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 support for Substitute House Bill No. 251, legislation that would modify Ohio’s statutes of limitations.

We provide you with a point-by-point analysis of the changes included in Sub.H.B. No. 251 in the attachment to this statement. Briefly summarizing, our reasons for supporting this bill, are:

A. Sub. H.B. No. 251 is both timely and necessary in light of the Consumer Financial Protection Bureau’s Regulation F, expected to be adopted later this year, including a rule imposing liability for bringing or threatening to bring a time-barred legal action. See Debt Collection Practices (Regulation F), 84 Fed. Reg. 23,274, 23,327-23,329, 23,403 (proposed May 21, 2019) (to be codified at 12 C.F.R. pt. 1006.26).

B. Sub. H.B. No. 251 clarifies the uncertainty created by the plurality decision in Taylor v. First Resolution Invest. Corp., 2016-Ohio-3444, 148 Ohio St. 3d 627, 72 N.E.3d 573, cert. denied, 137 S. Ct. 398 (2016), because “determining whether the statute of limitations has expired can be complex” and “a debt collector may be genuinely uncertain even after undertaking a reasonable investigation ... for example, when the case law in a State is unclear.” Van Hoven v. Buckles & Buckles, P.L.C, __ F.3d __, __, No. 18-2399, 2020 WL 239290, at *7 (6th Cir. Jan. 16, 2020) (quoting Debt Collection Practices (Regulation F), at 23,329).

C. Sub. H.B. No. 251 corrects a long-overdue over-extension of tort reform legislation in S.B. 80, to all civil actions under Section 2305.03 of the Revised Code, commonly referred to as the borrowing statute, enacted in 2004 by the 125th General Assembly. Sub. H.B. No. 251 makes a curative amendment to division 2305.03(B) of the Revised Code by limiting its application to tort actions, and section 3(B) of the bill makes the change to section 2305.03 retroactive to the effective date of S.B. 80 on April 7, 2005.
D. Sub. H.B. No. 251 consolidates claims against consumers under a single statute of limitations under 2305.07(C) of the Revised Code, (except commercial paper under UCC 3-118 and actions to recover the title to or possession of real property), whether express or implied contract, the sale of goods and notwithstanding any post-default partial payment, or borrowing statute, under a single six year statute of limitations.

E. 2305.07(C) also addresses the uncertainty as to when a cause of action accrues on a credit card debt claim, unresolved by the plurality decision in *Taylor*, adopting the standard discussed by the concurring opinion of Justice Kennedy, at paragraphs 116-121, 2016-Ohio-3444.

CONCLUSION

For these numerous reasons stated above, the Ohio Creditor’s Attorneys Association respectfully asks you and the members of the Judiciary Committee to favorably report Sub. H.B. No. 251.

Thank you.

On behalf of the Ohio Creditor’s Attorneys Association,

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Sec. 2305.03. (A) Except as provided in division (B) of this section and unless a different limitation is prescribed by statute, a civil action may be commenced only within the period prescribed in sections 2305.04 to 2305.22 of the Revised Code. If interposed by proper plea by a party to an action mentioned in any of those sections, lapse of time shall be a bar to the action.

(B) No civil tort action, as defined in section 2305.236 of the Revised Code, 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.

(C) No action upon a specialty or an agreement, contract, or promise in writing, other than an action described in division (C) of section 2305.07 of the Revised Code, that seeks post-default interest at a rate governed by or provided in the substantive laws of any other state, territory, district, or foreign jurisdiction, and in excess of the rate of interest provided by section 5703.47 of the Revised Code, may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that state has expired.


Sec. 2305.03(B) – Effective April 7, 2005, S.B. 80, 125th General Assembly, predominantly addressed needed reforms to the justice system arising from abusive tort claims. See Am. Sub. S. B. No. 80 § 3(A)(3)(a)-(f); Legislative Service Commission, Final Analysis Am. Sub. S.B. 80 (containing 118 references to torts).

Sub. H.B. No. 251 makes a curative amendment to division 2305.03(B) by limiting its application to tort actions.

Section 2305.236(F), defines “tort action” as “a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.”
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.

(D) No action described in division (C) of section 2305.07
of the Revised Code that seeks post charge-off interest at a
rate governed by or provided in the substantive laws of any
other state, territory, district, or foreign jurisdiction, and
in excess of the rate of interest provided by section 5703.47 of
the Revised Code, 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.

Sec. 2305.06. Except as provided in sections 126.301 and 1302.98, 1303.16, and 2305.04 of the Revised Code, an action
upon a specialty or an agreement, contract, or promise in
writing shall be brought within eight years after the cause
of action accrued.

Sec. 2305.07. (A) Except as provided in sections 126.301 and 1302.98 of the Revised Code, an action upon a contract not
in writing, express or implied, or shall be brought within four
years after the cause of action accrued.

(B) An action upon a liability created by statute other
than a forfeiture or penalty—shall be brought within six years

Sec. 2305.03(D) – Similar to division 2305.30(C), this division
would bar an action in Ohio by a creditor seeking recovery on
consumer claim described in 2305.07(C), which seek post-
charge-off interest above the variable rate provided by sec.
5703.47 (currently 5%), based on the law of another state for the
higher interest rate, if the law of the other state would bar the
action.

Sec. 2305.06 – This section is revised to provide that an action
on a written agreement must be brought within six years after
the cause of action accrues.

This section is further modified to clarify that existing law
provides for other limitations periods for specified types of
contract actions under sections 1303.16 and 2305.04.

Sec. 2305.07(A) – This section modifies existing section
2305.07 and subdivides the statute into three parts.
Under division (A), an implied contract action must be brought
within four year after the cause of action accrues, whereas
current law permits such actions to be brought within six years.
The limitations period is shortened to lessen the economic
burden associated with recordkeeping.

Sec. 2305.07(B) –Current law provide that actions on liabilities
created by statute must be brought within six years after the
cause of action accrues. This division does not change current
law.
after the cause of action accrued.

(C) Except as provided in sections 1303.16 and 2305.04 of the Revised Code, and notwithstanding divisions (A) and (B) of this section, sections 1302.98 and 2305.08, and division (B) of section 2305.03 of the Revised Code, an action arising out of a consumer transaction incurred primarily for personal, family, or household purposes, based upon any contract, agreement, obligation, liability, or promise, express or implied, including an account stated, whether or not reduced to writing or signed by the party to be charged by that transaction, shall be commenced within six years after the cause of action accrued. For purposes of this division, a cause of action accrues after the consumer's account is closed, settled to a single liability, and following the last pertinent entry of the account.

Section 2. That existing sections 2305.03, 2305.06, and 2305.07 of the Revised Code are hereby repealed.

Section 3. (A) Subject to Sections 4 and 5 of this act, sections 2305.06 and 2305.07 of the Revised Code, as amended by this act, apply to an action in which the cause of action accrues on or after the effective date.

(B) Division (B) of section 2305.03 of the Revised Code, as amended by this act, applies retroactively to April 7, 2005, the effective date of S.B. 80 of the 125th General Assembly.
Section 4. For causes of action that are governed by section 2305.06 of the Revised Code and that accrued prior to the effective date of this act, the period of limitations shall be six 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.

Section 5. (A) For causes of action that are governed by division (A) of section 2305.07 of the Revised Code that accrued prior to the effective date of this act, the period of limitations shall be four 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.

(B) For causes of action that are governed by division (C) of section 2305.07 of the Revised Code that accrued prior to the effective date of this act, the period of limitations shall be six 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.