

Sub. HB 27
Testimony by John Van Doorn
For the Ohio Association for Justice
In opposition to a one-year statute of limitations
Before the House Insurance Committee
March 22, 2017

Mr. Chairman and members,

My name is John Van Doorn and I am the legislative representative for the Ohio Association for Justice, the bar association for attorneys that represent people who are injured and need help getting back on their feet financially and getting proper medical care. Many of my members advocate for workers injured on the job by assisting them with their workers' compensation claims.

The first thing I want to say is that the OAJ appreciates your committee's willingness to include some suggestions that we offered to HB 27. We offered what we felt were modest proposals that benefit injured workers, as well as many employers.

My main purpose in testifying, though, is to explain why OAJ opposes the provision that cuts in half the statute of limitations, from two years to one year, for injured workers to file a claim for workers' compensation. That amendment is found in Sec. 4123.84 (A) starting in line 2238 of Sub. HB 27.

There are many legitimate reasons why an injured worker would not file within one year.

Some hope their injury will heal, so they wait. They try to work through their problems, medical as well as financial, often for an extended period of time, hoping for the best. Some injuries may not seem like a big deal at first but they become more severe over time. Think of a knee injury that feels better after staying off your feet for a few days, but ultimately it will require surgery.

Some employees hesitate to file a workers' comp claim because they suspect filing will put their job in jeopardy.

Some employers encourage their workers who are injured not to file a claim. Employers promise to work with the injured worker, to pay for their medical care and to pay them for time off work. But when the injury lingers, the employer pulls back on those promises.

This change impacts all those who hesitate to file a claim.

We object because workers' compensation is a category of tort law, and the statute of limitations for other tort claims in Ohio is two years. The statute for injured workers should be the same as it is for people injured in their cars, by faulty products, or in any other circumstance.

Consider that if a third party is involved in a workers' comp claim, the two-year statute of limitations applies. For example, third parties are involved when an employee while driving their company vehicle is hit by an at-fault driver. In that situation, an auto insurance claim or a legal claim for negligence may be filed within two years of the date of the crash.

We object because a shorter statute of limitations is unnecessary. No evidence has been presented to justify such a dramatic change in law. There is no evidence because there is no problem – Ohio is not experiencing a rash of claims filed in the second year after the injury occurs. On the contrary, the total number of workers' comp claims has plummeted from 296,000 new claims filed in 1996 to just 88,000 claims filed in 2016, as Administrator Morrison testified. The evidence is compelling – with claims plunging in the past twenty years -- there is no problem that requires this solution.

Consider the optics of this change. This provision is intended to cut off access to medical care and compensation for some injured workers. It was proposed on the same day that the Bureau announced a Third Billion Back in premium refunds to employers. Our workers' comp system is awash in money. In the past six years, the Bureau has given the business community \$6.3 billion in rate cuts, rebates and credits. It is not your intention, I am sure, but some will criticize this proposal as being insensitive, even mean-spirited.

You have been presented with data indicating that a very small number of injured workers file claims in the second year. We question that statistic. Our claimants counsel feel the number is higher than you have been told. But even if the number of claimants who file in the second year is miniscule, that begs the question: Why make this change and cut off access for so few claimants?

Finally, OAJ would submit that making such a major change in workers' comp law deserves to be considered separately, and should not be inserted into the BWC budget bill. We would point out that in the past it has been the tradition in Ohio that labor and industry have negotiated, subject to the consent of legislative leaders, any major change to workers' compensation law. We respectfully suggest that tradition should be honored. This is a major change in our law. We urge you to pull this provision from HB 27.

I appreciate this opportunity to testify, Mr. Chairman. If you or members have questions, I'll do my best to respond.