



MISSOURI HOUSE OF REPRESENTATIVES
WITNESS APPEARANCE FORM

| | | | |
|--|-------------|--|----------------------|
| BILL NUMBER: HB 474 | | DATE: 2/2/2021 | |
| COMMITTEE: Special Committee on Litigation Reform | | | |
| TESTIFYING: <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES | | | |
| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: BRAD JONES | | PHONE NUMBER: 573-619-3077 | |
| REPRESENTING: NATIONAL FEDERATION OF INDEPENDANT BUSINESS | | TITLE: | |
| ADDRESS: 308 EAST HIGH | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65101 |
| EMAIL: | ATTENDANCE: | SUBMIT DATE: 2/2/2021 12:00 AM | |
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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: BRIAN BERNSKOETTER | | PHONE NUMBER: 573-636-2822 | |
| REPRESENTING: MISSOURI ORGANIZATION OF DEFENSE LAWYERS | | TITLE: | |
| ADDRESS: 101 EAST HIGH | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65102 |
| EMAIL: | ATTENDANCE: | SUBMIT DATE: 2/2/2021 12:00 AM | |
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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: DAVID OVERFELT | | PHONE NUMBER: 573-636-2524 | |
| REPRESENTING: MISSOURI RETAILERS ASSOCIATION | | TITLE: PRESIDENT | |
| ADDRESS: 618 E CAPITOL | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65109 |
| EMAIL: dave@moretailers.com | ATTENDANCE: Written | SUBMIT DATE: 2/2/2021 12:00 AM | |

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Sellers should not be subject to product liability lawsuits over products sold decades ago, products that were deemed safe for their time. Many states have already adopted a 10 year limitation. Plaintiffs should bear the burden of proof on whether a retailer even sold the product in question.



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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: HEATH CLARKSTON | | PHONE NUMBER: 5734694173 | |
| REPRESENTING: UNITED STATES CHAMBER OF COMMERCE | | TITLE: | |
| ADDRESS: 314 E, HIGH ST. | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65101 |
| EMAIL: heath.clarkston@lgpmconsulting.com | ATTENDANCE: Written | SUBMIT DATE: 2/2/2021 12:00 AM | |

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Fully support this bill sponsored by Rep. Curtis Trent.



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| WITNESS NAME | | |
| BUSINESS/ORGANIZATION: | | |
| WITNESS NAME: MATT MORROW | | PHONE NUMBER: 417-862-5567 |
| BUSINESS/ORGANIZATION NAME: SPRINGFIELD AREA CHAMBER OF COMMERCE | | TITLE: PRESIDENT AND CEO |
| ADDRESS: 202 S. JOHN Q. HAMMONS PARKWAY | | |
| CITY: SPRINGFIELD | | STATE: MO |
| | | ZIP: 65806 |
| EMAIL: lmustoe@springfieldchamber.com | ATTENDANCE: Written | SUBMIT DATE: 2/2/2021 12:00 AM |

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February 2, 2021 The Honorable Bruce DeGroot and members of the House Special Committee on Litigation Reform House Special Committee on Litigation Reform 201 W Capitol Avenue, Room 304-B Jefferson City, MO 65101 Dear Chairman DeGroot and members of the House Special Committee on Litigation Reform: On behalf of the Springfield Area Chamber of Commerce and our over 1500-member businesses, please accept this letter of support for House Bill 474. Missouri currently has no statute of repose for product liability, in contrast with many surrounding states. The lack of a statute of repose puts many of our Missouri businesses at a disadvantage and exposure to undue liability, specifically regarding previously produced products for which regulations have since changed. HB 474 would create a reasonable timeline of 15 years to bring a claim for damages and is an important change to strengthen our business climate. Ultimately, we want to be a state that is conducive to business growth, competitive with our surrounding states and attractive to new businesses. The passage of this bill is an important step in the right direction for improving our state's legal climate and we encourage your support. Sincerely, Matt Morrow President and CEO, Springfield Area Chamber of Commerce 202 S John Q Hammons Parkway Springfield, MO 65806



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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: MATTHEW PANIK | | PHONE NUMBER: 573-634-3511 | |
| REPRESENTING: MISSOURI CHAMBER OF COMMERCE AND INDUSTRY | | TITLE: VICE PRESIDENT, GOVERNMENTAL AFFAIRS | |
| ADDRESS: 428 E CAPITOL AVE | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65101 |
| EMAIL: mpanik@mochamber.com | ATTENDANCE: In-Person | SUBMIT DATE: 2/2/2021 12:00 AM | |
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| WITNESS NAME | | |
| REGISTERED LOBBYIST: | | |
| WITNESS NAME: MICHAEL HENDERSON | | PHONE NUMBER: 573-893-4241 |
| REPRESENTING: MISSOURI INSURANCE COALITION | | TITLE: |
| ADDRESS: 220 EAST HIGH STREET, SUITE B | | |
| CITY: JEFFERSON CITY | | STATE: MO |
| | | ZIP: 65101 |
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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: RAY MCCARTY | | PHONE NUMBER: 573-634-2246 | |
| REPRESENTING: ASSOCIATED INDUSTRIES OF MISSOURI | | TITLE: | |
| ADDRESS: 3234 WEST TRUMAN BOULEVARD | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65109 |
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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: RICH AUBUCHON | | PHONE NUMBER: | |
| REPRESENTING: MISSOURI CIVIL JUSTICE REFORM COALITION; AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION | | TITLE: | |
| ADDRESS: 121 MADISON STREET | | | |
| CITY: JEFFERSON CITY | | STATE: MO | ZIP: 65101 |
| EMAIL: | ATTENDANCE: | SUBMIT DATE: 2/2/2021 12:00 AM | |
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| WITNESS NAME | | | |
| BUSINESS/ORGANIZATION: | | | |
| WITNESS NAME: WAYNE PRICE | | PHONE NUMBER: 417-874-7264 | |
| BUSINESS/ORGANIZATION NAME: O'reilly AUTO PARTS | | TITLE: VICE PRESIDENT, TREASURY & GOVERNMENT AFFAIRS | |
| ADDRESS: 233 S. PATTERSON | | | |
| CITY: SPRINGFIELD | | STATE: MO | ZIP: 65802 |
| EMAIL: wprice@oreillyauto.com | ATTENDANCE: Written | SUBMIT DATE: 2/2/2021 12:00 AM | |

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O'Reilly Auto Parts is a Missouri Company founded in 1957, with its headquarters in Springfield. It operates 203 stores in Missouri, and approximately 5,600 stores throughout the US and now in Mexico, employing thousands of people across Missouri, and tens of thousands beyond Missouri. O'Reilly is pleased to support HB474. As a matter of policy, it believes that Missouri businesses should not have perpetual liability exposure for products they sell past an appropriate period of time, and certainly not exposure that extends twenty, thirty, forty, or even beyond fifty years after the products enter the stream of commerce. Rather than focusing on manufacturing, O'Reilly's focus is on "innocent retailers." Innocent retailers, like O'Reilly, do not design products, manufacture products, nor provide the packaging and warnings for products. Universally, innocent retailers depend on manufacturers for these things. Requiring innocent retailers to defend someone else's product in those circumstances is unfair, because it places a burden upon the retailer to defend products it didn't engineer, make, nor have any obligation to provide warnings for. Furthermore, the retailer may be called upon to defend the manufacturers' product after the manufacturer has long since been out of business – sometimes decades later. The former owners and employees from those manufacturers are often gone or not locatable, and any relevant product information or documentation is also long since gone. In these situations, it is the Missouri retailer that is left to defend itself and someone else's product in a very challenging litigation environment in Missouri that includes:• Joint & Several liability• A lack of non-economic damage caps• The ability to seek unlimited amount of punitive damages. The proposed bill is appropriate and will help protect both Missouri businesses from perpetual liability, while still preserving the ability of those who are injured to make claims for a reasonable period - even beyond the 15 year period if a defendant is involved in fraudulently concealing a known defect, or where the useful life of the product is beyond 15 years. O'Reilly appreciates the Committee's consideration, and urges your support for this important legislation. Sincerely, Wayne Price Vice President, Treasury & Government Affairs O'Reilly Auto Parts



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| WITNESS NAME | | | |
| BUSINESS/ORGANIZATION: | | | |
| WITNESS NAME: Brett Emison | | PHONE NUMBER: 660-259-9903 | |
| BUSINESS/ORGANIZATION NAME: MATA | | TITLE: Immediate Past President | |
| ADDRESS: 240 East High Street, Suite 300 | | | |
| CITY: Jefferson City | | STATE: MO | ZIP: 65102 |
| EMAIL: brett@lelaw.com | ATTENDANCE: Written | SUBMIT DATE: 2/1/2021 10:53 AM | |

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I emailed my statement separate to the members of the committee. I incorporate that written testimony herein. In brief summary, I include a portion of my full testimony as follows: There is a fundamental tenet of society that someone who causes harm is responsible for that harm. The statute of repose would take that responsibility away when a manufacturer causes harm to Missouri citizens and families. A statute of repose is not about preventing frivolous lawsuits. It is not about encouraging plaintiffs or defendants to settle claims. A statute of repose completely takes away the right of the victim to hold the manufacturer accountable. When is ever unjust to hold a wrongdoer accountable for harm inflicted on others? The fundamental right to jury trial was recognized by our Founders as an "inalienable right" "endowed by [our] Creator" enumerated in the Declaration of Independence and the Bill of Rights. Most of us are familiar with at least some of the grievances listed in the Declaration of Independence; most notably "For imposing Taxes on us without our Consent." The very next grievance listed is "For depriving us in many cases, of the benefit of Trial by Jury." Those seeking to limit – or even eliminate – the right to jury trial are on precisely the same footing as King George leading up to the American Revolution. A statute of repose would not merely limit the right to civil jury trial; it would eliminate that right completely. WHAT IS A STATUTE OF REPOSE? A statute of repose completely eliminates a product manufacturer's responsibility for its product after an arbitrary deadline has passed.

There are important differences between a statute of limitation and a statute of repose. A statute of limitation begins to run when the injury occurs – when the victim has notice of the harm. A statute of repose begins to run when the product is first sold and may run completely before an injury ever occurs. Under a statute of repose, a victim's claim may be eliminated before the injury ever happens. HOW ARE "OLDER" PRODUCTS JUDGED IN A PRODUCT LIABILITY CLAIM? A common misperception is that older products – automobiles, for example – may be judged in a product defect lawsuit based on the benefits of hindsight or in comparison with modern technology. This is not true. I want to make clear: A product designed and sold in 2000 is not judged to be defective based on the technology and practices in place today – in 2021. A product – whether it is a motor vehicle or any other product – is judged based upon the technologically and economically feasible designs available at that time. I want to make clear: Someone injured by a defective product must prove that the product is substantially the same condition as when it was first sold. There cannot be modifications that change the character or performance of the product. There cannot be such deterioration that it changes the character or performance of the product. Manufacturers are not responsible for defects related to those kinds of changes to the product. Products will not be judged defective based on use, abuse, or later modification. The Missouri Approved Jury Instructions require a plaintiff to prove that the product was "substantially the same condition" as when it was originally manufactured. Under the current law, every product is judged based on the standards and technology available at the time of

manufacture. WHY IS A STATUTE OF LIMITATION WRONG FOR MISSOURI? (1) The Missouri Constitution requires that the “the right of trial by jury as heretofore enjoyed shall remain inviolate.” Mo. Const. Art. 1, § 22(a). This right “is one of the fundamental guarantees of the Missouri Constitution”. *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633, 637 (Mo. banc 2012). The term “inviolable” means “free from change or blemish, pure or unbroken.” *Id.* at 638. A statute of limitation violates the Constitution by wholly eliminating a right to jury trial even before the claim arises. (2)

There is a fundamental tenant of society that someone (or some corporation) who causes harm is responsible (or accountable) for that harm. A statute of repose would take that accountability away when a manufacturer causes harm to Missouri citizens. (3) Statutes of repose hit certain Missourians harder than others. For example, a statute of repose hurts teenagers and young people who are saving up for a first car. A teenager is likely to purchase a vehicle that is used, affordable, and older. Statutes of repose hurt first responders and emergency workers – the men and women we count on to keep us safe. For example, the average life cycle of a ladder fire truck is 18.5 years. The average life of a pumper fire truck is 15.5 years. Statutes of repose hurt employers and agricultural workers. Nearly half of heavy farm equipment is more than 15 years old. Most farm families cannot afford to regularly purchase new tractors, combines, trucks, wagons, and other farm machinery. (4) A statute of repose protects corporations that put profit over safety and human life. There is a dirty secret that many (perhaps all) manufacturers conduct economic calculations to determine how much a human life is worth. At a certain point, the value to shareholders overcomes the value of life. The corporation chooses profits over safety and human life. The Ed Ivey Memo is one of the most glaring examples of a company choosing profits over the human lives. GM engineer, Ed Ivey, prepared a two-page memo so managers could “figure out how much [Oldsmobile] could spend on fuel-systems.” In the memo, Ivey determined it would cost approximately \$8.59 per vehicle to fully protect the fuel system, but it would cost only \$2.20 per vehicle to settle wrongful death lawsuits arising from fuel-system-related deaths. He determined that GM could save \$6.39 per vehicle by accepting the deaths rather than fixing the fuel system. Stated another way, GM could spend up to \$2.20 to make the fuel system safer; anything more would not be cost effective because it was economically cheaper to let passengers burn to death in post collision fires. Ford Motor Company conducted a similar analysis known as the Grush-Saunby Report. Ford created the Grush-Saunby report in response to a NHTSA proposal for new safety standards designed to prevent post-collision fuel fed fires. Ford's report was created to compare the costs of complying with the proposed new standard. The Grush-Saunby report was a key factor in the outrage surrounding the Ford Pinto fire cases in the 1960s and 1970s. However, the same Pinto-style fuel tank design and placement remained in Crown Victoria vehicles (including Police Interceptors) until the vehicles were finally discontinued in 2011.



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| WITNESS NAME | | |
| INDIVIDUAL: | | |
| WITNESS NAME: FEDRA EKRES | | PHONE NUMBER: |
| BUSINESS/ORGANIZATION NAME: | | TITLE: |
| ADDRESS: | | |
| CITY: | | STATE: ZIP: |
| EMAIL: fedraekres@gmail.com | ATTENDANCE: Written | SUBMIT DATE: 2/2/2021 12:00 AM |
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Good day, Missouri House Special Committee on Government Oversight, today I shall tell you my story during March of 2020 and my testimony of experiencing this National Pandemic and The St Louis Unemployment Dept. My name is Fedra Ekres, I am 35 years old, an aspiring songwriter, and an excellent Customer Care Specialist for Franklin Energy Services. I was fired on March 31st 2020 by my employer. My job primarily was to serve the great St Louis area by addressing and answering questions for Ameren Missouri customers. Over the course of the first couple of weeks in March we were asked to work remotely and rumors spread throughout the company that people were being fired or furloughed left and right, I was among those employees. Although I had the best attendance in my team, worked every weekend along with a fellow employee, received an award for my service I was still fired while working remotely from my home. In June of 2020, St Louis Unemployment sent me a notification via the portal that I was "not fired" rather I quit voluntarily and that I was denied the unemployment and benefits from that moment on. I have not received any assistance since June of 2020 and am literally surviving off the assistance that was given to me and this is what they wish back. I have consistently looked for work since then and still I am unemployed. How can they expect me to pay back \$5,000 when I do not even have the means at this point to survive? I hope the committee will rethink this action and consider the many artists, free-lancers, and people like myself who simply followed the guidelines to turn in their information for unemployment and did nothing wrong. A large amount of people are seriously struggling and did not commit fraud. This level of responsibility to fall back on the people when the St Louis Unemployment Department did not do their own duly diligence is a sham to our country. These programs were put in place for these circumstances, a National Pandemic. No one could prepare for these numbers however this is why this type of system is in place, not to go after the very people who need this assistance.



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| WITNESS NAME | | | |
| REGISTERED LOBBYIST: | | | |
| WITNESS NAME: MARK MORELAND | | PHONE NUMBER: 314-346-6257 | |
| REPRESENTING: MISSOURI ASSOCIATION OF TRIAL ATTORNEYS | | TITLE: | |
| ADDRESS: 906 OLIVE STREET | | | |
| CITY: ST. LOUIS | | STATE: MO | ZIP: 63101 |
| EMAIL: | ATTENDANCE: | SUBMIT DATE: 2/2/2021 12:00 AM | |
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