

*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: John Van Doorn, Government Affairs Director for the Ohio Association for Justice

OAJ is a statewide association of attorneys whose mission is to protect our 7th Amendment rights... to ensure that all Ohioans can seek justice through our civil justice system.

OAJ testify on HB 251 as an interested party

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.

Benefits individual consumers/creditors

Helps consumers who are debtors because legislation reduces the timeframe (from 8 years to 3 years) for debt collection.

After three years, the borrower no longer has a debt.

Because the debt is no longer valid after three years, any negative information on the the borrower's credit rating must be removed at the end of three years.

May encourage debtors to engage in crooked behavior, such as non-payment of bills and evasion of debts to "run out the clock."

Creditors response: given this scenario, creditors may respond by moving earlier to pursue judgment.

Impacts small business

Shorter SOL will impact some transactional contracts where the statute of limitations clause may purposely extend for a longer period of time in order to accommodate the nature of the transaction.

Examples of transaction contracts where the SOL is likely to be long term are services, such as waste removal, used syringe disposal, or credit card processing, where the service is ongoing over a long period of time,

Mark Abramowitz, an OAJ witness who will follow me, will provide you with some specific examples of small business litigation that may be affected by a shorter statute of limitation.

Business-to-business litigation may increase

Another way it may affect small business is that shorter statute of limitations may disrupt ongoing business relationships.

Small businesses that have on-going relationships prefer to work out contract disputes with corporate customers rather than initiate litigation. Don't want to risk damage to that relationship.

With a shorter statute of limitations, businesses won't be able to be as patient to resolve disputes.

If purpose of this legislation is to reduce litigation, OAJ projects it will fail on that count as more business lawsuits will result.

Discovery may extend statute

Ohio's discovery law holds that the SOL period begins to run from the date the facts giving rise to the cause of action are discovered, or should have been discovered with the exercise of due diligence.

The legislation acknowledges the discovery rule because it says the cause of action must be "brought within three years after the cause of action accrued."

Accrual means when the contract breach occurs.

We are not aware of case law on the subject of discovery in contracts

Given the current lengthy 8-year statute of limitations (formerly, 15 years), the scarcity of litigation and case law is understandable; there has been ample time to discover injury or damage.

With the proposed 3-year SOL, the issue of when a plaintiff discovered or should have discovered the injury or damage will become the focus of increased litigation.

Businesses whose product or service has a life span greater than three years, who may face litigation based on discovery, will be well-advised to retain their records longer than three years.

Arbitration clauses may foil statute defenses

Several Ohio courts have held that statutes of limitations do not apply in arbitration proceedings which, by their nature, are creatures of contracts between private parties rather than "actions" in a court of law.

In Ohio, the term "action" is defined by statute as a "proceeding in a court of justice, involving process, pleadings, and ending in a judgement or decree, by which a party prosecutes another for the redress of a legal right, or the punishment of a public offense." RC 2307.01

An arbitration proceeding is not a "proceeding in a court of justice"

Contracts with mandatory arbitration clauses may not be bound by this shorter statute of limitations.

Businesses with contracts that contain arbitrations clauses would be well-advised to retain their records longer than three years.

UCC has 4-year statute of limitations

The Uniform Commercial Code is intended to harmonize state laws because of the prevalence of commercial transactions across the states.

Ohio has enacted the UCC in Title XIII of the Revised Code governing Ohio Uniform Commercial Transactions

The UCC says that an action for breach of any contract for sale must be commenced within four years after the cause of action has accrued.

State ranking not valid measure of business climate

OAJ disagrees with the stated rationale for this legislation, which is to rank Ohio among the states with the shortest statute of limitations (3 years).

A survey of states reveals many states with highly rated business climates have statutes of limitations for contracts longer than three years.

States with Highly Rated Business Climates

State	Written	Oral
TX	4	4
FL	5	4
IN	10	6
NV	6	4
AZ	6	3
GA	6	4
UT	6	4
TN	6	6
IL	10	5
MA	6	6

States surrounding Ohio all have statutes longer than three years.

States Surrounding Ohio

State	Written	Oral
IN	10	6
KY	10	5
MI	6	6
PA	4	4
WV	10	5

The national mean/average statute of limitations is: 6.12 years for written contracts and 4.74 for oral/implied contracts.

The national mode (appears most often) is: 6 for written contracts and 6 years for written contracts and 6 for oral/implied contracts.

Conclusion

Thank you for opportunity to testify. Questions?