DAVID SKIDMORE, JR.
CHAIR OF THE LABOR AND EMPLOYMENT GROUP
FROST BROWN TODD LLC
CINCINNATI, OHIO
BEFORE THE SENATE CIVIL JUSTICE COMMITTEE
PROPONENT TESTIMONY ON SB 268
Wednesday, May 18th, 2016

Chairman Bacon, Vice Chairman Oelslager, Ranking Member Skindell, and members of the Senate Civil Justice Committee, thank you for the opportunity to provide proponent testimony on Senate Bill 268 (SB 268), the Employment Law Uniformity Act. My name is David Skidmore and I am the Chair of the Frost Brown Todd Labor and Employment Group.

My group at Frost Brown Todd is comprised of approximately 45 lawyers involved in all areas of labor and employment law. We represent thousands of different employers around this state. These employers range from "Mom and Pop" establishments with a couple of employees to Fortune 500 companies with tens of thousands of employees. I have practiced law in Ohio since 1991, and all I do on a daily basis is work with federal and state employment laws.

Let me first say that discrimination on the basis of sex, race, age, etc. is repugnant based upon moral, legal, and economic grounds. Our law firm is committed to diversity and the elimination of discrimination in the workplace.

At the same time, let me say that the Ohio Civil Rights Act needs to be amended, for the good of employers, employees, and particularly for the good of our great state. Quite frankly, the employment laws in Ohio are an anachronism and do not match federal law or the laws of other states. These anachronisms make it difficult to do business in Ohio – and act in compliance with the law.

It should be the goal of this body to make it easy for employers to comply with the law, and the current system has too many quirks. SB 268 streamlines the Ohio Civil Rights Act and makes it consistent with the laws of Congress.

Let me turn to a few specifics:

1. SB 268 essentially creates a two-year period to file suit over alleged discrimination. Two years is a sufficient period of time for an employee to determine whether he or she believes that she is the victim of discrimination. Currently, employees have six years to file a discrimination lawsuit. Given that it takes approximately two years to get a case through the court system, witnesses can be asked about critical conversations that took place eight years ago. Can anyone honestly remember the details of conversations that took place in 2008? The practical reality is that witnesses and documents disappear over time through the fault of no one. It just happens. Shortening the statute of limitations simply increases the chance of reaching a just result in a lawsuit.

2. Age discrimination law in Ohio is simply a mess. Currently, there are four different methods for an employee to pursue a claim of age discrimination. Some of the methods are a trap for the unwary employee and their counsel. Frankly, I cannot keep straight in my mind all the various permutations of age discrimination law in Ohio, and I have to research this issue every time it

arises in a case. SB 268 changes the law governing age discrimination claims so that they are consistent with all other types of discrimination claims.

3. Ultimately, the goal of anti-discrimination law in Ohio should be to rid the state of discrimination. The goal should be deterrence, not lawsuits. That is in the interests of both employers and employees. SB 268 creates a limited affirmative defense that is patterned after federal law. The defense puts the burden on an employer to prove that it had an effective policy, that it properly educated employees about the policy and complaint procedures, that it exercised reasonable care to prevent or promptly correct an unlawful discriminatory practice, and that the complainant failed to take advantage of any preventative or corrective measures. I submit to you that if employers are taking these steps in their workplaces that discrimination will decrease markedly in this state which is the purpose of the law. SB 268 encourages employers to take these steps.

4. Currently, Ohio law permits individual liability in discrimination suits. In other words, rank-and-file managers and assistant managers are personally named in these suits. In reality, these managers and assistant managers are not actually writing checks to settle employment lawsuits in the vast majority of cases. So why are they named? These managers and assistant managers are named to prevent employers from moving cases to federal court. In Cincinnati, approximately 40% of the federal docket is comprised of employment cases. Thus, the Judges are very familiar with discrimination laws. SB 268 takes away individual liability so that these cases can be removed to federal court where the Judges, in general, have more experience with these issues.

5. SB 268 also creates caps on non-economic and punitive damages. These proposed caps mirror precisely federal law. When a client gets sued, most clients ask “what is the worst case scenario?” Currently, for Ohio employers the answer is “we can’t answer that question. It could be anything.” That is simply not an answer that any business can budget for or comprehend. The result is that completely meritless cases are settled because of fear of the unknown. The proposed revisions to the Ohio Civil Rights Act takes away this complete uncertainty – an uncertainty that falls hardest upon small businesses.

We urge you to support SB 268. Thank you for the opportunity to provide this testimony and we would be happy to answer any questions you may have at this time.