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Testimony on House Bill 251 Before the House Civil Justice Committee

Audra Funk, Esq. on behalf of the
Ohio Creditor's Attorneys Association

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Good afternoon Chairman Hambley, Vice Chairman Patton, Ranking Member Brown and members of the Ohio House Civil Justice Committee. My name is Audra Funk and I am here today speaking on behalf of the Ohio Creditor's Attorneys Association ("the OCAA"). Thank you for this opportunity to explain our opposition to House Bill 251.

The OCAA is a voluntary bar association for attorneys devoted to the practice of creditors' rights law throughout the state of Ohio. It is comprised of over 50 law firms and has been an active participant in the Ohio Legislature advocating for the rights of its members and members' clients since 1994. Our members recognize the important role credit plays in the economy. We work ethically to recover funds for our clients while

treating those in default with dignity and respect, and complying with regulatory standards.

I have been an active member and am a former secretary of the OCAA. I began my practice of law in 2001 representing Ohio consumers in Chapter 7 and 13 bankruptcies. From 2002 through 2016, I shifted my practice and began representing many different types of creditors to include banks, debt buyers, medical providers, insurance companies as well as commercial businesses. Since 2016, I have been working as in-house counsel for a national collection agency that provides debt collection services to medical, utility and financial industry customers in all 50 states.

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 limitations¹ from eight years to three years, and Ohio's oral contract statute of limitations² from six years to three years.

There are four main reasons we are opposed. First, this bill is based on a fallacy that shortening a state's contract statute of limitations is somehow causally related to economic growth, business climate or competition. The evidence does not support the premise. According to our statistics for economic growth³, Ohio is currently ranked 35th

¹ R.C. § 2305.06

² R.C. § 2305.07

³ U.S. Bureau of Economic Analysis

in the nation. In the Fall of 2011, I stood before this committee addressing the last proposed reduction of Ohio's statute of limitations contained in Senate Bill 224 from 15 to 8 on written contracts and Ohio was ranked 20th at that time. That bill resulted in a drastic reduction from 15 to 8 years, yet does not appear to have improved Ohio's rankings. Furthermore, based on the data when you look at the five states with the lowest statute of limitations periods for written contracts, one cannot demonstrate that a state's contract statute of limitations is causally related to that state's economic growth or business climate.

Secondly, this bill is unnecessary as there are other statutes of limitations already in place in Ohio which reduce the time for bringing actions on specific types of written contract obligations⁴. In addition, parties are free to contract amongst themselves to deviate from the otherwise applicable statute of limitations and such provisions are enforceable by the Courts.

Thirdly, this bill disrupts settlement expectations underlying existing contract obligations today and will have the potential to deprive business owners of receivables they expected to recover but cannot because too much time has now passed. Because

⁴ E.g., 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 with a shorter limitations period under Ohio's borrowing statute (R.C. 2305.03(B), suits on bodily injury, product liability, or damage to personal property (2 years, R.C. 2305.10).

this Bill does not have a provision which expressly limits its application to contracts entered into after the law goes into effect, like SB 224 did, 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 without preserving vested rights to recover on claims that have already accrued, untold numbers of receivables will be rendered worthless.

Finally, this bill will increase the burden on consumers, creditors and the courts by accelerating the deadline for commencing litigation. By reducing the time to sue, there is real potential that it will have the 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 and may also increase consumer bankruptcy filings. Consumers need time to recoup from the life changing event that caused them to incur debt. Likewise, creditors need time to locate, engage and work with consumers to resolve their debts. Many creditors consider a law suit as not a gateway to justice but a last resort they do not wish to take unless their hand is forced. This bill will force their hand unnecessarily.

At this time, I am happy to field any questions you may have. Thank you.