



North Dakota Association for Justice

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APPENDIX M

Interim Judiciary Committee
January 10, 2011

Chairman Nething and Committee Members;

My name is Alan Austad and I am the Executive Director of the North Dakota Association for Justice. Our members are Trial Lawyers who practice in all areas of the state and are, in many instances, the only lawyer in the area. They are criminal defense attorneys, part time states attorneys who do wills, estates, and represent local business. They practice in all areas of the law.

The proposed bill on the statute of limitations is a bill in search of a problem. The US Chamber of Commerce ranks North Dakota # 2 for having the best lawsuit climate for business in the United States.

There is no legal reason to change our law. Even the proponents gave no legal reason, and in reality they gave you no valid reasons. The only reasons given were to get us in the mainstream and to establish finality.

As for getting North Dakota into the mainstream, it is difficult to understand why that is a valid legal reason. There are many areas where North Dakota is not in the mainstream-Workforce Safety, the Bank of North Dakota and the State Mill & Elevator are three that stand out. There seems to be no compelling reason or desire to change any of these to put us in the mainstream.

Finality was raised as an issue during the first hearing, yet when the US Chamber compiled their survey they asked business general counsels/senior litigators in North Dakota the following question:

“What do you think is the single worst aspect of the litigation environment that state policy makers should focus on to improve the business climate in their state?”

Finality must not be an issue for business as it would have taken only 30 attorneys in North Dakota, Minnesota or Maine (the states with 6 year SOL) combined to have the statute of limitations issue make the most important issues list for state policymakers to consider. Statute of limitations issues did not make the threshold. Apparently business counsels and senior litigators who work for business in North Dakota did not think finality is important or an issue.

Only 1.5% of civil caseloads on a national basis are tort cases. North Dakota does not compile data in a manner that can be used to determine what types of cases are in our court system.

However, a study by the National Center for State Courts published in 2010 indicated that tort caseloads in North Dakota have decreased over the past 10 years from a high of 638 in 1999 to 320 in 2008.

Most trial lawyers do not ever see an insurance defense attorney when representing a client in personal injury case and most of these cases are settled without affecting the judicial system. If you change the law, this will change. More lawsuits will be filed, more insurance companies will hire defense attorneys, and the costs to the insurance companies will increase. The ability to seek a common ground for settlements may be lost.

Changing the law will not put us ahead of Delaware. There is a better chance for North Dakota to drop in the rankings, as the number of lawsuits filed is sure to increase.

As you consider the issue of the length of the statute of limitation in section 28-01-16 of the North Dakota Century Code make the decision on sound legal reasons not for any other reason.

The two issues raised for the change, mainstream and finality are not legal reasons to change a law that has served North Dakota well for over a 100 years.

Businesses attorneys in North Dakota do not think the finality is an issue or SOL would have been raised by them.

Being in the mainstream has very little to do with North Dakota's judicial climate and, in fact, may increase lawsuits and change the 10 year trend of a decreasing reliance on the courts to resolve personal injury.