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CREDITOR'S RIGHTS

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Testimony in Support of Sub. H.B. No. 251
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Chairman John Eklund
Senate Judiciary Committee
1 Capital Square, 1st Floor
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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.

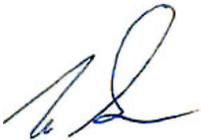
- D. Sub. H.B. No. 251 consolidates claims against consumers under a single statute of limitations under 2305.07(C) of the Revised Code, (except commercial paper under UCC 3-118 and actions to recover the title to or possession of real property), whether express or implied contract, the sale of goods 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.

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(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.

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(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

OCAA COMMENTS ON SUB.H.B. NO. 251

General - The Consumer Financial Protection Bureau's Regulation F is expected to be adopted later this year, including a rule imposing liability for bringing or threatening to bring a time-barred 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). The need to clarify the uncertainty unresolved 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) is manifest.

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.”

Sec. 2305.03(C) – This division ensures that creditors suing in Ohio under contracts governed by the law of another state, would not be permitted to both benefit from a higher interest rate than Ohio law permits (*c.f. Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299, 318, 99 S.Ct. 540, 550 (1978)), and Ohio's longer statute of limitations, if that other state's law would bar the action. To fall within this prohibition, a creditor seeking recovery on a written agreement (other than a consumer claim governed by section 2305.07(C)), who seeks post-default interest above the variable rate provided by sec. 5703.47 (currently 5%), and who relies on the law of another state for that higher rate, cannot maintain the action in Ohio if the law of the other state would bar the action.

other state, territory, district, or foreign jurisdiction has 32
expired or the period of limitation that applies to that action 33
under the laws of this state has expired. 34

(D) No action described in division (C) of section 2305.07 35
of the Revised Code that seeks post charge-off interest at a 36
rate governed by or provided in the substantive laws of any 37
other state, territory, district, or foreign jurisdiction, and 38
in excess of the rate of interest provided by section 5703.47 of 39
the Revised Code, may be commenced and maintained in this state 40
if the period of limitation that applies to that action under 41
the laws of that other state, territory, district, or foreign 42
jurisdiction has expired or the period of limitation that 43
applies to that action under the laws of this state has expired. 44

Sec. 2305.06. Except as provided in sections 126.301 ~~and~~, 45
1302.98, 1303.16, and 2305.04 of the Revised Code, an action 46
upon a specialty or an agreement, contract, or promise in 47
writing shall be brought within ~~eight~~ six years after the cause 48
of action accrued. 49

Sec. 2305.07. (A) Except as provided in sections 126.301 50
and 1302.98 of the Revised Code, an action upon a contract not 51
in writing, express or implied, ~~or~~ shall be brought within four 52
years after the cause of action accrued. 53

(B) An action upon a liability created by statute other 54
than a forfeiture or penalty, ~~shall~~ be brought within six years 55

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 ~~thereof~~ of action accrued. 56

(C) Except as provided in sections 1303.16 and 2305.04 of 57
the Revised Code, and notwithstanding divisions (A) and (B) of 58
this section, sections 1302.98 and 2305.08, and division (B) of 59
section 2305.03 of the Revised Code, an action arising out of a 60
consumer transaction incurred primarily for personal, family, or 61
household purposes, based upon any contract, agreement, 62
obligation, liability, or promise, express or implied, including 63
an account stated, whether or not reduced to writing or signed 64
by the party to be charged by that transaction, shall be 65
commenced within six years after the cause of action accrued. 66
For purposes of this division, a cause of action accrues after 67
the consumer's account is closed, settled to a single liability, 68
and following the last pertinent entry of the account. 69

Section 2. That existing sections 2305.03, 2305.06, and 70
2305.07 of the Revised Code are hereby repealed. 71

Section 3. (A) Subject to Sections 4 and 5 of this act, 72
sections 2305.06 and 2305.07 of the Revised Code, as amended by 73
this act, apply to an action in which the cause of action 74
accrues on or after the effective date of this act. 75

(B) Division (B) of section 2305.03 of the Revised Code, 76
as amended by this act, applies retroactively to April 7, 2005, 77
the effective date of S.B. 80 of the 125th General Assembly. 78

Sec. 2305.07(C) - Section 2305.07(C) is added to bring all consumer claims (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.

The division 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 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).

The last sentence adopts the standard discussed by the concurring opinion of Justice Kennedy, paragraphs 116-121, 2016-Ohio-3444.

Section 3(A) – Provides that the amendments to 2305.06 and 2305.07 apply to causes of action that accrue on or after the effective date.

Section 3(B) - Section 3(B) makes the change to section 2305.03 retroactive to the effective date of S.B. 80 on April 7, 2005. *State ex rel. McElroy v. A. M. Kinney, Inc.*, 171 Ohio St. 193, 196, 168 N.E.2d 400, 402 (1960); 2 SUTHERLAND STATUTORY CONSTRUCTION §§ 41:11, 41:16 (7th ed.).

Section 4. For causes of action that are governed by 79
section 2305.06 of the Revised Code and that accrued prior to 80
the effective date of this act, the period of limitations shall 81
be six years from the effective date of this act or the 82
expiration of the period of limitations in effect prior to the 83
effective date of this act, whichever occurs first. 84

Section 5. (A) For causes of action that are governed by 85
division (A) of section 2305.07 of the Revised Code that accrued 86
prior to the effective date of this act, the period of 87
limitations shall be four years from the effective date of this 88
act or the expiration of the period of limitations in effect 89
prior to the effective date of this act, whichever occurs first. 90

(B) For causes of action that are governed by division (C) 91
of section 2305.07 of the Revised Code that accrued prior to the 92
effective date of this act, the period of limitations shall be 93
six years from the effective date of this act or the expiration 94
of the period of limitations in effect prior to the effective 95
date of this act, whichever occurs first. 96

Section 4 –Addresses the question of how the act applies to any cause of action subject to 2305.06 that accrued prior to the effective date of the amendment. Provides that the limitations period for claims governed by 2305.06 will be the shorter of six years from effective date of the act or expiration of the prior limitations period.

Section 5(A) - Addresses the question of how the act applies to any cause of action subject to division (A) of 2305.07 that accrued prior to the effective date of the amendment. Provides that the limitations period for claims governed by 2305.07(A) will be the shorter of four years from effective date of the act or expiration of the prior limitations period.

Section 5(B)-Addresses the question of how the act applies to any cause of action subject to division (C) of 2305.07 that accrued prior to the effective date of the amendment. Provides that the limitations period for claims governed by 2305.07(C) will be the shorter of six years from effective date of the act or expiration of the prior limitations period.