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A STATE-WIDE ASSOCIATION FOR ATTORNEYS
PRACTICING IN THE AREA OF
CREDITOR'S RIGHTS

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<i>Fredric A. Kannensohn</i> <i>Youngstown, Ohio</i> <i>(330) 743-5181, Ext.126</i>	<i>Yale R. Levy &</i> <i>Sean M. Winters</i> <i>Columbus, Ohio</i> <i>(614) 898-5200</i>	<i>Timothy E. J. Keck</i> <i>Grandview Heights, Ohio</i> <i>(614) 459-2700</i>	<i>Crystal M. Duplay</i> <i>Medina, Ohio</i> <i>(440) 403-5116</i>
<i>fredk@millkann.com</i>	<i>sean@levylawllc.com</i>	<i>tkeck@pohlerlaw.com</i>	<i>crystal@lawgixlawyers.com</i>

Testimony in Support of S.B. No.13
Michael D. Slodov, Esq.
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Chairman Nathan H. Manning
Senate Judiciary Committee
1 Capital Square, 1st Floor
Columbus, Ohio 43215

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 Senate Bill 13, legislation that will modify Ohio's statutes of limitations.

We provide you with a point-by-point analysis of the changes included in S.B. No. 13 in the attachment to this statement. Briefly summarizing, our reasons for supporting this bill, are:

- A. S.B. No. 13 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. S.B. No. 13 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.
- B. S.B. No. 13 further amends section 2305.03 by adding new subdivisions (C) and (D) which apply when a creditor seeks post-default or post-charge off interest in an action brought in this state, based on a sister state's rate of interest in excess of Ohio's permitted interest rate. In such cases, the claim cannot be maintained in an Ohio court if the sister state's statute of limitations which authorizes the interest rate sought has expired.
- C. S.B. No. 13 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), which failed to reach consensus on where and when a cause of action accrues on a consumer credit card debt.

- D. The bill will resolve all doubt about over selecting the limitations periods governing claims brought in Ohio courts, and will restore the law of Ohio as providing the governing limitations period.
- E. Even when a claim is brought that is subject to new subdivisions (C) and (D) of section 2305.03, described above, the sister state's law governing the interest rate issue the creditor seeks to enforce will clarify the limitations issue and provide the measure to assess the timeliness of the claim.
- F. The bill will also resolve the uncertainty as to when the cause of action accrues, as section 2305.07(C) includes a definition for the accrual date, fixing it to 30 days after the last charge or payment by or on behalf of a consumer.
- G. S.B. No. 13 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.
- H. S.B. No. 13 is both timely and necessary in light of the Consumer Financial Protection Bureau's Regulation F, which will impose liability on attorneys for bringing or threatening to bring a time-barred action. *See Consumer Financial Protection Bureau, Debt Collection Practices (Regulation F)*, codified at 12 C.F.R. pt. 1006, 86 Fed.Reg. 5766, 5854 (to be codified at 12 C.F.R. § 1006.26 (eff. 11/30/21)). See <https://www.federalregister.gov/d/2020-28422/p-1246>.

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 S.B. No. 13.

Thank you.

On behalf of the Ohio Creditor's Attorneys Association,



Michael D. Slodov, Esq.
Javitch Block LLC
1100 Superior Ave., 19th Floor
Cleveland, Ohio 44114
866.881.2400 ext. 2781
direct -440.318.1073
fax -216.685.3039
msslodov@jblc.com

12 Sec. 2305.03. (A) Except as provided in division (B) of
13 this section and unless a different limitation is prescribed by
14 statute, a civil action may be commenced only within the period
15 prescribed in sections 2305.04 to 2305.22 of the Revised Code.
16 If interposed by proper plea by a party to an action mentioned
17 in any of those sections, lapse of time shall be a bar to the
18 action.

19 B) No civil tort action, as defined in section 2305.236
20 of the Revised Code, that is based upon a cause of action that
21 accrued in any other state, territory, district, or foreign
22 jurisdiction may be commenced and maintained in this state if
23 the period of limitation that applies to that action under the
24 laws of that other state, territory, district, or foreign
25 jurisdiction has expired or the period of limitation that
26 applies to that action under the laws of this state has expired.

27 (C) No action upon a specialty or an agreement, contract,
28 or promise in writing, other than an action described in
29 division (C) of section 2305.07 of the Revised Code, that seeks
30 post-default interest at a rate governed by or provided in the
31 substantive laws of any other state, territory, district, or
32 foreign jurisdiction, and in excess of the rate of interest
33 provided by section 5703.47 of the Revised Code, may be

12 Sec. 2305.03(B) Ohio tort reform legislation effective April
13 7, 2005, S.B. 80, 125th General Assembly, addressed needed
14 reforms to the justice system arising from abusive tort
15 claims. See Am. Sub. S. B. No. 80 § 3(A)(3)(a)-(f);
16 Legislative Service Commission, Final Analysis Am. Sub.
17 S.B. 80 (containing 118 references to torts). Universal
18 agreement exists that S.B. 80 was never intended to alter
19 Ohio limitations law for contract actions. S.B. 13 makes a
20 curative amendment to division 2305.03(B) by limiting its
21 application to tort actions. There is no question that the
22 General Assembly can enact such retroactive curative
23 legislation so long as it does not interfere with vested
24 contract rights. *State ex rel. McElroy v. A. M. Kinney, Inc.*, 171
25 Ohio St. 193, 196, 168 N.E.2d 400, 402 (1960). Curative
26 laws are those that fixes some irregularity in a law previously
27 enacted, or more aptly captures legislative intent. *Wilson v.*
28 *AC&S, Inc.*, 12th Dist. No. CA2006-03-056, 169 Ohio
29 App.3d 720, 2006-Ohio-6704, 864 N.E.2d 682, ¶ 125,
30 *construing Burgett v. Norris* (1874), 25 Ohio St. 308, 316; 2
31 Sutherland Statutory Construction § 41:1 (7th ed.). Section
32 2305.236(F), defines “tort action” as “a civil action for
33 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.”

26 Sec. 2305.03(C) – To ensure the amendment to Sec.
27 2305.03(B) is not abused, this division ensures that creditors
28 suing in Ohio under contracts governed by the law of
29 another state, would not be permitted to both benefit from
30 a higher interest rate than Ohio law permits (*c.f. Marquette*
31 *Nat. Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S.
32 299, 318 (1978)), and Ohio’s longer statute of limitations, if
33 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.

commenced and maintained in this state if the period of 34
limitation that applies to that action under the laws of that 35
other state, territory, district, or foreign jurisdiction has 36
expired or the period of limitation that applies to that action 37
under the laws of this state has expired. 38

(D) No action described in division (C) of section 2305.07 39
of the Revised Code that seeks post charge-off interest at a 40
rate governed by or provided in the substantive laws of any 41
other state, territory, district, or foreign jurisdiction, and 42
in excess of the rate of interest provided by section 5703.47 of 43
the Revised Code, may be commenced and maintained in this state 44
if the period of limitation that applies to that action under 45
the laws of that other state, territory, district, or foreign 46
jurisdiction has expired or the period of limitation that 47
applies to that action under the laws of this state has expired. 48

Sec. 2305.06. Except as provided in sections 126.301~~and,~~ 49
1302.98, ~~1303.16, 1345.10, and 2305.04~~ of the Revised Code, an 50
action upon a specialty or an agreement, contract, or promise in 51
writing shall be brought within ~~eight~~ six years after the cause 52
of action accrued. 53

Sec. 2305.07. (A) Except as provided in sections 126.301 54
and 1302.98 of the Revised Code, an action upon a contract not 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, 1345.10 and 2305.04.

Sec. 2305.07 – This section modifies existing section 2305.07 and subdivides the statute into three parts.

in writing, express or implied, ~~or~~ shall be brought within four years after the cause of action accrued.

(B) An action upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause ~~thereof~~ of action accrued.

(C) Except as provided in sections 1303.16, 1345.10, and 2305.04 of the Revised Code, and notwithstanding divisions (A) and (B) of this section, section 1302.98, and division (B) of section 2305.03 of the Revised Code, an action arising out of a consumer transaction incurred primarily for personal, family, or household purposes, based upon any contract, agreement, obligation, liability, or promise, express or implied, including an account stated, whether or not reduced to writing or signed by the party to be charged by that transaction, shall be commenced within six years after the cause of action accrued. For purposes of this division, a cause of action accrues thirty calendar days after the date of the last charge or payment by, or on behalf of, the consumer, whichever is later.

Sec. 2305.11. (A) An action for libel, slander, malicious prosecution, or false imprisonment, an action for malpractice other than an action upon a medical, dental, optometric, or chiropractic claim, an action for legal malpractice against an

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Sec. 2305.07(A) - 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.

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.

This 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. The bill provides that consumer claims accrue 30 days after the last charge or payment by or on behalf of a consumer. This revision represents a compromise reached in response to objections raised by consumer advocates in the judiciary committee at the fourth hearing of Sub. H.B. 251 on May 20, 2020.

This definition is consistent with the general view of courts addressing “accrual” regarding credit card debt claims as running from the failure to pay when due, but fixes the accrual date on a date that can be readily ascertained without an extensive or searching inquiry over years of transaction records to find every instances that the consumer’s payments were either a day late or a dollar short. It likewise prevents creditors from artificially extending the date of accrual by fixing the accrual date to the conduct of the consumer’s payments or the consumer’s charges, rather than the creditor’s debits and credits.

attorney or a law firm or legal professional association, or an 78
action upon a statute for a penalty or forfeiture shall be 79
commenced within one year after the cause of action accrued, 80
provided that an action by an employee for the payment of unpaid 81
minimum wages, unpaid overtime compensation, or liquidated 82
damages by reason of the nonpayment of minimum wages or overtime 83
compensation shall be commenced within two years after the cause 84
of action accrued. 85

(B) A civil action for unlawful abortion pursuant to 86
section 2919.12 of the Revised Code, a civil action authorized 87
by division (H) of section 2317.56 of the Revised Code, a civil 88
action pursuant to division (B) of section 2307.52 of the 89
Revised Code for terminating or attempting to terminate a human 90
pregnancy after viability in violation of division (A) of 91
section 2919.17 of the Revised Code, and a civil action for 92
terminating or attempting to terminate a human pregnancy of a 93
pain-capable unborn child in violation of division (E) of 94
section 2919.201 of the Revised Code shall be commenced within 95
one year after the performance or inducement of the abortion or 96
within one year after the attempt to perform or induce the 97
abortion in violation of division (A) of section 2919.17 of the 98

Sec. 2305.11. We generally support the effort to add legal malpractice claims to Ohio's statute of repose.

Revised Code or division (E) of section 2919.201 of the Revised	99
Code.	100
(C) As used in this section, "medical claim," "dental	101
claim," "optometric claim," and "chiropractic claim" have the	102
same meanings as in section 2305.113 of the Revised Code.	103
<u>Sec. 2305.117. (A) Except as otherwise provided in this</u>	104
<u>section, an action upon a legal malpractice claim against an</u>	105
<u>attorney or a law firm or legal professional association shall</u>	106
<u>be commenced within one year after the cause of action accrued.</u>	107
<u>(B) Except as to persons within the age of minority or of</u>	108
<u>unsound mind as provided by section 2305.16 of the Revised Code,</u>	109
<u>and except as provided in division (C) of this section, both of</u>	110
<u>the following apply:</u>	111
<u>(1) No action upon a legal malpractice claim against an</u>	112
<u>attorney or a law firm or legal professional association shall</u>	113
<u>be commenced more than four years after the occurrence of the</u>	114
<u>act or omission constituting the alleged basis of the legal</u>	115
<u>malpractice claim.</u>	116
<u>(2) If an action upon a legal malpractice claim against an</u>	117
<u>attorney or a law firm or legal professional association is not</u>	118
<u>commenced within four years after the occurrence of the act or</u>	119

<u>omission constituting the alleged basis of the claim, then, any</u>	120
<u>action upon that claim is barred.</u>	121
<u>(C)(1) If a person making a legal malpractice claim</u>	122
<u>against an attorney or a law firm or legal professional</u>	123
<u>association, in the exercise of reasonable care and diligence,</u>	124
<u>could not have discovered the injury resulting from the act or</u>	125
<u>omission constituting the alleged basis of the claim within</u>	126
<u>three years after the occurrence of the act or omission, but, in</u>	127
<u>the exercise of reasonable care and diligence, discovers the</u>	128
<u>injury resulting from that act or omission before the expiration</u>	129
<u>of the four-year period specified in division (B)(1) of this</u>	130
<u>section, the person may commence an action upon the claim not</u>	131
<u>later than one year after the person discovers the injury</u>	132
<u>resulting from that act or omission.</u>	133
<u>(2) A person who commences an action upon a legal</u>	134
<u>malpractice claim under the circumstances described in division</u>	135
<u>(C)(1) of this section has the affirmative burden of proving, by</u>	136
<u>clear and convincing evidence, that the person, with reasonable</u>	137
<u>care and diligence, could not have discovered the injury</u>	138
<u>resulting from the act or omission constituting the alleged</u>	139
<u>basis of the claim within the three-year period described in</u>	140
<u>that division.</u>	141

Section 2. That existing sections 2305.03, 2305.06, 142
2305.07, and 2305.11 of the Revised Code are hereby repealed. 143

Section 3. (A) Subject to Sections 4 and 5 of this act, 144
sections 2305.06 and 2305.07 of the Revised Code, as amended by 145
this act, apply to an action in which the cause of action 146
accrues on or after the effective date of this act. 147

(B) Division (B) of section 2305.03 of the Revised Code, 148
as amended by this act, applies retroactively to April 7, 2005, 149
the effective date of S.B. 80 of the 125th General Assembly. 150

Section 4. For causes of action that are governed by 151
section 2305.06 of the Revised Code and that accrued prior to 152
the effective date of this act, the period of limitations shall 153
be six years from the effective date of this act or the 154
expiration of the period of limitations in effect prior to the 155
effective date of this act, whichever occurs first. 156

Section 5. (A) For causes of action that are governed by 157
division (A) of section 2305.07 of the Revised Code that accrued 158
prior to the effective date of this act, the period of 159
limitations shall be four years from the effective date of this 160
act or the expiration of the period of limitations in effect 161
prior to the effective date of this act, whichever occurs first. 162

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 –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.

(B) For causes of action that are governed by division (C) 163
of section 2305.07 of the Revised Code that accrued prior to the 164
effective date of this act, the period of limitations shall be 165
six years from the effective date of this act or the expiration 166
of the period of limitations in effect prior to the effective 167
date of this act, whichever occurs first. 168

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.