

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

Before the Senate Judiciary Committee
Senator Nathan Manning, Chair

Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks Hudson, and members of the Senate Judiciary 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 that was not expressly provided for. Nevertheless, the case has been decided and we are supportive of the way 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 regard 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 issues that have resulted from that decision. Ambiguity surrounding this decision and how courts could apply it have had negative consequences on the legal system in Ohio. We are supportive of legislation that provides guidance to practitioners so that they can be absolutely sure that they are not failing to name a necessary party.

We do remain an interested party on the bill’s provision relating to the *Clawson* decision. The OSBA represents counsel for plaintiffs and counsel for defendants, and we remain neutral on most issues where there are different opinions from the two sides. To that end, we would encourage the legislature to consider both viewpoints, but we stress the need for a resolution soon that both provides certainty in the law and does not lead to unintended consequences.

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