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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 7
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Grendell and Stewart

Local Impact Statement Procedure Required: No

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Highlights

- The bill's provisions regarding name change procedures, trusts, and guardian appointments are likely to lead to cost savings for the probate divisions of the courts of common pleas offset to some degree by short-term administrative costs for the courts to implement the new name change procedures.
- The annual cost of performing the state Bureau of Criminal Investigation's criminal records check activities and services will increase to some degree, and more or less be offset by the fees charged to conduct a criminal records check.
- The bill's elimination of a current law provision allowing the Second Chance Trust Fund (Fund 5D60) to be used by the Department of Health to encourage attorneys to assist their clients in making anatomical gifts will reduce expenditures that otherwise would have been made for that purpose.
- Any additional expenses incurred by the Department of Commerce's Division of Real Estate resulting from the bill's changes to the law regarding cemetery endowment care trusts, which the Division regulates, would be paid from the Cemetery Registration Fund (Fund 4H90).

Detailed Analysis

Name change procedure

The bill establishes a procedure in probate courts to correct a misspelling, inconsistency, or other error of a person's legal name in an official identity document. Additionally, the bill amends the existing probate court procedure to change a legal name by making several changes, which include, for example, permitting the court: (1) to determine if a hearing is required and, if

so, set the hearing notice's manner, scope, and content, (2) to require, by local rule or order, the applicant to submit official identity documents, and (3) to require a criminal records check on the applicant.

The bill's name change provisions may reduce the number of hearings conducted for such requests, but may increase the number of applicants by making the process easier (reducing the residency requirement, streamlining processes, and creating a process for document corrections) which may encourage people to apply who otherwise would not. In 2019, there were 8,278 name change cases in the probate courts, an increase of 50.1%, or 2,764, from 5,514 cases in 2010. In 2019, the counties with the highest number of name change cases were Franklin (1,323), Cuyahoga (1,122), Hamilton (597), Summit (428), and Lucas (352).¹

It is likely that the efficiencies created under the bill will lead to cost savings for the courts, offset somewhat by: (1) additional cases processed under the name correction/conformity process (these costs themselves offset by fees charged for application processing), and (2) minimal short-term administrative costs for the courts to implement new procedures.

Background checks

If a court requires a criminal background check for an applicant, the bill will affect the workload of the state's Bureau of Criminal Investigation (BCI) by increasing the likely number of criminal records checks requested each year. While the associated increase in BCI's annual operating expenses is not readily quantifiable, it is possible that the cost increase will be more or less offset by the fees charged to conduct a criminal records check.

BCI performs state-only background checks by comparing an individual's fingerprints against a database of criminal fingerprints to determine if there is a criminal record. If requested or required, BCI also administers FBI background checks, which use a national database to search for criminal history records. Who pays for a background check varies; sometimes the employer pays and sometimes the individual who is the subject of the background check pays. Licensing entities may include the price of the background check as part of the licensure process. The base fees of the state-only and FBI background checks are \$22 and \$25.25, respectively. All of the fees are credited to the Attorney General's General Reimbursement Fund (Fund 1060),² with \$23.25 of the FBI background check fee subsequently disbursed to the FBI.

Nonprofit corporation as guardian of a person

The bill:

- Permits a nonprofit corporation domiciled in Ohio to be appointed as a guardian of the person of an incompetent if the probate court certifies the corporation to serve as such guardian;

¹ Based on total incoming cases which is the sum of all new cases filed plus cases that were transferred into the court, reopened (after being previously closed), redesignated, or reactivated (after previously placed on inactive status) during the reporting period.

² The Attorney General uses the money credited to Fund 1060 to pay for operating expenses incurred in the provision of law enforcement services, legal representation, and overall office administration.

- Requires the probate court to certify the corporation and any individual acting as guardian on behalf of the corporation upon meeting the requirements for serving as a guardian under the Rules of Superintendence for the Courts of Ohio and the rules of the probate court in the county with jurisdiction over the individual adjudged as an incompetent; and
- Prohibits a nonprofit corporation appointed as guardian from being a residential caregiver, health care provider, or employer of the incompetent.

These provisions may reduce costs for a court in cases in which the court is acting or would have acted as guardian and a nonprofit corporation would do so instead. The impact of this cost savings would vary by jurisdiction and depend on application and necessity.

Anatomical gifts

The bill eliminates a donor's ability to make an anatomical gift in the donor's will or living will, and eliminates a provision under current law which allows the Second Chance Trust Fund (Fund 5D60) maintained by the Ohio Department of Health (ODH) to be used to encourage attorneys to assist their clients in making anatomical gifts through their wills or their living wills. Fund 5D60 is used for various activities that promote organ, tissue, and eye donation, including statewide public education and donor awareness. The fund is also used to reimburse ODH and the Bureau of Motor Vehicles for the administrative costs incurred in performing duties associated with the program. The likely limited effect of this provision is to reduce expenditures by ODH from Fund 5D60 specifically on efforts to encourage attorneys to assist their clients in making anatomical gifts through their wills or their living wills.

Trusts

The bill makes a number of changes to Ohio's trust statutes, including:

- Requiring a court, when determining whether a provision of law is similar to any provision of the Ohio Uniform Fraudulent Transfer Act if there is a conflict between that Act and the Ohio Legacy Trust Act, to be liberal in finding that such similarity exists;
- Expanding the definition of "qualified trustee" to include a "family trust company";
- Specifying that the records required to be maintained by a qualified trustee for the legacy trust be electronic or physical records; and
- Expanding a transferor's powers to include a power allowing the transferor to substitute property of equivalent value for any property that is part of the principal of the legacy trust.

Relatively few trust-related cases are likely to be affected by these provisions annually in the courts of common pleas statewide, as such cases are relatively infrequent under current law. These provisions may somewhat decrease the complexity of certain civil actions which may result in some expenditure savings related to a court's caseload that is not readily quantifiable in terms of dollars and cents.

Cemetery endowment care trusts

The bill requires the Department of Commerce's Division of Real Estate and Professional Licensing to establish a form to be filled out by cemetery associations if the cemetery selects a unitrust distribution method (a fixed percentage of a trust's assets) as the distribution method

used for payouts from an endowment care trust. As a result, expenses incurred by the Division, if any, would be paid from the Cemetery Registration Fund (Fund 4H90). Under current law, the distribution from an endowment care trust must be used to establish, manage, and administer the trust or for the maintenance, supervision, improvement, and preservation of the grounds, lots, buildings, equipment, statues, and other real and personal property of the cemetery. The bill adds that the distribution can also be used for the expenses incurred for investing and administering the records of the trust. The other changes to the law regarding cemetery endowment care trusts for cemetery associations do not appear to have a fiscal effect on the state or political subdivisions.

Involuntary mental health treatment

The bill allows the probate court to consider the diagnosis and prognosis of a respondent subject to involuntary mental health treatment that is made by an advanced practice registered nurse when determining the most appropriate treatment placement for a respondent. This provision has no fiscal impact on the operations of the probate court.

Probate court fee report

Under current law each probate court judge is required to file a certified account of all fees received by the judge during the preceding year with the county auditor. The bill moves the deadline for filing from the first to the 15th of January. Under continuing law, the county prosecuting attorney is required to institute and prosecute an action against any judge who fails to file such an account by the deadline when such an action is requested by any person. Assuming that most probate judges meet the current deadline, the extension of the filing deadline by two weeks is unlikely to have a fiscal effect, either positive or negative, on the courts or county auditors.