

**OHIO CREDITOR'S ATTORNEYS ASSOCIATION  
A STATE-WIDE ASSOCIATION FOR ATTORNEYS  
PRACTICING IN THE AREA OF  
CREDITOR'S RIGHTS**

*PRESIDENT*  
Fredric A. Kannensohn  
Youngstown, Ohio  
(330) 743-5181, Ext.126  
[fredk@millkann.com](mailto:fredk@millkann.com)

*EDUCATION*  
Yale R. Levy &  
Sean M. Winters  
Columbus, Ohio  
(614) 898-5200  
[sean@levylawllc.com](mailto:sean@levylawllc.com)

*TREASURER*  
William W. Emley, Sr.  
Canton, Ohio  
(330) 492-8717  
[wemley@bdbl.com](mailto:wemley@bdbl.com)

*SECRETARY*  
Crystal M. Duplay  
Cleveland, Ohio  
(440) 871-8805 Ext.107  
[crystal@tmslaw.net](mailto:crystal@tmslaw.net)

The Ohio Creditor's Attorneys Association (OCAA) is an association of over 50 law firms throughout Ohio and has been an active participant in Ohio legislation since 1994 advocating for the rights of its members and members' clients.

On behalf of the OCAA and its members, I express our collective opposition to House Bill 251, legislation that would shorten Ohio's written contract statute of limitations (R.C. § 2305.06) from eight years to three years, and Ohio's oral contract statute of limitations (R.C. § 2305.07) from six years to three years.

Briefly summarizing, our reasons for opposing this bill, are:

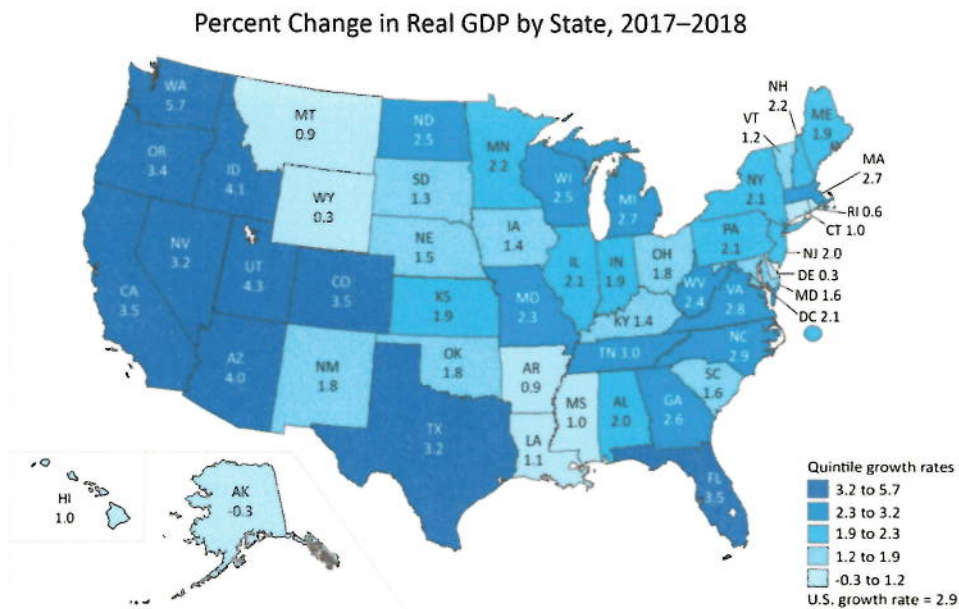
- A. HB 251 is based on a fallacy that shortening a state's contract statute of limitations is causally related to economic growth, business climate or competition. The evidence does not support the premise.
- B. HB 251 is unnecessary as: (i) other statutes of limitations already in place in Ohio reduce the time for bringing actions on specific types of written contract obligations, such as on the sale of goods (4 years, R.C. 1302.98), suits on promissory notes (6 years, R.C. 1303.16), checks (3 years, R.C. 1303.16) and three years on ordinary contracts upon finding the cause of action accrued in another state under Ohio's borrowing statute (R.C. 2305.03(B)),<sup>1</sup> and (ii) parties to a contract can agree to deviate from the otherwise applicable statute of limitations, and such provisions are enforceable.
- C. HB 251 disrupts settled expectations underlying existing contract obligations, and has the potential to deprive business owners of receivables they expected to recover, but cannot because too much time has passed.
- D. HB 251 increases the burden on courts by accelerating the deadline for commencing litigation and is arbitrary.

**A. HB 251 is based on a fallacy that shortening a state's contract statute of limitations is causally related to economic growth, business climate or competition. The evidence does not support the premise.**

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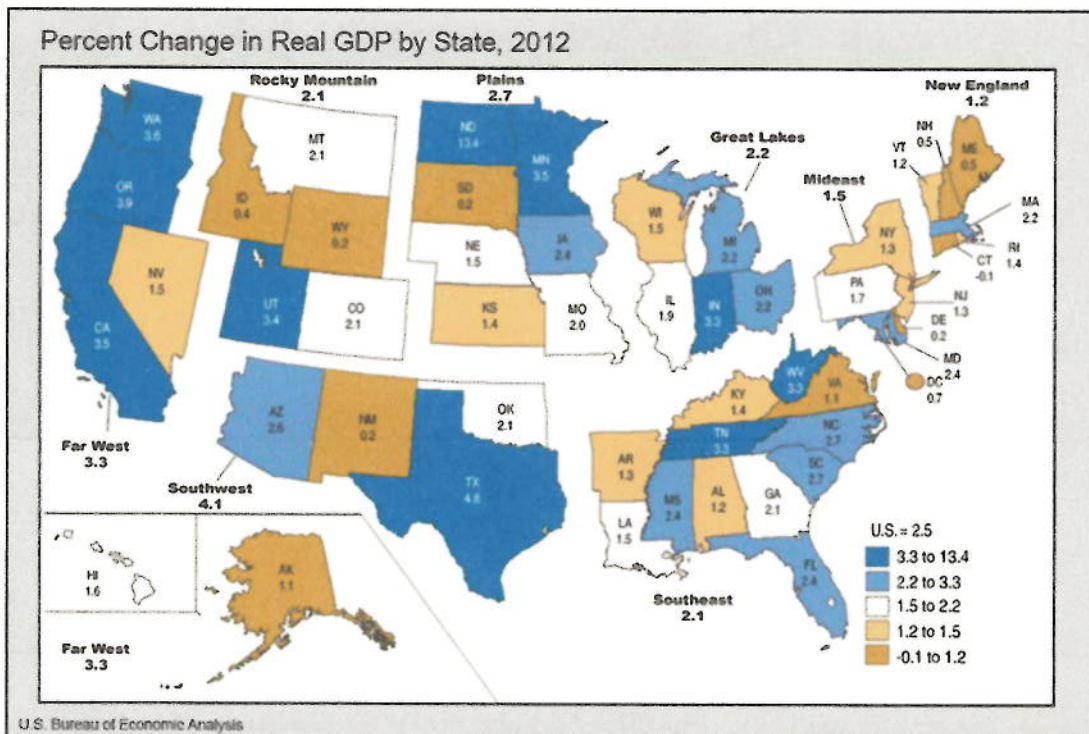
<sup>1</sup> See *Taylor v. First Resolution Invest. Corp.*, 148 Ohio St.3d 627, 2016-Ohio-3444, 72 N.E.3d 573, ¶ 107 (2016) (applying Delaware's three year statute of limitations); *Unifund CCR Partners v. Piasek*, 11th Dist. Ashtabula No. 2016-A-0076, 2019-Ohio-183, review denied, 155 Ohio St.3d 1438, 2019-Ohio-1536 (2019) (applying New Hampshire's three year statute of limitations).

According to statistics released by the U.S. Bureau of Economic Analysis, economic growth, that is, the percentage change in real GDP,<sup>2</sup> Ohio ranked 35th in the nation for 2017:Q1-2018:Q4:<sup>3</sup>



U.S. Bureau of Economic Analysis

Prior to SB 224 in 2012, the amendment to R.C. 2305.06, shortening the limitations period for contract actions from 15 years to eight years, Ohio ranked 20th in the nation for the percentage change in real GDP for the period 2009-2012:<sup>4</sup>



U.S. Bureau of Economic Analysis

<sup>2</sup> <https://www.bea.gov/news/2019/gross-domestic-product-state-fourth-quarter-and-annual-2018>

<sup>3</sup> [https://www.bea.gov/system/files/2019-04/qgdpsstate0519\\_4.pdf](https://www.bea.gov/system/files/2019-04/qgdpsstate0519_4.pdf), page 5, table 1.

<sup>4</sup> <https://www.bea.gov/system/files/2019-02/gsp0613.pdf>.

[https://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_economic\\_growth\\_rate#cite\\_note-4](https://en.wikipedia.org/wiki/List_of_U.S._states_by_economic_growth_rate#cite_note-4)

In fact, shortening Ohio's limitations period for contract actions from 15 years to eight years has not improved Ohio's ranking. If anything, it appears to be the opposite.

Among the "good business states" identified by Rep. Hillyer, Delaware (3 years) has consistently trailed Ohio in economic growth during the period 2009-2018 (ranked 49th ('09-12), 50th ('17-18)).

According to CNBC's top states for business 2018 rankings,<sup>5</sup> cited by the Ohio Alliance for Civil Justice, while it is true that the top 15 states on the CNBC list have limitations periods less than eight years, among the 15 states occupying the *bottom* rankings<sup>6</sup> on the list, 11 states also have shorter limitations periods for contract actions than Ohio's eight year limitations period: New Jersey (6 years),<sup>7</sup> Connecticut (6),<sup>8</sup> Delaware (3),<sup>9</sup> Oklahoma (5),<sup>10</sup> Arkansas (3),<sup>11</sup> Alabama (6),<sup>12</sup> New Mexico (6),<sup>13</sup> Maine (6),<sup>14</sup> Hawaii (6),<sup>15</sup> Mississippi (3),<sup>16</sup> Alaska (3).<sup>17</sup>

At present, there are only five states and the District of Columbia in the nation with a three year statute of limitations on written contracts: Alaska,<sup>18</sup> Colorado,<sup>19</sup> Delaware,<sup>20</sup> District of Columbia,<sup>21</sup> Maryland,<sup>22</sup> and North Carolina.<sup>23</sup>

Based on the data, one cannot demonstrate that a state's contract statute of limitations is causally related to the state's economic growth or business climate.

Moreover, it cannot be said that Kentucky altered its statute of limitations as a direct result of Ohio's 2012 amendment to R.C. 2305.06. While it is true that Kentucky amended its contract statute of limitations, it did not do so until 2014,<sup>24</sup> nearly two years after Ohio.

And, rather than completely dispense with its longstanding 15 year statute of limitations in KRS § 413.090, Kentucky retained its 15 year statute of limitations for contract actions, but also amended the statutes to *also* provide a 10 year limitations period for contracts after the effective date. In pertinent part, as amended, Kentucky's statutes were amended to read:

Except as provided in KRS 396.205, 413.110, 413.220, 413.230 and 413.240, the following actions shall be commenced within fifteen (15) years after the cause of action first accrued:

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<sup>5</sup> <https://www.cnbc.com/2018/07/10/americas-top-states-for-business-2018.html>

<sup>6</sup> New Jersey (36th), Connecticut (37th), Delaware (38th), Oklahoma (39th), Arkansas (40th), Alabama (41st), Kentucky (42nd), New Mexico (43rd), Louisiana (44th), Maine (45th), Rhode Island (46th), Hawaii (47th), West Virginia (48th), Mississippi (49th), Alaska (50th).

<sup>7</sup> N.J.S.A. 2A:14-1.

<sup>8</sup> C.G.S.A. § 52-576.

<sup>9</sup> 10 Del.C. § 8106.

<sup>10</sup> 12 Okl.St. Ann. § 95.

<sup>11</sup> A.C.A. § 16-56-105.

<sup>12</sup> Ala.Code 1975 § 6-2-34.

<sup>13</sup> N. M. S. A. 1978, § 37-1-3.

<sup>14</sup> 14 M.R.S.A. § 752.

<sup>15</sup> HRS § 657-1.

<sup>16</sup> Miss. Code Ann. § 15-1-49.

<sup>17</sup> AS § 09.10.053.

<sup>18</sup> AS § 09.10.053.

<sup>19</sup> C.R.S.A. § 13-80-101.

<sup>20</sup> 10 Del.C. § 8106.

<sup>21</sup> DC ST § 12-301.

<sup>22</sup> MD Code, Courts and Judicial Proceedings, § 5-101.

<sup>23</sup> N.C.G.S.A. § 1-52.

<sup>24</sup> <https://apps.legislature.ky.gov/record/14rs/hb369.html>



- (1) An action upon a judgment or decree of any court of this state or of the United States, or of any state or territory thereof, the period to be computed from the date of the last execution thereon;
- (2) An action upon a recognizance, bond, or written contract, except that actions upon written contracts executed after July 15, 2014, shall be governed by KRS 413.160;

KRS 413.160 was amended to read:

An action upon a written contract executed after the effective date of this Act unless otherwise provided by statute, and an action for relief[,] not provided for by statute[,] can only be commenced within ten (10) years after the cause of action accrued.

Lastly, the cost of record retention today is substantially less than in years past – a one terabyte drive costs as little as \$50.

In sum, while boosting economic growth and competitiveness are laudable goals for the legislature, the proponents stated rationales for shortening Ohio underlying HB 251 are inapposite and counterfactual.

**B. HB 251 is unnecessary as:**

**(i) Other statutes of limitations already in place in Ohio reduce the time for bringing actions on specific types of written contract obligations, such as on the sale of goods (4 years, R.C. 1302.98), suits on promissory notes (6 years, R.C. 1303.16), checks (3 years, R.C. 1303.16) and three years on ordinary contracts upon finding the cause of action accrued in another state under Ohio's borrowing statute (R.C. 2305.03(B)), and**

**(ii) Parties to a contract can agree to deviate from the otherwise applicable statute of limitations, and such provisions are enforceable.**

Existing statutes of limitation governing specific contract actions in Ohio and contract provisions setting a contractual statute of limitations are tools already available.

At present, R.C. 1302.98 provides for a four year statute of limitations on contracts for the sale of goods. In fact, R.C. 1302.98 is based on Uniform Commercial Code § 2-725, which has been adopted in nearly every one of the fifty states (except Louisiana).

Similarly, R.C. 1303.16 provides for a six year statute of limitations on negotiable promissory notes, and three years on checks, which is based on Uniform Commercial Code § 3-118, part of Uniform Commercial Code Revised Article Three, adopted nationwide.

Further, unmentioned by any of the proponents of HB 251, OCAA reminds the committee that S.B. 80, 125th General Assembly, added R.C. 2305.03(B) to Chapter 2305 of the Revised Code, effective April 7, 2005. The subsection reads: “(B) No civil action that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.”

Commonly referred to as the Ohio borrowing statute, this 2004 amendment to the Revised Code affected how Ohio courts are applying the statute of limitations under R.C. 2305.06 and R.C. 2305.07 in Ohio Courts. For example, in *Unifund CCR Partners v. Piasek*,<sup>25</sup> the Court concluded that a credit card debt claim was time-barred by virtue of the Ohio borrowing statute under New Hampshire's three year statute of limitations. And in *Taylor*

<sup>25</sup> 11th Dist. Ashtabula No. 2016-A-0076, 2019-Ohio-183, *review denied*, 155 Ohio St.3d 1438, 2019-Ohio-1536 (2019).

*v. First Resolution Invest. Corp.*,<sup>26</sup> the Court applied Delaware's three year statute of limitations to find a claim based on a defaulted credit card debt was time-barred.

In addition, contracting parties can agree to deviate from the otherwise applicable statute of limitations, and those provisions are enforceable.<sup>27</sup> In other words, if a party to a contract wants to limit the time for bringing any claims for breach of the specific contract to anything other than the statutory eight year limit, the parties can negotiate for the inclusion of a clause that requires either party to bring a claim before that time.

Individuals and parties can also bargain for the inclusion of contract provisions that otherwise limit exposure to litigation, damages or attorney's fees, such as clauses for damages limitation (liquidated damages), arbitration, estoppel certificate, indemnity, fee shifting and insurance.

As such, there is no apparent need to adopt a three year statute of limitations.

**C. HB 251 disrupts settled expectations underlying existing contract obligations, and has the potential to deprive business owners of receivables they expected to recover, but cannot because too much time has passed.**

"What is the justification for depriving a man of his rights, a pure evil as far as it goes, in consequence of the lapse of time?"<sup>28</sup>

Article II, Section 28 of the Ohio Constitution<sup>29</sup> prohibits the General Assembly from passing retroactive laws and protects vested rights from new legislative encroachments.

The test for unconstitutional retroactivity requires the court first to determine whether the General Assembly expressly intended the statute to apply retroactively.<sup>30</sup> If so, the court moves on to the question of whether the statute is substantive, rendering it unconstitutionally retroactive, as opposed to merely remedial.<sup>31</sup> "A statute purely remedial in its operation on pre-existing rights, obligations, duties and interests, is not within the mischiefs against which [Section 28, Article II] ... was intended to guard, and is not, therefore, within a just construction of its terms."<sup>32</sup>

In *Taylor v. First Resolution Invest. Corp.*,<sup>33</sup> the Ohio Supreme Court held that applying amended R.C. 2305.03(B) to a contract that went into default shortly after the effective date of the amendment to the statute on April 7, 2005, was not unconstitutionally retroactive, as statutes of limitation are remedial in nature and the creditor had three years (instead of 15) to bring its claim.

<sup>26</sup> 148 Ohio St.3d 627, 2016-Ohio-3444, 72 N.E.3d 573, ¶ 107 (2016).

<sup>27</sup> *Barbee v. Nationwide Mut. Ins. Co.*, 130 Ohio St.3d 96, 2011-Ohio-4914, 955 N.E.2d 995, ¶ 23 (2011) ("parties to a contract may validly limit the time for bringing an action on a contract to a period that is shorter than the general statute of limitations for a written contract, as long as the shorter period is a reasonable one.") (quoting *Sarmiento v. Grange Mut. Cas. Co.*, 106 Ohio St.3d 403, 2005-Ohio-5410, 835 N.E.2d 692, ¶ 11).

<sup>28</sup> Oliver W. Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 476 (1897).

<sup>29</sup> "The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state."

<sup>30</sup> R.C. 1.48; *State v. Cook* (1998), 83 Ohio St.3d 404, 410, 700 N.E.2d 570, 576.

<sup>31</sup> *Id.*

<sup>32</sup> *Rairden v. Holden* (1864), 15 Ohio St. 207, 210.

<sup>33</sup> 148 Ohio St.3d 627, 2016-Ohio-3444, 72 N.E.3d 573 (2016).

In *Unifund CCR Partners v. Piasek*,<sup>34</sup> the Court held that a cause of action on a credit card debt claim accrued prior to the effective date of amended R.C. 2305.03, and was time barred as soon as the amendment became effective.

When R.C. 2305.06 was amended in 2012 by the 129th General Assembly, sections 3 and 4 of Sub. S.B. 224 bill provided that it did not apply to causes of action accrued prior to the Act's effective date, and that the eight year period of limitations ran from the effective date of the Act.<sup>35</sup>

Because HB 251 does not expressly limit its application to contracts entered into after the law is enacted, as Sub. S.B. 224 and Kentucky did when enacting KRS 413.160, it will impact and impair existing contracts that are already in default, and curtail the time for bringing an action seeking remedies for breach.

By reducing the time to sue R.C. 2305.06 under R.C. 2305.07 without preserving vested rights to recover on claims that have already accrued, untold numbers of receivables will be rendered worthless.

**D. HB 251 increases the burden on courts by accelerating the deadline for commencing litigation and is arbitrary.**

As noted in the previous section, HB 251 would immediately affect obligations that are currently subject to an eight year statute of limitations.

By reducing the time to sue R.C. 2305.06 and R.C. 2305.07, there is a real potential that it will have the very real effect of creating an incentive to bring suits before the law goes into effect, thereby burdening Ohio's courts with an increase in volume of litigation.

Further, the Ohio legislature's choice to change the statute of limitations on written contract actions in 2012 from 15 years to eight years reflects a reasoned policy decision for establishing eight years, balancing the competing interests in establishing peace of mind, reducing uncertainty, promoting diligence, and ensuring accurate fact-finding in the judicial process.

With the exception of five states noted above, the vast majority (45) of the U.S. States have limitations period for written contract actions that are longer than 3 years.

Nothing offered by the proponents of HB 251 compels an alteration in the policy decision made by the legislature seven years ago that eight years was neither too long nor too short.

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<sup>34</sup> 2019-Ohio-183, ¶ 30, *review denied*, 155 Ohio St.3d 1438, 2019-Ohio-1536 (2019),

<sup>35</sup> [http://archives.legislature.state.oh.us/bills.cfm?ID=129\\_SB\\_224](http://archives.legislature.state.oh.us/bills.cfm?ID=129_SB_224), 2012 Ohio Laws File 135 (Sub. S.B. 224):

“Section 3. Subject to Section 4 of this act, section 2305.06 of the Revised Code, as amended by this act, applies to actions in which the cause of action accrues on or after the effective date of this act.

Section 4. For causes of action that are governed by section 2305.06 of the Revised Code and accrued prior to the effective date of this act, the period of limitations shall be eight years from the effective date of this act or the expiration of the period of limitations in effect prior to the effective date of this act, whichever occurs first.”

## CONCLUSION

For these numerous reasons stated above, the Ohio Creditor's Attorneys Association respectfully asks you and the members of the House Civil Justice Committee to oppose HB 251.

Thank you.

On behalf of the Ohio Creditor's Attorneys Association,



Michael D. Slodov, Esq.  
Javitch Block LLC  
1100 Superior Ave., 19th Floor  
Cleveland, Ohio 44114  
866.881.2400 ext. 2781  
direct -440.318.1073  
fax -216.685.3039  
[msslodov@jblc.com](mailto:msslodov@jblc.com)