

**INTERESTED PARTY STATEMENT OF THE  
OHIO STATE BAR ASSOCIATION  
ON HOUSE BILL 179**

Before the House Civil Justice Committee  
Representative Brett Hillyer, Chair

Chairman Hillyer, Vice Chair Matthews, Ranking Member Galonksi, and members of the House Civil Justice Committee, thank you for the opportunity to present Interested Party testimony on House Bill 179.

The Ohio State Bar Association (“OSBA”) fully supports the provisions in the bill that seek to overturn *Elliot v. Durani* by clarifying that the tolling of the limitations period during the defendant’s absence or concealment does not apply to statutes of repose. We believe that the case was wrongly decided, because as Chief Justice Kennedy pointed out in her dissenting opinion, statutes of repose contain express exceptions to their application within their own statute and the absconding defendant rule is not one of those exceptions. The statute of repose enacted for legal malpractice last general assembly in Senate Bill 13 began as a proposal from our Senior Lawyers Section. When we drafted the language, there was no concern that a court would read into the statute an exception to statutes of limitation that are not a part of the expressly provided list of exceptions within the statute. Nevertheless, the case has been decided and we are supportive of the manner in which House Bill 179 takes away any ambiguity on this issue.

As the sponsors correctly pointed out, statutes of limitations are plaintiff-focused in that they are meant to provide potential plaintiffs an amount of time in which they must file a complaint. Statutes of repose, however, are focused on the defendant in that they provide certainty that one cannot be held liable for a specified event after a set number of years. To subject a statute of repose to the absconded defendant rule negates the purpose of the policy because it takes away any certainty in the amount of time that must pass before liability is eliminated.

With regards to the other provisions in the bill stemming from the Court’s decision in *Clawson v. Heights Chiropractic Physicians, LLC*, we are thankful for the willingness of the sponsors to address potential issues that may result from that decision. To the extent that the decision puts plaintiff’s lawyers in a difficult spot where they feel they must over-name, we would encourage the legislature to amend the Revised Code to resolve that. But the legislature should be certain that the amendments do not lead to unintended consequences. The OSBA represents counsel for plaintiffs and counsel for defendants and we hope to use our resources and history of convening the entire civil litigation world to be sure the legislature has all the information they need to make the best decision for the people of Ohio. We will continue to do whatever we can do to find consensus from both sides on this important issue.

Thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.