

HB 251 – reduce statute of limitations on contracts to three years  
OAJ interested party testimony  
before the House Civil Justice Committee  
June 18, 2019

Chairman Hambley, Vice Chair Patton, Ranking Member Brown and members,

Introduction: Mark Abramowitz from DiCello Levitt Gutzler LLC and on behalf of small business owners of Ohio.

Reducing the statute of limitations in contracts, written and oral, is more complicated than appears on the surface. There are some important practical and legal consequences to consider.

- The complexity of scheme
- What does accrual/discovery mean here
  - H.B. 251 does not define when a company would have discovery of the issue or when the statute begins to run. Does it run from the time the breach happened? Does it run from when a company should have discovered the issue regardless of how difficult or expensive it would be to discover the harm? If it is ongoing harm, does the statute run from the first breach? Or are the ongoing breaches their own statute?
  - Is it going to be like the FLSA statutes?
- Some examples of potential problems with the statute are:
  - The incorrect charging of interchange fees by credit card processors
    - Complex scheme
    - Discovery/accrual date
  - *Flying J* Rebate Scandal
    - Complex Scheme
    - Discovery/accrual date
  - Improper contract increases in auto-renewal contracts
    - Complex scheme
    - Discovery/accrual date
  - Improper interpretation of contracts – market factors for increase in costs, certain criteria being met
    - Complex schemes
    - Discovery/accrual
  - Cybersecurity breaches
    - Complex schemes
    - Discovery/accrual

My suggestions

- Defining accrual to mean when the problem is discovered, but put a 15-year statute of repose on the discovery. Allowing for loss to be recouped despite when

it is discovered. Using the *Flying J* case, once discovered, you can look back for the entire time period of the scheme even if it goes beyond the statute of limitations.

- Potential language could be:
  - If the harm is discovered during the applicable statute of limitations, the entire harm, regardless of when started is to be compensable in an action to recover damages