Sub. HB 27

Testimony by John Van Doorn

For the Ohio Association for Justice

Before the Senate Insurance & Financial Institutions Committee

June 13, 2017

Mr. Chairman and members,

My name is John Van Doorn and I am the legislative representative for the Ohio Association for Justice, the statewide bar association for attorneys that represent people who are injured and need help getting proper medical care and then getting back on their feet financially. Many OAJ members advocate for workers injured on the job by assisting them with their workers’ compensation claims.

OAJ is testifying today as an interested party. We support the BWC’s budget and most of the substantive law changes being made by this legislation. We commend Administrator Morrison and her team for their sound fiscal management and for their inclusive style of management.

I also want to express our appreciation to Rep. Tom Brinkman and members of the House Insurance Committee for including in this bill several suggestions that OAJ offered, which are best described as modest proposals that benefit both injured workers and employers.

The main focus of my testimony is to express OAJ’s opposition to two parts of the bill – one that that cuts in half the statute of limitations, from two years to one year, for injured workers to file a claim for workers’ compensation. And OAJ opposes the provision that denies undocumented workers access to workers’ comp coverage when they are injured on the job.

There are many legitimate reasons why an injured worker would not file within one year.

Some hope their injury will heal, so they wait. They try to work through their problems, medical as well as financial, often for an extended period of time, hoping for the best. Some injuries may not seem like a big deal at first but they become more severe over time. Think of a sharp blow to your abdomen. Your ribs may feel better over time, but ultimately you may require surgery to repair damage done internally.

Some workers hesitate to file a workers’ comp claim because they suspect filing will put their job in jeopardy. This is the best job they’ve ever had; they’ve heard others say the boss doesn’t like WC claims, so they tough it out.

Some employers encourage their workers who are injured not to file a claim. Employers promise to work with the injured worker, to pay for their medical care and to pay them for time off work. But when the injury lingers, the employer pulls back on those promises.

This change impacts all those who hesitate to file a claim. As I’ve described, most have virtuous reasons for hesitating to file. They are not holding off filing their claim until the second year so they can suddenly surprise the boss with a claim that will cause the employer to lose their group rating. That’s a fiction.

We object because workers’ compensation is a category of tort law, and the statute of limitations for other tort claims in Ohio is two years. The statute for injured workers should be the same as it is for people injured in their cars, by faulty products, or in any other circumstance.

We object because a shorter statute of limitations is unnecessary. No evidence has been presented to justify this reduction. There is no evidence because there is no problem – Ohio is not experiencing a rash of claims filed in the second year after the injury occurs. On the contrary, the total number of workers’ comp claims has plummeted from 296,000 new claims filed in 1996 to just 88,000 claims filed in 2016.

Consider the optics of this change. This provision is intended to cut off access to medical care and compensation for a small group of injured workers. It is proposed at the same time that the Bureau has announced a Third Billion Back in premium refunds to employers. Our workers’ comp system is awash in money. In the past six years, the Bureau has given the business community $6.3 billion in rate cuts, rebates and credits.

We urge you to remove this one-year statute of limitation provision from the bill.

Let’s turn now to the matter of coverage for undocumented workers. OAJ opposes the denial of coverage for a number of reasons, but I’ll present just one.

This proposal punishes the wrong people.

It punishes workers who have sustained major injuries. Undocumented workers don’t file claims for minor injuries like a sprained wrist; they file only when their injuries are severe, when they have lost an arm or crushed a vertebrae. Punishing them is inhumane.

The people who should be punished are the unscrupulous employers who exploit undocumented workers. They are operating outside the law, and they know it. They skirt the law to gain an unfair competitive advantage over law-abiding business. Why would the legislature help an employer whose business model is to intentionally violate the law?

We have a suggestion on how you might address this matter. Allow the undocumented worker to file a workers’ compensation claim in order to receive the medical care they need. But then hold the law-breaking employer accountable by requiring them to reimburse the Bureau dollar-for-dollar for the cost of that injured workers’ medical care. In that way, you would provide a powerful incentive for these employers to comply with the law.

I appreciate this opportunity to testify, Mr. Chairman. If you or members have questions, I’ll do my best to respond.