



# OHIO ALLIANCE FOR CIVIL JUSTICE



House Civil Justice Committee  
House Bill 179  
June 20, 2023  
Interested Party Testimony

Chair Hillyer, Vice Chair Mathews, and Ranking Member Galonski and members of the House Civil Justice Committee, thank you for providing the opportunity to give interested party testimony on behalf of the Ohio Alliance for Civil Justice on House Bill 179.

By way of background, the Ohio Alliance for Civil Justice (OACJ) was founded in the mid-1980s to stop lawsuit abuse and promote a common-sense civil justice system in Ohio. The OACJ is comprised of representatives of dozens of Ohio trade and professional associations, small and large businesses, medical groups, farmers, non-profit organizations and local government associations. The OACJ's leadership team includes representatives from the following organizations: Ohio NFIB, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Hospital Association, Ohio Manufacturers' Association, Ohio Society of CPAs, and the Ohio State Medical Association. OACJ works to ensure that the civil justice system remains stable and predictable for Ohio's businesses.

In House Bill 179, OACJ is supportive of the fix for the statute of repose in light of the *Durrani* decision. Specifically, the provisions in the bill clarify that the tolling of the limitations period during the defendant's absence or concealment does not apply to statutes of repose. Statutes of repose 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 that certainty, thereby defeating the purpose of the statute of repose.

In regards to the second section of the bill, OACJ understands that the sponsors' intention is to state who needs to be named in a lawsuit, and not to change any substantive law. While, the OACJ understands that some may desire clarification in light of *Clawson*, the OACJ does not believe that the statute as proposed provides such clarification, and instead creates more confusion. Therefore, the flaws in the language should be fixed to provide clarity. Any change to current law should not inadvertently or directly require the overnaming of employees because the overnaming of defendants is not conducive to a fair and predictable civil justice system in Ohio.

To set the stage, it is important to understand the terms used in bill. Vicarious liability generally is liability a supervisory party bears for the actionable conduct of a subordinate or associate. Vicarious liability is an umbrella for the other types of liability that fall underneath it. For instance, respondeat superior is a legal doctrine that falls under vicarious liability. Specifically, respondeat superior holds an employer legally responsible for the negligent acts of its employee, if such acts occur within the course and scope of the employment. Under the amendments to R.C. 2307.241,

it remains unclear if it will apply to only respondeat superior or all claims that fall under the umbrella of vicarious liability.

In R.C. 2307.241(B), the bill states “in a tort action alleging respondeat superior *or* vicarious liability” The language is ambiguous because by stating both legal claims it does not clearly set out what claims to which the naming requirements apply. Therefore, the naming requirements could apply to other legal claims, such as agency by estoppel, that lie under the vicarious liability umbrella. This usually comes up in the context of medical claims. However, it appears that the bill is trying to exempt medical claims from the amendments to subsection (B). Ms. Sprader’s testimony addresses this section and the impact on the medical community. With the language being unclear, it could provide different court interpretations, thereby creating inconsistency for the business community, the medical community, and others.

In R.C. 2307.241(B)(1), the phrase “if liability arises” appears. After researching the Ohio Revised Code, the phrase is not used in other statutes and could be construed to have a variety of meanings. This phrase is another example of unclear language in House Bill 179.

Additionally, the language in subsection (C) is vague. Although, it appears the language is attempting to state that nothing in this bill changes the necessary standard of proof for a claim of vicarious liability, the language is confusing and does not concisely communicate that message. Without explicit language in the law, inconsistent decisions in Ohio’s courts could occur. OACJ believes a simplified statement of law in subsection (C) would achieve that goal.

In conclusion, OACJ believes additional changes to the bill will provide needed clarification. Consistency is important to Ohio’s business climate. Thank you for the opportunity to provide testimony on House Bill 179. I am happy to answer any questions from the committee.