

Testimony in Support of Am. Sub. HB 80
Offered by Chelsea Fulton Rubin
On behalf of the Ohio Association for Justice
Before the Senate Insurance and Financial Institutions Committee
June 18, 2019

Good afternoon, Chairman Hackett, Vice Chairman Hottinger, Ranking Member Craig and members,

My name is Chelsea Fulton Rubin, and I am here to provide testimony on amended substitute House Bill 80 on behalf of the Ohio Association for Justice, the statewide bar association of trial attorneys whose mission is to protect our 7th Amendment rights. OAJ includes among its membership most of the attorneys who represent and assist injured workers with their workers' compensation claims in Ohio. I am the current legislative chair and immediate past workers' compensation chair of the organization, and I exclusively represent injured workers and disabled children and adults seeking Social Security disability insurance.

OAJ finds much to like in amended substitute HB 80. First and foremost, we support adequate funding for the BWC. Further, we support several provisions that were included in the substitute bill, which we believe will make the Ohio workers' compensation system work better for all stakeholders.

OAJ supports the elimination of a state-fund employer's authority to veto a settlement when the claim is no longer in the employer's experience. R.C. 4123.65(G). A state-fund employer should not have the power to veto a settlement application if the employer is no longer impacted. This practice creates bad policy for the workers' compensation system as it makes it more difficult to settle claims.

OAJ supports the provision nullifying judicially-created common law voluntary abandonment defenses to temporary total disability compensation. R.C. 4123.56(F). The General Assembly has enacted several statutory defenses against Temporary Total Disability compensation, like for incarceration or drug use, and for other reasons involving causal relationship. It is the legislature's duty and prerogative, not the courts, to determine when and how to award or deny compensation.

OAJ supports the provision allowing first responders to be covered for PTSD arising in the course and scope of employment. R.C. 4123.01(C)(1)(c). We would prefer this psychological coverage be extended to all workers, and not just first responders, but we recognize that the political viability of this provision depends upon this limitation.

OAJ supports the provision requiring the Bureau or a self-insuring detention facility employer to pay the cost of medical diagnostic tests when a corrections officer is exposed to bodily fluids. R.C. 4123.026. It is not uncommon for guards in our jails and prisons to be exposed to a prisoner's saliva or vomit; and it is only fair that their employer's comp coverage pay the cost of their medical tests since the exposure happened on the job.

OAJ supports the provision clarifying that an employee's sick days, which an employee has earned, are not considered part of the employer-provided disability coverage. RC 4123.56(A). An employee should not be compelled to use their accrued sick time when they must take time off to recover from an injury sustained on the job.

OAJ supports the provision that increases funeral expenses from \$5,500 to \$7,500.

OAJ does not support the provision that would require employees to disclose if they are U.S. citizens, illegal aliens, or unauthorized aliens on their First Report of Injury forms. The provision would likely deter many non-U.S. citizen workers from filing claims for medical help that they're entitled to. It will also disproportionately impact employees who have sustained major injuries because undocumented workers are not going to file claims for minor injuries. Last, an unintended consequence of denying compensation to individuals injured on the job is that it is taxpayers who end up footing the bill: "American taxpayers . . . shell out tens of billions of dollars a year through Social Security Disability Insurance, Medicare and Medicaid for lost wages and medical costs not covered by workers' comp." Grabell and Berkes, *The Demolition of Workers Comp.*, propublica.org and NPR (March 4, 2015), <https://www.propublica.org/article/the-demolition-of-workers-compensation>. Employers pay premiums for all of their employees, regardless of their legal status, and it should be these premiums that pay for injuries that occur on the job.

That concludes my remarks, Mr. Chairman. I thank you for allowing me the privilege of presenting OAJ's views. OAJ is pleased to support Am. Sub. HB 80, and we look forward to working with you and the committee to make our workers' comp system better for all stakeholders.