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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 199  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Judiciary

**Primary Sponsor:** Sen. Blessing

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### SUMMARY

#### **Disinterment of bodies buried in cemeteries**

- Revises the law granting a surviving adult spouse priority to disinter a body buried in a cemetery and instead grants the priority to a person designated by the decedent under the Ohio Right of Disposition Law, and if there is no designation, then the surviving spouse.

#### **Irrevocable trusts**

- Prescribes an optional process by which the trustee of an irrevocable trust may conclude the trustee's administration of the trust.
- Requires that if the trustee elects the optional process, before concluding the administration of the trust, the trustee must send both (1) a written notice with specific information outlined in the bill and (2) up to four years of trustee reports to applicable parties, including all beneficiaries of the trust.
- Establishes a 45-day window for those receiving the notice and reports to provide an objection to the trustee's proposed action or any other objection concerning the trustee's administration of the trust.

#### **Transfer on death of tangible personal property**

- Establishes a method for tangible personal property to be designated for transfer of ownership to specified beneficiaries upon the owner's death.
- Provides protection to individuals who deliver tangible personal property pursuant to a transfer-on-death designation.

#### **Disclosures relating to settlement of claims for minors**

- Exempts from disclosure records from proceedings in probate court that involves the settlement of claims made by guardians on behalf of a minor.

## **Presentment of claims against an estate**

- Revises the options a creditor has to present a claim against an estate after the appointment of an executor or administrator and prior to the filing of a final account or certificate of termination to include presenting the claim to the executor's or administrator's counsel and to the probate court.

## **Anti-lapse statute**

- Expands the definition of "devise" under the anti-lapse statute to include a primary devise.
- Specifies that the new definition is to be applied retroactively to the fullest extent possible, except in situations in which real property has been transferred and recorded.

## **Technical changes relating to effective dates**

- Clarifies the effective date for certain changes made to Ohio Trust Law regarding exceptions to the rule against perpetuities in H.B. 701 of the 122<sup>nd</sup> General Assembly and H.B. 479 of the 129<sup>th</sup> General Assembly.

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# **DETAILED ANALYSIS**

## **Disinterment of bodies buried in cemeteries**

The bill revises the law relating to the disinterment of a body buried in a township or municipal cemetery. "Disinterment" generally means the recovery of human remains by exhumation, disentombment, or disurnment. Under existing law, modified by the bill, the person or persons having control of a cemetery are required to disinter any remains buried in the cemetery in either of the following circumstances:

1. A decedent's adult surviving spouse files an application and pays the reasonable costs and expenses;
2. The person specified by an order of the probate court after an adult who is not the surviving spouse applies to the probate court for the disinterment.

Under a separate law called the Ohio Right of Disposition Law, an individual during his or her lifetime is allowed to appoint a representative who will have the top priority when it comes to making funeral and disposition arrangements. If an individual appoints a representative, that representative has full authority, even over the contrary wishes of a spouse, to make funeral and disposition arrangements. The bill revises the law relating to the disinterment of a body buried in a township or municipal cemetery by requiring the person or persons in control of the cemetery to grant the disinterment to a designated representative pursuant to the Ohio Right of Disposition Law, if designation exists. Under the bill, the persons in control of the cemetery must grant the disinterment to the following:

1. A designated representative, or successor, to whom the decedent assigned the right of disposition via the Ohio Right of Disposition Law and who exercised that right when the declarant died;

2. If no designated representative exercised that right, the surviving adult spouse;
3. The person specified by an order of the probate court after an adult who is not the surviving spouse applies to the probate court for the disinterment.<sup>1</sup>

Under existing law, the person or persons having control of the cemetery may disinter or grant permission to disinter and, if appropriate, may reinter or grant permission to reinter any remains buried in the cemetery to correct an interment error in the cemetery if the person or persons comply with the internal rules of the cemetery pertaining to disinterment and if the person or persons provide notice of the disinterment to the decedent's last known next of kin. The bill instead requires the notice to be given to the person who has been assigned or reassigned the rights to disposition for the deceased.<sup>2</sup>

Under existing law, a person who is an interested party and who is 18 years old or older and of sound mind may apply to the probate court of the county in which the decedent is buried for an order to prevent the decedent's surviving spouse from having the remains of the decedent disinterred. Under the bill, the order from the probate court applies to whomever has applied for the disinterment, whether the surviving spouse or a designated representative, or successor, to whom the decedent assigned the right of disposition via a declaration.<sup>3</sup>

### **Application to cemetery for disinterment**

The bill also requires that when filing the application for disinterment, if the applicant is the designated representative, a copy of the designating declaration must be included. If the applicant is the surviving adult spouse, the application must state (1) that to the best of the applicant's knowledge, the decedent did not sign a declaration or that the declaration is not available to the applicant, or (2) that to the best of the applicant's knowledge the assignee pursuant to a declaration or assignment did not exercise the right of disposition. If the applicant is neither the designated representative nor the surviving adult spouse, the application must include a copy of the declaration or a statement that to the best of the applicant's knowledge, the decedent did not sign a declaration or that the declaration is not available to the applicant.<sup>4</sup>

### **Probate court order**

Under the bill, when an applicant is neither the designated representative nor the surviving adult spouse, a probate court must conduct a hearing to determine whether to issue an order for disinterment based on the factors described in the law governing the assignment of the right of disposition by a probate court. Under existing law, the court could grant the order if good cause was shown. The bill replaces this requirement of the factors that must be

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<sup>1</sup> R.C. 517.23(A) and (C) and conforming changes in R.C. 517.24 and 517.25.

<sup>2</sup> R.C. 517.23(D).

<sup>3</sup> R.C. 517.23(E)(1).

<sup>4</sup> R.C. 517.24(A) and (B)(1).

considered under the Ohio Right of Disposition Law, described below, which the bill also revises.<sup>5</sup>

### **Right of disposition law**

The bill expands the factors that a probate court must consider when making a determination under the Ohio Right of Disposition Law. That law permits the probate court for the county in which the declarant or deceased person resided at the time of death, on its own motion or the motion of another person, assign to any person the right of disposition for a declarant or deceased person. In making this determination, current law requires the court to consider the following:

1. Whether evidence before the court demonstrates that the person who is the subject of the motion and the declarant or deceased person had a close personal relationship;
2. The express written desires of the declarant or deceased person;
3. The convenience and needs of family and friends wishing to pay their final respects;
4. The reasonableness and practicality of any plans that the person who is the subject of the motion may have for the declarant's or deceased person's funeral, burial, cremation, or final disposition;
5. The willingness of the person who is the subject of the motion to assume the responsibility to pay for the declarant's or deceased person's funeral and dispositional desires.

The bill expands the considerations to also apply to the declarant's or deceased person's redistribution or disinterment desires and adds to the list of factors a probate court must consider when assigning the right of disposition to include the following:

- The religious beliefs or other evidence of the desires of the declarant or deceased person;
- The conduct of the persons involved in the proceedings related to the circumstances concerning the deceased person, the deceased person's estate, and other family members;
- The length of time that has elapsed since the original or last disposition;
- Whether there is a change of circumstances, which may include a change (1) to the physical or environmental conditions of the cemetery or other location of the deceased person's bodily remains or the surrounding area, (2) to the financial condition of the cemetery containing the deceased person's bodily remains, (3) to the residence of the deceased person's family members, or (4) to the burial arrangement for the deceased person's family members. A change of circumstances does not include a mere change of

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<sup>5</sup> R.C. 517.24(B)(3)(a).

the representative who has been assigned the right to direct the disposition of the deceased person's bodily remains.

The bill prohibits the disinterment or any other change of the original or last disposition unless the court finds compelling reasons based upon the factors listed above.<sup>6</sup>

## **Irrevocable trusts**

The bill prescribes an optional process by which the trustees of an irrevocable trust may conclude the trustee's administration of the trust. This optional process does not apply to testamentary trusts subject to supervision of a probate court. The optional process is applicable in two scenarios: (1) when the trust is to terminate as a result of one or more "trust-terminating distributions" or (2) when the trustee is resigning, or has been removed, and will be delivering the trust assets to a successor trustee. The process may be used in combination with or in lieu of other options or proceedings available under the law.<sup>7</sup> A "trust-terminating distribution" means a distribution that, when completed, will distribute the remaining net assets of a trust and thereby effectively terminate the trust.<sup>8</sup>

### **Trust-terminating distribution**

When a trust is to terminate as a result of trust-terminating distributions and the trustee elects to use the provisions specified in the bill, the trustee must serve on the terminating distributions necessary parties both (1) a written notice, executed by or on behalf of the trustee and (2) one or more trustee's reports covering the applicable reporting period. Under continuing law, as a trust is being administered, beneficiaries are entitled to an annual report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and the trust assets' respective market values.<sup>9</sup> The bill defines "applicable reporting period" as either the most recent four years, as of the date of preparation of a notice under the bill, or if the trust became irrevocable during such four-year period, the period from the date the trust became irrevocable to the date of preparation of the notice. If the trustee sending the notice accepted the trusteeship during either of these periods, then the applicable reporting period is from the date of the trustee's acceptance to the date of preparation of the notice. The trustee also may serve those documents and that information on other persons who the trustee reasonably believes may have an interest in the trust. Service must be made within a reasonable period of time after the event or determination that requires or authorizes such distributions.<sup>10</sup>

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<sup>6</sup> R.C. 2108.82.

<sup>7</sup> R.C. 5801.21.

<sup>8</sup> R.C. 5801.20.

<sup>9</sup> R.C. 5801.20(K) and 5808.13(C), not in the bill.

<sup>10</sup> R.C. 5801.20(A).

## Written notice

The written notice must include the following information:

1. The date of the notice, corresponding to the date the notice is being sent;
2. A description of the terms of the trust that require or authorize the trust-terminating distributions or a citation to any statute that requires or authorizes the distributions;
3. If the terms of the trust require any of the proposed trust-terminating distributions, a description of any triggering event that is the basis for each mandatory distribution. "Triggering event" is any event, such as a death, age attainment, or other circumstance, that has occurred and that is the basis for a mandatory distribution under the terms of the trust;
4. A description of the proposed trust-terminating distributions that includes the names of the proposed distributees and a description, in general or specific terms, of the assets proposed for distribution to each;
5. A description of the distributions objection period and the name, mailing address, email address if available, and telephone number of the person or office associated with the trustee to which any written objections should be sent;
6. A description of the process that will be followed if the trustee receives no written objections within the distributions objection period;
7. A description of the process that will be followed if the trustee receives a written objection within the distributions objection period;
8. A statement of the impending bar of claims against the trustee that will result if an objection is not timely made;
9. A statement that the trustee may rely upon the written statement of a recipient of the notice that such person consents to the proposed trust-terminating distributions and irrevocably waives the right to object to the distributions and any claim against the trustee for matters disclosed in the notice or the trustee's reports served with it and all other matters pertaining to the trustee's administration of the trust;
10. A statement that the trustee may complete the distributions described in the notice prior to the expiration of the distributions objection period if all of the persons on whom the notice was served deliver to the trustee written consents and irrevocable waivers;
11. An exhibit showing the assets on hand at the date the notice is prepared and their respective values as shown in the regularly kept records of the trustee;
12. An estimate of any assets, income, taxes, fees, expenses, claims, or other items reasonably expected by the trustee to be received or disbursed before completion of

the trust-terminating distributions but not yet received or disbursed, including trustee fees remaining to be paid.<sup>11</sup>

## **Distributions objection period**

### **No objection**

If no written objection is received by the trustee within the distributions objection period, which is 45 days after the notice and trustee's report are served on the recipient, then the notice and trustee's reports served are considered approved by each recipient, and the trustee, within a reasonable period of time following the expiration of the distributions objection period, must distribute the assets as provided in the notice. Any person who was served a notice and reports is barred from bringing a claim against the trustee, and from challenging the validity of the trust.<sup>12</sup>

### **Objection**

If, however, after being served the notice and trustee's reports, a qualified beneficiary or any other recipient of the notice wishes to object to matters disclosed in the notice or the trustee's reports, or any other matter pertaining to the trustee's administration of the trust, the person must provide written notice of the objection to the trustee of the noticing trust within the distributions objection period. If the trustee receives a written objection within the distributions objection period, the trustee may either submit the written objection to the court for resolution or resolve the objection with the objecting person by accepting a withdrawal of the person's objection or by written instrument, a written agreement, or other means. Any agreement or other written instrument executed by the objecting party may include a release and a trustee indemnification clause, along with other terms agreed to by the parties. Reasonable expenses related to such written instrument or written agreement must be charged to the trust. Within a reasonable time after resolution of all timely objections, the trustee must distribute the remaining trust assets as provided in the notice, subject to any modifications provided for in the terms of the document setting forth the resolution of each such objection.<sup>13</sup>

## **Consent and bar to claim against trustee**

The trustee may rely on the written statement of a recipient of the notice and trustee's reports served that the recipient consents to the proposed trust-terminating distributions, irrevocably waives the right to object to the distributions, irrevocably waives any claims against the trustee for breach of trust as to matters disclosed in the notice and trustee's reports and all other matters pertaining to the trustee's administration of the trust. The distributions described in the notice may be completed prior to the expiration of the distributions objection period if all of the persons on whom the notice and trustee's reports were served have delivered to the trustee similar written consents and irrevocable waivers.

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<sup>11</sup> R.C. 5801.22(A) and (B).

<sup>12</sup> R.C. 5801.22(C).

<sup>13</sup> R.C. 5801.20(C) and 5801.22(D).

Any person who was served a notice and trustee's reports that comply with the requirements and who either consented to the proposed trust-terminating distributions or failed to timely provide the trustee a written objection is barred from bringing a claim against the trustee for breach of trust as to matters disclosed in the notice and trustee's reports and all other matters pertaining to the trustee's administration of the trust and barred from challenging the validity of the trust. If all of the terminating distributions necessary parties and all qualified beneficiaries of the trust have been served a notice and trustee's reports that comply with the requirements and have either consented to the proposed trust-terminating distributions or failed to timely provide the trustee a written objection, all other beneficiaries of the trust, including persons who may succeed to the interests in the trust of the beneficiaries served, must be barred.

The bar of claims applies to each person barred, the person's personal representatives and assigns, and the person's heirs who are not beneficiaries of the noticing trust. And the bar of claims applies to the same extent and with the same preclusive effect as if the court had entered a final order approving and settling the trustee's full account of its entire administration of the trust, notwithstanding the limitations periods for actions against a trustee that are otherwise applicable under continuing law.<sup>14</sup>

Any beneficiary who receives trust assets as a result of a trust-terminating distribution described in the notice and who is barred from bringing claims may be required to return all or any part of the value of the distributed assets if the trustee determines that the return of assets is necessary to pay, or reimburse the trustee for payment of, taxes, debts, or expenses of the trust, including the reasonable expenses incurred by the trustee in obtaining the return of those assets. The beneficiary must make the return expeditiously upon receipt of a written notice from the trustee requesting the return of all or any part of the value of those distributed assets.<sup>15</sup>

### **Departing trustee**

When a trustee resigns or is removed from an irrevocable trust and the departing trustee elects to use the provisions of this bill, the departing trustee must serve on the resignation or removal necessary parties (1) a written notice, executed by or on behalf of the departing trustee with the information described below and (2) one or more trustee's reports covering the applicable reporting period. The resignation or removal necessary parties should include any co-trustee of the trust and the successor trustee if one has been appointed or designated. In addition, in the case of a trustee's resignation, the necessary parties must include the following persons:

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<sup>14</sup> R.C. 5801.22(E) and (F).

<sup>15</sup> R.C. 5801.22(G).



- If the trust terms identify persons to whom notice of the trustee's resignation must be provided, the persons identified and any other persons who are current beneficiaries of the trust, determined as of the date of the notice;
- If the trust terms do not identify any persons to whom notice of the trustee's resignation must be provided, the qualified beneficiaries of the trust, determined as of the date of the notice.

In the case of a trustee removal, the necessary parties include any person to whom notice of trustee removal is required to be provided under the trust terms and any other persons who are current beneficiaries of the trust, determined as of the date of the notice. The trustee also may serve those documents and that information on other persons who the trustee reasonably believes may have an interest in the trust. Service must be made within a reasonable period of time after such resignation or removal.

### **Written notice**

The written notice must include all of the following:

1. The date of the notice, corresponding to the date the notice is being sent;
2. A description of any terms of the trust or the Revised Code relevant to the resignation or removal of the departing trustee and the provisions, if applicable, regarding the appointment or designation of the successor trustee;
3. A description of any actions taken by the departing trustee, the beneficiaries of the trust, or other required parties pertaining to the resignation or removal of the departing trustee and, if applicable, the appointment or designation of the successor trustee;
4. The name and address of the successor trustee, if one has been appointed or designated;
5. If applicable, a statement confirming the successor trustee's acceptance of the trusteeship;
6. A description of the trustee succession objection period and the name, mailing address, email address if available, and telephone number of the person or office associated with the departing trustee to which any written objections should be sent;
7. A description of the process that will be followed if the departing trustee receives a written objection or no written objections within the trustee succession objection period;
8. A statement of the impending bar of claims against the departing trustee that will result if an objection is not timely made;
9. A statement that the departing trustee may rely upon the written statement of a recipient of the notice that the person consents to the delivery of the net assets of the trust to the successor trustee, or to one or more co-trustees as applicable, and irrevocably waives the right to object to the delivery of the assets and any claim against the departing trustee for matters disclosed in the notice or the trustee's reports served

with it and all other matters pertaining to the departing trustee's administration of the trust;

10. A statement that the departing trustee may complete the delivery of the net assets of the trust to the successor trustee, or to one or more co-trustees as applicable, prior to the expiration of the trustee succession objection period if all of the persons on whom the notice was served deliver to the trustee written consents and irrevocable waivers;
11. An exhibit showing the assets on hand at the date the notice is prepared and their respective values as shown in the regularly kept records of the trustee;
12. An estimate of any assets, income, taxes, fees, expenses, claims, or other items reasonably expected by the departing trustee to be received or disbursed before delivery of the net assets of the trust to the successor trustee, or to one or more co-trustees as applicable, but not yet received or disbursed, including trustee fees remaining to be paid.

### **No objection**

If no written objection is received by the departing trustee within the trustee succession objection period, which is the 45-day period commencing with the date the notice and trustee's reports are served on the recipient, then the notice and trustee's reports served is considered approved by each recipient and the departing trustee. And within a reasonable period of time following the expiration of the trustee succession objection period, the trustee must deliver the net trust assets to the successor trustee or to one or more co-trustees, as applicable. Any person who was served such notice and reports is barred from bringing a claim against the trustee, and from challenging the validity of the trust.

### **Objection**

If, after being served the notice and trustee's reports, a qualified beneficiary or any other recipient of the notice wishes to object to matters disclosed in the notice or reports or any other matter pertaining to the departing trustee's administration of the trust, the person must provide written notice of the objection to the departing trustee within the 45-day objection period. In this case, the departing trustee may either submit the written objection to the court for resolution or resolve the objection with the objecting person by accepting a withdrawal of the person's objection or by written instrument, a written agreement, or other means. Any agreement or other written instrument executed by the objecting party may include a release and a trustee indemnification clause, along with other terms agreed to by the parties. Reasonable expenses related to the written instrument or written agreement must be charged to the trust. Within a reasonable time after resolution of all timely objections, the departing trustee must deliver the net trust assets to the successor trustee, or to one or more co-trustees as applicable, subject to any modifications provided for in the terms of the document setting forth the resolution of each such objection.

### **Consent and bar to claim against trustee**

The departing trustee may rely upon the written statement of a recipient of the notice and trustee's reports served under the bill that the recipient consents to, and irrevocably

waives the right to object to the departing trustee's resignation or removal, the appointment of the successor trustee, if applicable, and delivery of the net assets of the trust to the successor trustee or to one or more co-trustees, as applicable. The statement must also irrevocably waive any claims against the departing trustee for breach of trust as to matters disclosed in the notice and trustee's reports and all other matters pertaining to the departing trustee's administration of the trust.

The delivery of the net assets of the trust to the successor trustee, or to one or more co-trustees as applicable, may be completed prior to the expiration of the trustee succession objection period if all of the persons on whom the notice and trustee's reports were served have delivered to the departing trustee similar written consents and irrevocable waivers. Any person who was served a notice and trustee's reports that comply with these requirements and who either consented to the delivery of the net assets of the trust to the successor trustee or one or more co-trustees as applicable or failed to timely provide the departing trustee a written objection is barred from bringing a claim against the departing trustee for breach of trust as to matters disclosed in the notice and trustee's reports and all other matters pertaining to the departing trustee's administration of the trust and barred from challenging the validity of the trust. If all of the resignation or removal necessary parties and all qualified beneficiaries of the trust have been served a notice and trustee's reports that comply with the bill's requirements and have either consented to the delivery of the net assets of the trust to the successor trustee or failed to timely provide the trustee a written objection, all other beneficiaries of the trust, including persons who may succeed to the interests in the trust of the beneficiaries served, are barred. The bar of claims applies to each person barred, the person's personal representatives and assigns, and the person's heirs who are not beneficiaries of the noticing trust and to the same extent and with the same preclusive effect as if the court had entered a final order approving and settling the departing trustee's full account of its entire administration of the trust, notwithstanding any other applicable limitation period for actions against a trustee under the law. A person is also barred from bringing a claim against the successor trustee for failure to object to a matter that is subject to the bar of claims against the departing trustee to the same extent as the bar applies to claims against the departing trustee.<sup>16</sup>

### **Bar to claims against a fiduciary of an estate or subtrust**

In the case of the conclusion of the trustee's administration in a trust-terminating distribution or a departing trustee in which a notice and trustee's reports are sent pursuant to the bill to a personal representative for an estate of a deceased beneficiary of the noticing trust or the trustee of a subtrust that is a beneficiary of the noticing trust or one or more beneficiaries of the estate or subtrust whose fiduciary is served, claims are also barred against the fiduciary of the estate or subtrust. But only if both the fiduciary of the estate or subtrust and one or more beneficiaries of that estate or subtrust who are served either consent to the proposed distributions or delivery of assets described in the notice or fail to object within the

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<sup>16</sup> R.C. 5801.23.

applicable objection period. In this case, the beneficiary of the estate or subtrust who is subject to the claims bar with respect to the administration of the noticing trust is also barred to the same extent from bringing a claim against the fiduciary of the estate or subtrust for failure to object to a matter that is subject to the bar of claims against the trustee of the noticing trust.<sup>17</sup>

## **Delivery of notice and trustee's reports**

Under the bill, the trustee's substantial good-faith compliance with the requirements of the notices and trustee's reports served by the trustee of the noticing trust is deemed sufficient. The notice and reports must be served on a person by any of the following means:

- Handing them to the person;
- Leaving them at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office;
- Leaving them at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- Mailing them to the person's last known address by U.S. mail, in which event service is complete upon mailing;
- Delivering them to a commercial carrier service for delivery to the person's last known address within three calendar days, in which event service is complete upon delivery to the carrier;
- Sending them by electronic means to a fax number or email address provided by the person to be served or provided by his or her attorney, in which event service is complete upon transmission, but is not effective if the trustee of the noticing trust learns that they did not reach the person.

A trustee is prohibited from requesting or including an indemnification clause in the notice and trustee's reports served or in any documentation served by the trustee with the notice and trustee's reports. However, in the event such notice and trustee's reports are served and a written objection is received by the trustee within the applicable objection period, a trustee indemnification clause may be included in an agreement or other written instrument executed by the objecting party.<sup>18</sup>

## **Transfer on death of tangible personal property**

The bill establishes a method for tangible personal property to be designated for transfer or ownership to specified beneficiaries upon the owner's death. This method allows for the transfer of tangible personal property after the owner's death without the property being subject to probate proceedings. The bill defines "tangible personal property" as objects that

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<sup>17</sup> R.C. 5801.24(A).

<sup>18</sup> R.C. 5801.20, 5801.21(D), and 5801.24(B) and (C).

may be touched and moved, including animals and property that is acquired after the execution of a designation in beneficiary form. “Tangible personal property” does not include money or any registered or certificated tangible personal property such as motor vehicles, watercraft, and outboard motors, but can include coin collections.

In order to do this, the owner before the owner’s death must complete a beneficiary form. The beneficiary form must be in writing, signed, dated, and notarized with the owner present. The form must also contain a general statement of disposition of all tangible personal property or describe the specific item or items of tangible personal property that will be transferred and identify a specified part of the interest to be transferred, if less than the entire interest will be transferred. The form must also state the words “transfer-on-death,” “TOD,” or any other words or statements to indicate intent to transfer ownership of tangible personal property upon the death of the present owner and identify the name of the transfer-on-death beneficiary or beneficiaries.<sup>19</sup> There does not need to be an exchange of money or any other consideration or delivery to the beneficiary for the beneficiary form to be effective. And the form has no effect on the ownership of the property until the death of the present owner. The present owner can revoke or change the designation in beneficiary form at any time without the consent of the transfer-on-death beneficiary or beneficiaries by a subsequently executed designation in beneficiary form or by a subsequently executed written instrument that is dated, executed by the present owner, and acknowledged before a notary public.<sup>20</sup>

Once the present owner of the tangible personal property designated in beneficiary form dies, the ownership of the passes to the transfer-on-death beneficiary or beneficiaries who survive the deceased owner or are in existence on the date of death of the deceased owner. The form can also contain primary and contingent transfer-on-death beneficiaries. If there are inconsistent designations in beneficiary form, the most recent designation in beneficiary form controls. If no primary or contingent transfer-on-death beneficiary or beneficiaries survive the deceased owner, the tangible personal property must be included in the probate estate of the deceased owner. If someone other than the designated beneficiary receives the property, that person must deliver the improperly received tangible personal property to the rightful beneficiary or beneficiaries. If the person who improperly received the property no longer has it or has imposed an encumbrance on the tangible personal property, the recipient is liable to return the value of the property as of the date of disposition.<sup>21</sup>

The designated beneficiary receives protections from this nonprobate transfer. The transferring person may rely and act on a certified or authenticated copy of a death certificate issued by an official or agency of the place where the death occurred as showing the fact, place, date, time of death, and identity of the decedent, or a certified or authenticated copy of a report or record of any governmental agency that a person is deceased. The bill specifies that

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<sup>19</sup> R.C. 2131.14 (A) and (B).

<sup>20</sup> R.C. 2131.14(C) and (D).

<sup>21</sup> R.C. 2131.14(E) to (G).

the person that transfers the tangible personal property from the deceased owner to the beneficiary has no duty to do any of the following:

- Give notice to any person of the date, manner, and persons to whom transfer will be made under the beneficiary designation;
- Attempt to locate any beneficiary;
- Locate a trustee or custodian, obtain appointment of a successor trustee or custodian, or discover the existence of a trust instrument or will that creates an express trust;
- Determine any fact or law that would cause the beneficiary designation to be revoked, in whole or in part, as to any person or that would qualify or disqualify any person to receive a share under the nonprobate transfer, or that would vary the distribution provided in the beneficiary designation.

If there is an issue or problem with respect to the transfer of the tangible personal property to the transfer-on-death beneficiary or beneficiaries, a transferring person has the right to petition the probate court having jurisdiction with respect to the deceased owner's estate for instructions.

If, after the execution of a designation of beneficiary form under which the present owner of the tangible personal property's spouse is designated the transfer-on-death beneficiary, the present owner of the tangible personal property and the present owner's spouse are divorced, obtain a dissolution of marriage, or have the marriage annulled, then the designation of the present owner's spouse as a transfer-on-death beneficiary must be terminated and the spouse must be deemed to have predeceased the present owner of the tangible personal property. A transfer by the transferring person pursuant to a beneficiary designation, in good faith and in reliance on information the transferring person reasonably believes to be accurate, discharges the transferring person from all claims and liability for the property transferred, regardless of any negligence in determining the proper transferees. The remedy of the rightful transferees of tangible personal property transferred under a designation in beneficiary form executed in compliance with the bill's provisions must be limited to an action against the improper transferees. The bill does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of the tangible personal property until after the death of the present owner.<sup>22</sup>

## **Disclosures relating to settlement of claims for minors**

Continuing law sets forth the procedure in probate court for settlement of claims for minors, or other persons a probate court has found to be an incompetent, who are subject to guardianship. Under the law, when any ward, a person subject to guardianship, is entitled to maintain an action for damages or any other relief, the guardian of the estate of the ward may

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<sup>22</sup> R.C. 2131.14(H) to (P).

adjust and settle a claim with the advice, approval, and consent of the probate court. The bill adds a provision that if the claimant in the action is a minor, records of the proceedings are not subject to disclosure to any person who is not a party to the settlement, or made available for publication or inspection, except upon a motion and show of good cause.<sup>23</sup>

## **Presentment of claims against an estate**

The bill revises the options a creditor has to present a claim against an estate after the appointment of an executor or administrator and prior to the filing of a final account or certificate of termination to include presenting the claim to the executor's or administrator's counsel and to the probate court. Under continuing law, unchanged by the bill, all creditors having claims against an estate, must present their claims either (1) after the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination or (2) if the final account or certificate of termination has been filed, in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim. Existing law provides three ways a creditor can present a claim after the appointment of executor or administrator and prior to the filing of a final account or a certificate of termination must be made. The bill modifies the three methods in the following manner:

1. Existing law allows the claim to be presented to the executor or administrator in writing. The bill allows, in addition, the claim to be presented to the executor's or administrator's counsel in writing.
2. Existing law allows the claim to be presented to the executor or administrator in writing, and to the probate court by filing a copy of the writing with it. The bill, instead, says that the claim can be presented only to the probate court in a writing that includes the probate court case number of the decedent's estate.
3. Existing law allows the claim to be presented in a writing that is sent by ordinary mail addressed to the decedent and that is actually received by the executor or administrator within the appropriate time. The bill modifies this option by eliminating the requirement that it is sent by ordinary mail. And the bill adds that it can be received by the executor's or administrator's attorney within the appropriate time and without regard to whom the writing is addressed.<sup>24</sup>

## **Anti-lapse statute**

The bill revises the definition of "devise" under the anti-lapse statute. Generally, under continuing law, if a devisee fails to survive the testator, a substitute gift may be created in the surviving descendants of any deceased devisee, if certain conditions are met. Under current law, changed by the bill, a "devise" means an alternative devise, a devise in the form of a class gift, or an exercise of a power of appointment. The bill amends the definition to specify that

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<sup>23</sup> R.C. 2111.18.

<sup>24</sup> R.C. 2117.06 and 2117.07.

“devise” additionally includes a primary devise.<sup>25</sup> The bill states that the amendment must be given retroactive effect to the fullest extent permitted under Ohio Constitution. However, the amendment should not be given retroactive effect in instances where doing so would invalidate or supersede any instrument that conveys real property or any interest in the real property that has been recorded.<sup>26</sup>

## Technical changes

The bill clarifies the effective dates for certain changes made to Ohio Trust Law regarding exceptions to the rule against perpetuities in H.B. 701 of the 122<sup>nd</sup> General Assembly and H.B. 479 of the 129<sup>th</sup> General Assembly. H.B. 701 took effect on March 22, 1999, and H.B. 479 took effect March 27, 2013. Several amendments to R.C. 2131.09 in H.B. 479 stated that the amendments took effect on “the effective date of this section.” R.C. 2131.09 took effect in 1953 with the creation of the Revised Code.

The bill clarifies that one of the H.B. 479 changes took effect on the effective date of *the amendment to* the section by H.B. 701, March 22, 1999, and the other took effect on the effective date of *the amendment to* the section by H.B. 479, March 27, 2013.<sup>27</sup>

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## HISTORY

Action	Date
Introduced	06-16-21
Reported, S. Judiciary	03-02-22

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ANSB0199RS-134/ar

<sup>25</sup> In the recent case of [Diller v. Diller, 2021-Ohio-4252](#) (PDF), which is available on the Ohio Supreme Court’s website: [www.supremecourt.ohio.gov](http://www.supremecourt.ohio.gov), the interpretation of the definition of “devise” came into question. The Court ruled that “devise” under Ohio’s anti-lapse statute does not include a primary devise.

<sup>26</sup> R.C. 2107.52.

<sup>27</sup> R.C. 2131.09.