
23.	Roberta T. Jordan Civ. No. 18-07-C-1936	Isaac D. Jordan	AL	
24.	William E. Keeling Civ. No. 18-07-C-1913		AL	
25.	James R. Lindsey Civ. No. 18-07-C-1913		AL	
26.	J.D. Mostella Civ. No. 18-07-C-1913		AL	
27.	J. Larry Nunnally Civ. No. 18-07-C-1913	James Nunnally	AL	
28.	Henry G. Phillips Civ. No. 18-07-C-1913		AL	
29.	Gary W. Reeves Civ. No. 18-07-C-1947		AL	
30.	S.T. Ross Civ. No. 18-07-C-1913		AL	
31.	Samuel R. Stafford Civ. No. 18-07-C-1917		AL	
32.	Garland E. Thompson Civ. No. 18-07-C-1954		AL	
33.	Roy D. Todd Civ. No. 18-07-C-1913		AL	TN, ME
34.	Jerry Waites Civ. No. 18-07-C-1913		AL	
35.	Willie C. Watts Civ. No. 18-07-C-1913		AL	

Phone: 701-224-0430

dmaring@maringlaw.com

TESTIMONY OF DAVID S. MARING – OPPOSITION TO HOUSE BILL NO. 1365

Submitted by:

David S. Maring Maring Williams Law Office, P.C. P.O. Box 795 Bismarck, ND 58502-0795

Mr. Chairman and Members of the Committee:

My name is Dave Maring. I am a shareholder in the law firm of Maring Williams Law Office, P.C. which has offices in Bismarck and Fargo. I have been practicing in the area of civil litigation for over 30 years. During the first years of my career, I primarily represented the interests of insurance companies, in addition to representing businesses. For the last many years, I have concentrated my practice in personal injury and wrongful death litigation on behalf of the injured party, but still represent businesses and corporations with respect to civil litigation.

I am here to speak in opposition to House Bill No. 1365. My points are as follows:

- 1. In my experience working with North Dakota residents, they are very hesitant to contact an attorney or to bring a lawsuit. Often, individuals who have been injured do not contact a lawyer for representation until two, three, or more years after an accident. If the statute of limitations is changed to three years, North Dakota citizens with legitimate claims who miss the statute of limitations will be barred from bringing those claims.
- 2. In North Dakota, claims for breach of contract and many other claims are governed by a six year statute of limitations (generally). This bill would have the effect of unnecessarily restricting the rights of individuals who have been injured in accidents, but do not start a lawsuit within three years of the date of the accident.
- 3. The change in the statute of limitations to three years will likely have the unintended consequence of increasing the number of lawsuits in North Dakota. It takes time for an injured person to reach maximum medical improvement. In addition, it takes time for the attorney for the injured party and the insurance carrier to negotiate settlements. Many times, claims for injuries that occurred three or more years ago are settled, without litigation. If the law is changed, lawyers will need to start lawsuits earlier, increasing the demand for court services.
- 4. If an injured person misses the statute of limitations and is not able to recover fair compensation for his/her injuries, that person is more likely to need public assistance for medical and related expenses.

A shorter statute of limitations will bring finality to claims when the injured person does not start a lawsuit within three years and the claim is barred. That limited benefit should not override the rights of North Dakota citizens who have been injured in accidents to seek fair and just compensation for their injuries.

I would ask that you vote "no" on House Bill No. 1365. Thank you for your time.



Respectfully submitted by:

Jeffrey S. Weikum
PAGEL WEIKUM, PLLP
1715 Burnt Boat Drive
Madison Suite
Bismarck, ND 58503
701-250-1369
jweikum@pagelweikum.com

Mr. Chairman and members of the Committee:

Thank you for allowing me to speak with you this morning. I am an attorney from Bismarck and I have been practicing in North Dakota for over fifteen (15) years. I am also licensed to practice in Minnesota, South Dakota and Montana. I am a member of the North Dakota Association for Justice.

I am here in opposition to House Bill No. 1365.

95% of my practice involves civil litigation primarily in the area of torts and personal injury claims.

The North Dakota litigation environment is continually rated as one of the best in the nation by the business community because it is considered non-litigious in comparison to the other States. One of the primary reasons for this is that disputes are resolved outside of the litigation process through settlement negotiations.

The current six year statute allows time for the settlement process to work. The injured party needs to heal to the point where the severity and permanency of their injury can be evaluated by all the sides. The healing process alone routinely takes between 1½ to 2½ years and settlement negotiations cannot effectively begin until this point. Additionally, it is very common for settlement negotiations on a claim to occur over many months depending on the issues being discussed. If the statute is shortened, it will be necessary to place that claim into litigation and the costs associated with resolving that claim will be immediately and substantially increased.

I practice injury litigation in Montana and South Dakota were the injury statutes are both three (3) years. The shorter statute does not result in less litigation but has the opposite effect. I would estimate that I end up putting 60-75% of my South Dakota cases into formal litigation because we don't have enough time to resolve the claim after the person heals. Alternatively, North Dakota and Minnesota have longer six year statutes. I put less than 30% of North Dakota and Minnesota cases into litigation because we are able to resolve these claims within the current timeframe.

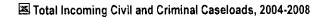
The current statute of limitation provides an appropriate framework within which the North Dakota civil justice system can effectively and efficiently work.

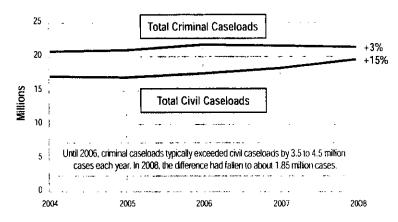
I would ask that you vote "no" on House Bill No. 1365.

Thank you again for your time. If you have any questions, please feel free to contact me

If present trends continue, civil caseloads may soon outnumber criminal caseloads

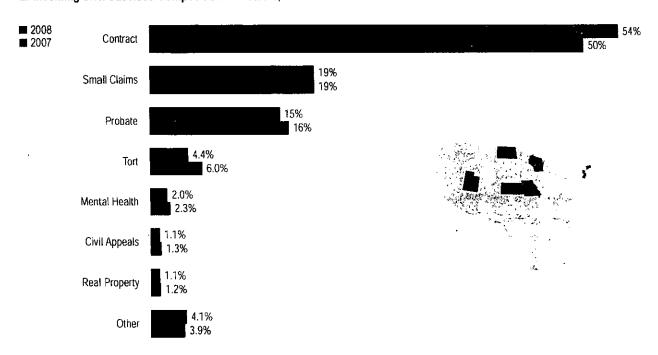
Criminal caseloads are somewhat different than other categories of cases in that, in two-tiered court systems, felony cases can be legitimately counted twice—once in the limited jurisdiction court for a preliminary hearing and again if it is bound over to the general jurisdiction court for trial. Though these are recommended counts of cases for each level of court, it does exaggerate the actual number of defendants in the criminal court system. Since most states have two-tiered systems and count criminal cases at both levels of court, it is conceivable that civil cases have already exceeded the number of criminal defendants being processed in state courts.





Contracts comprise an increasingly large share of civil caseloads

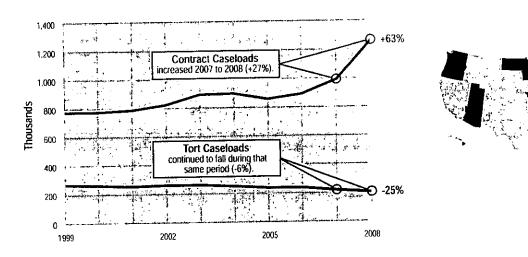
Incoming Civil Caseload Composition in 7 States, 2007 vs. 2008



Note: In 2008, contract and small claims cases combined for 73 percent of all civil cases in these 7 states (up 4% from 2007) while tort cases comprised less than 5 percent.

Contract caseloads continue to climb

Contract and Tort Caseloads in 13 General Jurisdiction Courts, 1999-2008



Incoming contract cases are nine times that of torts

Incoming Tort and Contract Rates in 11 States, 2008

	Incoming Tort	Incoming Contract	Proportion of Tort	Percent Tort ■ Percent Contract
State	Cases	Cases	to Contract Cases	HEAVEN A. T. L.
North Dakota	320	19,590	98%	Authorities and Telephone Telephone Telephone
Kansas	3,342	155,756	98%	
Utah .	2,535	72,156	97%	The same of the sa
Minnesota	5,537	118,054	96%	
Missouri	13,727	216,508	94%	der ver til handerskappen for tore i
New Jersey	54,418	581,000	91%	
Mississippi	5,545	43,456	3.23 89%	
lowa	3,611	26,311	To be desire the settle of the	
Hawaii	2,142	14,441	87%	The state of the state of the
Puerto Rico	8,280	45,564	85%	
Connecticut	15,240	70,782	82%	
Median			91%	
			0 10% 20% 30% 40% 50%	60% 70% 80% 90% 100

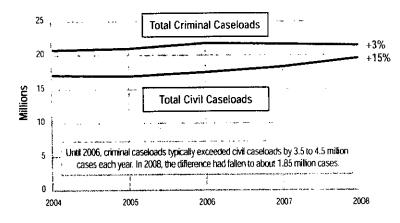
Note: States in **Bold** have a unified court system.

When tort and contracticaseloads are examined side by side, contracts dominate in every jurisdiction. With the overall and median proportion of contracts in these 11 states above 90 percent, and given their growing inumbers, contract ಸರ್ವಿ case processing is doubtless an increasing concern for all state courts.

If present trends continue, civil caseloads may soon outnumber criminal caseloads

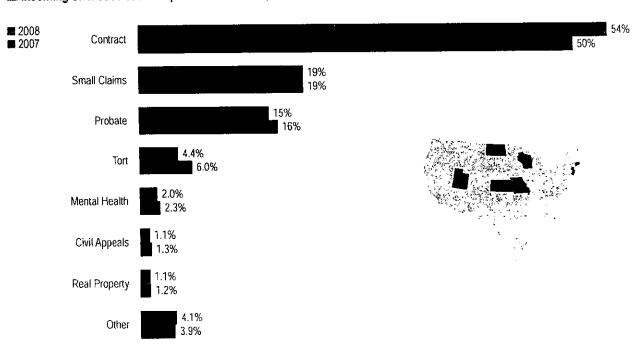
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Contracts comprise an increasingly large share of civil caseloads

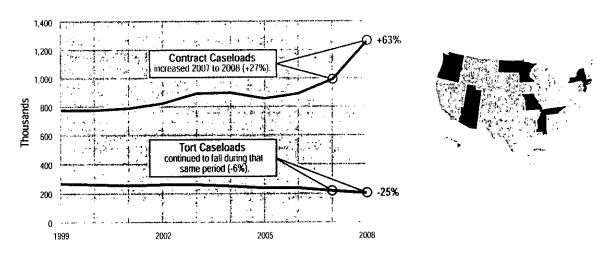
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Note: In 2008, contract and small claims cases combined for 73 percent of all civil cases in these 7 states (up 4% from 2007) while tort cases comprised less than 5 percent.

Contract caseloads continue to climb

Contract and Tort Caseloads in 13 General Jurisdiction Courts, 1999-2008



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Incoming Tort and Contract Rates in 11 States, 2008

State	Incoming Tort Cases	Incoming Contract Cases	Proportion of Tort to Contract Cases	Percent Tort Percent Contract
North Dakota	320	19,590	98%	· · · · · · · · · · · · · · · · · · ·
Kansas	3,342	155,756	98%	
Utah	2,535	72,156	97%	
Minnesota	5,537	118,054	96%	
Missouri	13,727	216,508	9.4%	
New Jersey	54,418	581,000	91%	
Mississippi	5,545	43,456	89%	
lowa	3,611	26,311	88%	
Hawaii	2,142	14,441	87%	
Puerto Rico	8,280	45,564	85%	The state of the s
Connecticut	15,240	70,782	82%	
Median			91%	м м д түү
			Paris Control of the	60% 70% 80% 90% 100

Note: States in Bold have a unified court system.

When tort and contract caseloads are examined side by side, contracts dominate in every jurisdiction. With the overall and median proportion of contracts in these 11 states above _90 percent, and given their growing numbers, contract case processing is doubtless an , increasing concern for all state courts.







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Laws 2008

Overall Rankings of State Liability Systems '02-'10"

2010	SCORE	'08	'07	'06	'05	'04	.03	'02
1. Delaware	77.2	1	1	1	1	1	1	1
2. North Dakota	71.1	13	20	12	3	16	6	25
3. Nebraska	69.7	2	3	2	2	2	2	6
4. Indiana	69.6	4	8	11	6	11	5	12
5. lowa	69.4	7	4	4	5	4	3	5
6. Virginia	68.1	6	12	3	4	3	8	2
7. Utah	67.8	5	9	17	14	6	7	8
8. Colorado	65.8	9	21	8	, 13	13	12	7
9. Massachusetts	65.6	18	18	32	31	28	22	36
10. South Dakota	65.6	12	11	7	8	17	4	9
11. Minnesota	65.3	11	2	14	7	8	9	19
12. Maine	65.2	3	5	9	11	, 12	16	. 18
13. Arizona	65.0	15	15	13	19	14	` 18	11
14. Kansas	64.6	10	13	15	16	9	15	4
15.Wyoming	64.5	23	22	16	9	15	25	20
16. New Hampshire	64.2	16	6	6	12	7	10	17
17. North Carolina	64.0	21	. 16	10	20	19	20	16

	18. Idaho	63.9	26	30	18	10	5	13	14 '	
	19. Tennessee	63.7	22	7	29	22	25	26	24	
	20. Maryland	∘63.2	-30-	-29-	.20	23	21	23	24	
	21. Oregon	:63.0	14	17	30	25	27	14	13	
	22. Wisconsin	62.8	24	10	23	17	10	11	15	
	23. New York	62.5	25	19	21	27	22	27	27	
	24. Connecticut	62.1	19	14	5	18	18	17	10	
	25. Vermont	61.6	8	27	24	21	20	19	21	
	26. Washington	61.6	27	25	28	15	24	21	3	
	27. Georgia	60.9	28	31	27	28	29	39	23	
	28. Nevada	59.8	40	28	37	29	34	34	30	
	29. Ohio	59.7	32	24	19	26	32	24	26	
	30. Michigan	59.5	33	23	22	24	23	29	28	
	31. Oklahoma	59.0	17	38	33	32	31	36	41	
	32. New Jersey	57.8	35	26	25	30	26	30	32	
	√33. Alaska	56.6	20	43	36	33	33	32	37	
	34. Pennsylvania	56.6	36	32	31	34	30	31	31	
	35. Hawaii	56.4	45	42	46	41	39	43	40	
	36. Texas	56.3	41	44	43	44	45	46	46	
	37. Missouri	56.1	31	34	35	40	41	33	29	
	38. Rhode Island	55.2	39	35	26	35	36	37	35	
	39. South Carolina	55.1	43	37	42	39	40	42	42	
	40. Kentucky	54.4	29	33	34	36	35	35	38	
	41. New Mexico	53.9	37	39	40	38	37	41	39	
	42. Florida	53.9	42	36	38	42	38	40	33	
	43. Montana	52.4	38	40	39	37	43	28	43	
	44. Arkansas	48.7	34	41	41	43	42	45	44	
ŀ	45. Illinois	47.9	46	46	45	46	44	38	34	
	46. California	47.2	44	45	44	45	46	44	45	
	47. Alabama	45.5	47	47	47	48	48	48	48	
	48. Mississippi	40.0	48	49	48	50	50	50	50	
	49. Louisiana	39.6	49	48	49	47	47	47	47	ĺ
	50. West Virginia	35.1	50	50	50	49	49	49	49	ļ
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^{*} Scores displayed in this table have been rounded to one decimal point. However, when developing the ranking, scores were evaluated based on two decimal points. Therefore, states that appear tied based upon the scores in this table were not fied when two decimal points were taken into consideration. See details on p. 30.





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Overall Rankings of State Liability

Systems '02-10'

2010	SCORE	'08	'07	'06	'05	'04	'03	'02
1. Delaware	77.2	1	1	1	1	1	1	٠ 1 أ
2. North Dakota	71.1	13	20	12	3	16	6	25
3. Nebraska	69.7	2	3	2	2	2	2	6
4. Indiana	69.6	4	8	11	6	11	5	12
5. lowa	69.4	7	4	4	5	. 4	3	5
6. Virginia	68.1	6	12	3	4	3	. 8	2
7. Utah	67.8	5	9	17	14	6	7	8
8. Colorado	65.8	9	21	8	13	13	12	7
9. Massachusetts	65.6	18	18	32	31	28	22	36
10. South Dakota	65.6	12	11	7	В	17	4	9
11. Minnesota	65.3	11	2	14	7	8	9	19
12. Maine	65.2	3	5	9	11	12	16	18
13. Arizona	65.0	15	15	13	19	14	18	<u>,</u> 11
14, Kansas	64.6	; 10	13	15	16	9	15	. 4
15.Wyoming	64.5	23	22	16	9	15	25	20
16. New Hampshire	64.2	16	6	6	12	7	10	17
17. North Carolina	64.0	21	16	10	20	19	20	16

18. Idaho	63.9	26	30	18	10	5	13	14	
19. Tennessee	63.7	22	7	29	22	25	26	24	
20. Maryland	63.2	30	29	20	23	21	23	24	ļ
21. Oregon	63.0	14	17	30	25	27	14	13	
22. Wisconsin	62.8	24	10	23	17	10	11	15	
23. New York	62.5	25	19	21	27	22	27	. 27	
24. Connecticut	62.1	, 19	14	5	18	18	17	10	
25. Vermont	61.6	8	27	24	21	20	19	21	
26. Washington	61.6	27	25	28	15	24	21	3	
27. Georgia	60.9	28	31	27	28	29	39	23	
28. Nevada	59.8	40	28	37	29	34	34	. 30	
29. Ohio	59.7	32	24	19	26	32	24	26	
30. Michigan	59 .5	33	23	22	24	23	29	28	
31. Oklahoma	59.0	17	38	33	32	31	36	41	
32. New Jersey	57.8	35	26	25	30	26	30	32	
33. Alaska	56.6	20	43	36	33	33	32	37	
34. Pennsylvania	56.6	36	32	31	34	30	31	31	
35. Hawaii	56.4	45	42	46	41	39	43	40	
36. Texas	56.3	41	44	43	44	45	46	46	
37. Missouri	56.1	31	34	35	40	41	33	29	
38, Rhode Island	55.2	39	35	26	35	36	37	35	
39, South Carolina	55.1	43	37	42	39	40	42	42	
40. Kentucky	54.4	29	33	34	36	35	35	38	
41. New Mexico	53.9	37	39	40	38	37	41	39	
42. Florida	53.9	42	36	38	42	38	40	33	
43. Montana	52.4	38	40	39	37	43	28	43	
44. Arkansas	48.7	34	41	41	43	42	45	44	į
45. Illinois	47.9	46	46	45	46	44	38	34	
46. California	47.2	44	45	44	45	46	44	45	
47. Alabama	45.5	47	47	47	48	48	48	48	
48. Mississippi	40.0	48	49	48	50	50	50	50	
49. Louisiana	39.6	49	48	49	47	47	47	47	ĺ
50. West Virginia	35.1	50	50	50	49	49	49	49	

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^{*} Scores displayed in this table have been rounded to one decimal point. However, when developing the ranking, scores were evaluated based on two decimal points. Therefore, states that appear tied based upon the scores in this table were not tied when two decimal points were taken into consideration. See details on p. 30.





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Prepared for: Rep. Larry Klemin

Prepared by: Jessica Braun, Legislative Intern, House Judiciary Committee

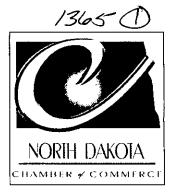
PROPOSED AMENDMENT TO HOUSE BILL 1365

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of statutes of limitation and venue requirements for civil actions in North Dakota."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY – STATUTES OF LIMITATION AND VENUE REQUIREMENTS FOR CIVIL ACTIONS. During the 2011-12 interim, the legislative management shall consider studying statutes of limitation and venue requirements for civil actions in North Dakota. The study must include a review of limitation on the length of time that has passed since a cause of action arose and whether the time limitations in current law remain appropriate or should be changed, and the extent to which claims are filed in the North Dakota courts for claims otherwise prohibited in other states due to the relevant state statute of limitation having expired. The study must also review the venue requirements for bringing a civil action in North Dakota and whether the venue requirements should be amended to limit claims being brought in this state by nonresidents who have no connection to this state. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly



Testimony of Jeb Oehlke North Dakota Chamber of Commerce HB 1365 March, 2011

Chairman Nething and members of the House Judiciary Committee, my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes trade associations, local chambers of commerce, economic development organizations, convention and visitors bureaus, and public sector organizations.

HB 1365, in its original form, shortened the statute of limitations – the time in which a claim for damages must be filed – on general tort claims from six years to three years. The business community believes this move is necessary because of the wide disparity in the length of the statutes of limitation for the majority of states and that of North Dakota. As you can see in the attachment to my testimony, nearly half of the states (23) allow plaintiffs two years to file a claim. Slightly fewer states (17) allow a period of three years to file general tort claims. The statute of limitations periods for all 50 states is provided in the attachment.

Currently North Dakota, along with Minnesota and Maine, has the longest statute of limitations in the country for general tort claims, and as odd as it might sound this six year statute of limitations can actually do a disservice for plaintiffs and defendants alike. When an accident or injury happens and is allowed to age for several years before an action for damages is brought the evidence of the accident or injury may become stale, get lost or be discarded, and memories of witnesses fade. As a result the claims become harder and harder to prove as well as refute. By shortening the length of time in which a claim must be brought we are helping to ensure the availability of evidence of an accident or injury.





Another reason the North Dakota Chamber asked for the introduction of this legislation is because of an emerging trend of non-resident plaintiffs with no connection to North Dakota opting to use our court system to bring claims for injuries sustained in other states. These plaintiffs made this decision because their ability to file a claim in their home states, or the states in which the injuries occurred, no longer existed. They were time-barred from pursuing the action because the statute of limitations had run, so they brought their claims to North Dakota hoping to breathe new life into them by taking advantage of the states longer limitations period.

Recently the North Dakota Supreme Court issued a decision in one of these cases affirming the dismissal granted by the district court. The decision was based on the Uniform Choice of Laws-Limitations Act contained in chapter 28-01.2 of the North Dakota Century Code. However, it took at least six years worth of filings, motions, briefs, hearings, and appeals to finally reach the resolution in this case. It should not have to consume this much time and resources to reach a conclusion in these matters, and reducing the statute of limitations period for these claims would ensure that future claims could be settled more expeditiously.

Our intent with this bill is not to discount the injuries or other damage sustained by the plaintiffs in these or other cases. However, the business community of this state does not believe that North Dakota should be the forum of last resort for civil actions in which the claims have expired in 47 other states.

Thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.

Attachment

North Dakota's Statute of Limitations for General Tort Claims: As Compared to the other 49 states and Washington, D.C.

States with a one-year statute of limitations for general tort claims (3):

- Kentucky KY. Code § 413.140
- Louisiana La Civ. Code art. 3492
- Tennessee Tenn. Code § 28-3-104

States with a two-year statute of limitations for general tort claims (23):

- Alabama Ala. Code §§ 6-2-30, 6-2-38
- Alaska Alaska Stat. § 09.10.070
- Arizona Ariz. Stat. §12-542
- California Cal. Code Civ. Proc. §335.1
- Colorado Colo. Rev. Stat. § 13-80-102
- Connecticut Conn. Gen. Stat. § 52-548
- Delaware Del. Code tit. 10, § 8119
- Georgia Ga. Code Ann. § 9-3-33
- Hawaii Haw. Rev. Stat. § 657-7
- Idaho Idaho Code § 5-219(4)
- Illinois 735 III. Comp. Stat. 5/13-202
- Indiana Ind. Code § 34-11-2-4
- lowa lowa Code § 614.1(2)
- Kansas Kan. Stat. § 60-513
- New Jersey N.J. Stat. Ann. § 2A:14-2
- Nevada Nev. Rev. Stat. § 11.190(4)(e)
- Ohio Ohio Rev. Code § 2305.10
- Oklahoma Okla. Stat. Ann. tit. 12, § 95(3)
- Oregon Or. Rev. Stat. § 12.110
- Pennsylvania Pa. Con. Stat. § 5524
- Texas Tex. Civ. Prac. & Rem. Code §§ 16.003, 16.0031
- Virginia Va. Code Ann. § 8.01-243
- West Virginia W. Va. Code § 55-2-12

States with a three-year statute of limitations for general tort claims (16 + D.C.):

- Arkansas Ark. Code Ann. § 16-56-105
- Maryland Md. Cts. & Jud. Code Ann. § 5-101
- Massachusetts Mass. Gen. Laws, Art. 260, §§ 2A, 4
- Michigan Mich. Comp. Laws § 600.5805(10)
- Mississippi Miss. Code Ann. § 15-1-49
- Montana Mont. Code Ann. § 27-2-204
- New Hampshire N.H. Rev. Stat. § 508:4
- New Mexico N.M. Stat. Ann. § 37-1-8
- New York N.Y. Civ. Prac. R. § 214(5)
- North Carolina N.C. Gen. Stat. § 1-52(16)

- Rhode Island R.I. Gen. Laws § 9-1-14(b)
- South Carolina –S.C. Code Ann. § 15-3-530(5)
- South Dakota S.D. Comp. Laws Ann. § 15-2-14(3)
- Vermont Vt. Stat. Ann. tit. 12, §512(4)
- Washington Wash. Rev. Code Ann. § 4.16.080(2)
- Washington D.C. D.C. Code § 12-301
- Wisconsin Wis. Stat. § 893.54

States with a four-year statute of limitations for general tort claims (4):

- Florida Fla. Stat. §95.11(3)(a)
- Nebraska Neb. Rev. Stat. § 25-207
- Utah Utah Code § 78-12-25.1
- Wyoming Wyo. Stat. Ann. § 1-3-105 (iv)(c)

Missouri is the only state with a five-year statute of limitations for general tort claims – Mo. Stat. § 516-120(4).

States with a six-year statute of limitations for general tort claims (3):

- Maine Me. Rev. Stat. Ann. tit. 14, ch. 205, § 752
- Minnesota Minn. Stat. § 541.07 subd. (5)
- North Dakota N.D. Cent. Code § 28-01-16(5)