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March 18, 2019

Hon. J.B. Pritzker
Governor
207 State House
Springfield, IL 62706

Dear Governor Pritzker,

The Illinois Association of Defense Trial Counsel, an organization whose members are committed to protecting and improving civil justice in Illinois, urges you to veto SB 1596 which would create an exception to the workers' compensation system allowing civil actions to be brought against Illinois employers in latent injury cases.

Legislative action on the length of the statute of repose period for latent injury claims might be appropriate to discuss if the worker's recovery remains in the longstanding system of Illinois worker's compensation. That is not what this bill would do, however.

Removing the exclusive jurisdiction of such claims from the Illinois Worker's Compensation Commission will have unintended consequences that will hurt the very constituents the Legislature seeks to assist by creating unlimited liability for Illinois employers in the civil tort system for such claims, have the practical effect of eliminating existing insurance coverage for such claims, and drive even more Illinois businesses out of state or into bankruptcy protection.

This bill ignores the rationale for the exclusive remedy provisions of the Illinois Workers' Compensation Act and the Workers' Occupational Diseases Act. Current law imposes liability without fault upon the employer and, in return, prohibits common law suits by employees against the employer. The exclusive remedy provision found in the Acts "is part of the quid pro quo in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts." *Meerbrey v. Marshall Field & Co., Inc.*, 139 Ill.2d 455, 462 (1990).

Reasonable legislators could debate the merits of extending the length of the twenty-five year repose period under current law. Instead, this bill seeks to place recovery for such injury in the civil tort system, where the worker relinquishes the advantage of strict liability of the employer, and as a practical matter, doubles the attorneys' fees that will be paid by the injured worker from 20% under current law in the workers' compensation system to the typical 40% for attorneys in the civil system.

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Most importantly, all Illinois employers will be surprised to find that they are suddenly uninsured for claims under this legislation – all General Liability Insurance policies have a standard exclusion for claims by an employee, and all Workers' Compensation policies have a standard exclusion for any civil claims against the employer. The practical effect of this bill is to subject Illinois employers to unlimited liability for employees' latent injury claims, and at the same time strip Illinois employers of their insurance for such claims. It would be manifestly unjust to do so. This bill will adversely affect the Illinois economy, and likely reduce or eliminate the likelihood of a viable recovery by the injured worker, defeating the supposed purpose for this legislation.

For all of these reasons, we urge that you veto SB 1596. If you would like to discuss this matter further or need additional information, please feel free to contact me.

Sincerely,

Bradley C. Nahrstadt
2018-2019 President
Illinois Association of Defense Trial Counsel

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