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Bill Analysis

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Version: As Reported by House Civil Justice

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.

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.

* This analysis was prepared before the report of the House Civil Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

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 in the Probate Law to include a primary devise.
- Expands the definition of "beneficiary" under the anti-lapse statute in the Ohio Trust Code to include a beneficiary of a primary gift.
- Specifies that the new definitions are to be applied retroactively to the fullest extent possible, except in situations in which real property has been transferred and recorded.

Guardianship Law changes

Definitions

- Expands the terms defined in the Guardianship Law to include "limited guardian," "standby guardian," "interim guardian," "emergency guardian," and "successor guardian."
- Modifies the definitions of "ward," "incompetent," "parent," and "financial harm."

Guardianship of a minor

- Expands the contents of an application for guardianship of a minor to include:
  - An affidavit with information on the child's address, places where the child lived in the past five years, and the name and address of each person with whom the child lived in those years;
  - Name and contact information of any person nominated in a writing or a durable power of attorney for health care as guardian of the nominator's person, estate, or both.
- Removes from the contents of an application for guardianship of a minor the name and address of the person having custody of the minor.
- Modifies current law by providing that a minor *over the age of 12 years*, instead of over the age of 14 years, may select a guardian who must be appointed if a suitable person.
- Eliminates current law's provision that when a testamentary guardian is appointed, that guardian's duties, powers, and liabilities in all other respects must be governed by the law regulating guardians not appointed by the will.
- Specifies that the married parents are the joint natural guardians of their minor children, and eliminates provisions specifying parental rights and responsibilities with respect to their children.

Guardianship of an incompetent; conservatorship

- Expands the contents of an application for guardianship of an incompetent to include:
  - The proposed ward's military service, if applicable;
  - The name and contact information of any person nominated in a durable power of attorney for health care or in a writing as guardian of the person, estate, or both, of the person;
  - A statement of expert evaluation under Superintendence Rule 66 by any of the specified professionals, or other qualified person as determined by the court, who has examined the proposed ward within three months prior to the date of that statement as to the need for establishing the guardianship.
- Modifies current law by providing that generally, the guardian of an incompetent must be the guardian of the minor children of the ward, *upon the filing of a separate application under a new case number* unless the court appoints some other person as their guardian.
- Requires the clerk of the probate court to furnish the guardianship guide specifically to a guardian of an *incompetent*.
- Expands current law by providing that a guardian's report must include a statement by *any of other specified professionals*, in addition to those in current law, or *other qualified person* who has evaluated the ward within three months prior to the date of the report as to the need for continuing the guardianship.
- Specifies the times when the probate court, upon written request by the ward, the ward's attorney, or any interested party, must conduct a hearing to evaluate the continued necessity of the guardianship of an incompetent.
- Requires that if the ward alleges competence, the burden of proving incompetence must be upon the guardian by clear and convincing evidence.
- Provides that the statement of expert evaluation filed with the application or the most recent statement of evaluation filed with the guardian's report, or both statements, may satisfy that burden of proving incompetence unless contradicted by medical evidence or a statement of any of the specified professionals, submitted by the ward.
- Eliminates the requirement that a competent adult must be physically infirm in order to petition the probate court to place the petitioner's person, any or all of the petitioner's property, or both, under a conservatorship.
- Provides that if found necessary, a probate court, on its own motion or on application by any interested party, may appoint a representative to act on behalf of an alleged incompetent, for certain limited purposes.

Notice of hearing on application for guardianship in general

- Retains current provisions regarding the persons who must receive notice of the hearing except that in the appointment of the guardian of a minor, notice must be served by personal service upon the minor, if *over the age of 12*, instead of over the age of 14 under current law.
- Provides that for good cause shown, the requirement of notice to certain persons under continuing law may be waived except for the notice to the proposed ward.

Extension of interim guardian's appointment

- Provides that an interim guardian's appointment may be extended for up to two subsequent 30-day periods, instead of an additional 30 days under current law, after the initial extension of 15 days.

Appointment of successor guardian

- Requires the court to provide notice of a vacancy of the guardianship to the ward and nearest next of kin.
- Authorizes the appointment of a successor guardian upon application by an interested party after notice to the ward or by the court if found necessary to determine the suitability of applicants or it would otherwise be in the ward's best interest.
- Authorizes the court to appoint a successor guardian sua sponte and without a hearing or notice to the ward if the interested party has not so applied within a certain period, and requires the court to give notice to the ward after the appointment.

Guardianship of wards in general

- Specifies that a guardian of the person of a ward must oversee the physical placement, maintenance, and care of the ward.
- Requires the guardian of the person of a minor to have the "legal custody" of the minor.
- Defines "legal custody" as a legal status that vests in the custodian the right to have the minor's physical care and control, determine where and with whom the minor will live, protect and discipline the minor, and provide the minor with food, shelter, education, and medical care, all subject to any residual parental rights and responsibilities.
- Repeals current law generally requiring a guardian of the person and estate of a minor to have the custody of the ward and to provide for the education of the ward and the management of the ward's estate during minority.
- Expands the duties of a guardian of a minor to include the duty to identify both family and nonfamily members with whom the ward desires to communicate and facilitate the contact that the guardian believes is in the best interest of the ward.
- Repeals outright current law providing that when a person is appointed to have the custody of the person and to take charge of the estate of a ward, such person must have all the duties required of a guardian of the estate and of a guardian of the person.

- Modifies current law by prohibiting any attorney who represents *a guardian* from acting with co-responsibility for any guardianship asset for which the guardian is responsible, or from being a cosignatory on any financial account related to the guardianship.
- Provides that upon application by a guardian of the person of the ward, the court may authorize the settlement of the ward's claim for injury to the ward or damage to the ward's property without the appointment of a guardian of the estate of the ward, and authorize the delivery of the moneys as provided in applicable law.
- Outright repeals the current provision that the marriage of a ward must terminate the guardianship as to the person, but not as to the estate, of the ward.

Transactions dealing with ward's property

- Specifies that an appointed successor guardian may complete any authorized contract relating to the ward's real property entered into by a guardian who has died or been removed.
- Modifies current law by providing that the guardian of the person and estate, or of the estate only, may sell all or any part of the ward's personal property if the sale is for the *best* interest of the ward*, with prior court approval*.
- Requires a guardian to file in the probate court a motion, instead of a petition under current law, to use the ward's moneys and personal property to improve the ward's real property.
- Eliminates the following from the contents of the motion (replacing petition under current law) as described in the preceding dot point:
  - A prayer that the guardian be authorized to use so much of the ward's money and personal property that is necessary to make the improvement;
  - The character of the ward's disability, and if it is incompetency, whether the disability is curable or not, temporary, or confirmed, and its duration;
  - The names, ages, and residences of the ward's family, including the spouse and residents of the county who have the next estate of inheritance from the ward, all of whom, as well as the ward, must be made defendants and notified of the pendency and prayer of the petition in the manner that the court directs.
- Outright repeals the following provisions in current law dealing with the improvement of the ward's property:
  - The probate court must appoint three disinterested freeholders of the county as commissioners to examine the premises to be improved and its surroundings, and to report to the court their opinion whether the improvement proposed will be advantageous to the estate of the ward.
  - If the prayer is granted, the probate court must fix the amount of money and personal property that may be used in making the improvement, and may authorize

the guardian to unite with adjacent property owners, for the improvement and management of the ward's premises.

- A guardian must report to the probate court the amount of money and personal property expended in making an improvement to the ward's real property within 40 days after its completion.
- If the ward dies before the removal of the disability and there are heirs who inherit real property only from the ward, the money expended must descend and pass in the same manner as the ward's other personal property and must be a charge on the premises improved in favor of the heirs.

Termination of guardianship based on value of ward's estate

- Upon a court order to terminate the guardianship of a ward whose estate does not exceed $25,000 in value, eliminates the court's authority to authorize delivery of the assets to the minor's natural guardian, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor's own self.
- Requires a receipt verifying the deposit of guardianship assets in an authorized depository be submitted to the court and that release of any funds held in a depository for the benefit of the minor be by court order.
- Provides that in the alternative to the preceding dot point and for good cause shown, the court may direct the guardian to deliver the assets to a suitable person, and such person must hold the assets and dispose of them in the manner the court directs.
- Upon a court order to terminate the guardianship of an incompetent, requires a receipt verifying the deposit of guardianship assets in an authorized depository be submitted to the court and that release of any funds held in a depository for the benefit of the incompetent be by court order.
- Modifies current law by providing that if the estate of a person *18 years old or older* who has been adjudged incompetent, does not exceed $25,000, the court, without the appointment of a guardian or, *if a guardian is appointed without the giving of bond*, may authorize the deposit of estate assets in an authorized depository.
- In the event of the preceding dot point, requires a receipt verifying the deposit of assets be submitted to the court and that release of any funds held in a depository for the benefit of the incompetent be by court order.

Guardian for nonresident

- Eliminates the application of current law authorizing the probate court of the county in which a person confined in a state, charitable, or correctional institution has property to appoint a resident guardian to manage the property, and retains the application of the law to the appointment of a resident guardian for a nonresident minor or incompetent.
- Generally requires a resident guardian of a nonresident minor to hold the appointment until the minor dies or arrives at the age of majority, whether or not the minor was over

14 years old at the time of appointment prior to the bill's effective date or whether or not the minor is over 12 years old at the time of appointment on or after that date.

- Changes terminology from nonresident wards to nonresident minors or incompetents.

Other provisions in R.C. Chapter 2111

- Modifies current law by providing that the probate court may enter an order that authorizes a person under a duty to pay money or personal property to a minor who does not have a guardian, to perform that duty in amounts *not exceeding $25,000*, instead of not exceeding $5,000 annually.
- Expands the persons or entities to which the money or property under the preceding dot point is to be delivered to include a trust for the benefit of the minor.
- If the money under the second preceding dot point is to be paid to a financial institution, requires that a receipt verifying the deposit be submitted to the court and that release of funds held in a depository for the benefit of the minor be upon court order, including release of funds to the minor upon attaining the age of majority.
- Modifies current law by providing that a probate court may issue an emergency ex parte order freezing the financial assets of an individual whom the court or applicant has reason to believe is missing or has gone or been *taken away* if immediate action is required to prevent significant financial harm to the individual.

Persons prohibited from benefiting by another's death

- Provides that if a probate court finds by clear and convincing evidence that an individual committed an act that would be any of a set of specified murder or homicide offenses and the victim of the act was the individual's spouse, the court, at its discretion and in the interests of justice, may choose to apply the rule of law in the following dot point.
- The property of the decedent, or other property or benefits payable in respect of the decedent's death, pass or are to be paid as if the person who caused the death of the decedent had predeceased the decedent.

Qualifications for judges

- For the offices for judges of municipal courts, county courts, courts of common pleas, courts of appeals, and for justices of the Supreme Court:
  - Modifies the qualification of having been admitted to the practice of law in Ohio by requiring that such admission must be for at least one year prior to appointment or the commencement of the judge's or justice's term;
  - Provides that for a total of at least six years prior to appointment or the commencement of the judge's or justice's term, the judge or justice must have done any of the following:
    - Engaged in the practice of law in Ohio;
    - Practiced in a federal court in Ohio;

- Engaged in the authorized practice of law as in-house counsel for a business in Ohio or as an attorney for a government entity in Ohio.

Fulton County County Court judgeship

- Requires that, effective January 1, 2023, the part-time judgeship of the Fulton County County Court originally elected in 1982, be converted to the full-time judgeship of that court until the court is abolished on January 1, 2024.
- Requires that, effective January 1, 2023, notwithstanding the statutes providing for the compensation of a county court judge, that full-time judge of the Fulton County County Court receive the compensation for a judge of the municipal court.

Scout's Honor Law

- Enacts the Scout's Honor Law described in the following dot point.
- Eliminates the current 12-year period of limitation for an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by such victim asserting any claim resulting from childhood sexual abuse, only for purposes of making claims against a bankruptcy estate.

Voluntary permanent surrender of child in temporary custody

- Permits a public children services agency or private child placing agency to accept the voluntary permanent surrender of a child by the child's parents while the child is in the agency's temporary custody.

Emergency hospitalization

- Establishes a new category under which an individual may be considered a "mentally ill person subject to a court order" and subject to emergency hospitalization: psychiatric deterioration.
- Modifies a requirement for emergency hospitalization ("pink slipping") that an individual must represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending an examination by removing the requirement that the substantial risk of harm be a risk of physical harm.
- Specifies that a written statement required to be made by an individual transporting a "mentally ill person subject to a court order" is not invalid if the statement identifies a general hospital as the receiving hospital.
- Requires an individual making a written statement regarding a person considered a "mentally ill person subject to a court order" under the psychiatric deterioration standard established by the bill to include additional available relevant information about a person's mental illness.
- Establishes conditions under which a general hospital that receives a "mentally ill person subject to a court order" is not required to transfer the person to a hospital licensed by the Ohio Department of Mental Health and Addiction Services.

- Adds state highway patrol troopers to the list of individuals who are authorized to detain a person and initiate emergency involuntary hospitalization.

Medicaid prior authorization requirements for prescription drugs

- Adds drugs that are prescribed for the treatment of schizophrenia, schizotypal disorder, or delusional disorder to the list of drugs for which a Medicaid managed care organization is prohibited from imposing a prior authorization requirement.

MAT drug prior authorization under managed care

- Prohibits Medicaid managed care organizations from imposing prior authorization for a drug used in medication-assisted treatment (MAT) or in withdrawal management or detoxification if the drug is prescribed by a prescriber who has a waiver under federal law, and for a use indicated on its label.

Towing authorizations

- Authorizes a conservancy district police department to order the towing and storage of a motor vehicle in certain circumstances, including when the vehicle is an abandoned junk vehicle and when the vehicle is left on private or public property for a specified time.
- Authorizes a conservancy district police department to undertake other activities related to towed or abandoned vehicles, including maintaining records of vehicles towed from private tow-away zones and receiving notices from specified entities that are taking title to abandoned vehicles.
- Authorizes certain officers employed by the Department of Natural Resources (ODNR) to order the towing and storage of motor vehicles in certain circumstances, including when a vehicle is abandoned and when left on public property for a specified time.
- Authorizes ODNR to provide the required notice to a person who willfully leaves an abandoned junk vehicle on private property and to a person who allows a junk motor vehicle to remain on their property.

Transfer of title through public auction

- Authorizes the executor or administrator of an estate to transfer the title to a decedent's titled automobile, watercraft, watercraft trailer, or outboard motor at a public auction to a purchaser without first obtaining the probate court's approval for the transfer.
- Clarifies that automobile includes all titled vehicles.

Residential PACE lien priority

- Specifies that the priority for a residential "property assessed clean energy" (PACE) lien is:

- Always subordinate to a first mortgage, regardless of when that mortgage is recorded with the county recorder;
- Subordinate to all other liens recorded prior to the recordation of the residential PACE lien;
- Superior to all other liens recorded after the recordation of the residential PACE lien.

Defines a residential PACE lien as a lien for a residential PACE loan, which is a loan to pay for the installation of cost-effective energy improvements on a homeowner's qualifying residential real property and is repayable by the homeowner through a special assessment.

Cremation procedure

- Corrects a drafting error relating to a prohibition against removing items of value from a body prior to or after cremation without proper authorization.

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 122nd General Assembly and H.B. 479 of the 129th 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.1

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.[2]

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.[3]

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.[4]

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

[1] R.C. 517.23(A) and (C) and conforming changes in R.C. 517.24 and 517.25.

[2] R.C. 517.23(D).

[3] R.C. 517.23(E)(1).

[4] R.C. 517.24(A) and (B)(1).

considered under the Ohio Right of Disposition Law, described below, which the bill also revises.[5]

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 redisposition 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

[5] 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.[6]

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.[7] 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.[8]

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.[9] 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.[10]

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[6] R.C. 2108.82.

[7] R.C. 5801.21.

[8] R.C. 5801.20.

[9] R.C. 5801.20(K) and 5808.13(C), not in the bill.

[10] 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.11

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.[12]

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.[13]

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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[11] R.C. 5801.22(A) and (B).

[12] R.C. 5801.22(C).

[13] 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.[14]

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.[15]

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:

[14] R.C. 5801.22(E) and (F).

[15] 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.[16]

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

[16] 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.[17]

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.[18]

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

[17] R.C. 5801.24(A).

[18] R.C. 5801.20, 5801.21(D), and 5801.24(B) and (C).

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.[19]

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.20

Anti-lapse statute

The bill revises the definition of "devise" under the anti-lapse statute in the Probate Law. 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

[19] R.C. 2111.18.

[20] R.C. 2117.06 and 2117.07.

to specify that "devise" additionally includes a primary devise.[21] 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.[22]

The bill revises the definition of "beneficiary" under the anti-lapse statute in Ohio Trust Law. Generally, under continuing law, if a beneficiary fails to survive the distribution date with respect to a future interest, a substitute gift may be created in the surviving descendants of any deceased beneficiary, if certain conditions are met. Under current law, "beneficiary" means the beneficiary of a future interest, and includes a class member if the future interest is in the form of a class gift. The bill amends the definition to specify that "beneficiary" also includes the *beneficiary of a primary gift*.[23] The bill states that the amendment must be given retroactive effect to the fullest extent permitted under the 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.[24]

Guardianship Law changes

Definitions

The bill expands the terms defined in the Guardianship Law to include the following:[25]

"**Limited guardian**" means a guardian appointed with specific limited powers, including overseeing the care and management of mental health, placement, visitation, or other specified limited powers, as outlined in the letters of guardianship.

"**Standby guardian**" means a person nominated in a writing to be a guardian of the person, the estate, or both, of one or more of a nominator's minor or incompetent adult children pursuant to the provisions on the nomination of a guardian.

"**Interim guardian**" means a person appointed as guardian when an existing guardian is temporarily or permanently removed or resigns and if the welfare of the ward requires immediate action, for a maximum period of 15 days that may be extended for up to two

[21] 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, 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.

[22] R.C. 2107.52.

[23] R.C. 5808.19(A)(1)(a).

[24] R.C. 5808.19(A)(2).

[25] R.C. 2111.01(I) to (M).

subsequent 30-day periods for good cause shown and notice of hearing to the ward and interested parties.

"**Emergency guardian**" means a person appointed as guardian when an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of a ward, for a maximum period of 72 hours that may be extended up to an additional 30 days for good cause shown and notice of hearing to the ward and interested parties.

"**Successor guardian**" means a person appointed by the court when a ward is still in need of a guardian of the person, the estate, or both, but the current guardian dies, resigns, or is removed, or an interim guardianship expires.

The bill modifies the definitions under current law of the following terms:[26]

"**Ward**" means any *incompetent or minor*, instead of person, for whom a guardian is acting or for whom the probate court is acting as superior guardian of wards.

"**Incompetent**" means: (a) any *adult,* instead of person, who is so mentally impaired, as a result of a mental or physical illness or disability, intellectual disability, or chronic substance abuse, that the person is incapable of taking proper care of self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or (b) any *adult*, instead of person, confined to a correctional institution in Ohio.

"**Parent**" means a natural or adoptive parent of a minor child whose parental rights and responsibilities have not been terminated by *a court of competent jurisdiction*, instead of "a juvenile court or another court."

"**Financial harm**" means impairment of an individual's financial assets by (the bill eliminates "unlawfully") obtaining or exerting control over the individual's real or personal property in any of the ways specified under continuing law.

Guardianship of a minor

Application for appointment of guardian of a minor

Under current law, in addition to the general requirements for an application for the appointment of a guardian, the application for an appointment of a guardian of a minor must contain the following:[27]

1. Name, age, and residence of the minor;
2. Name and residence of each parent of the minor;
3. Name, degree of kinship, age, and address of next of kin of the minor, if no parent is living or if a parent is absent, under disability, or for other reason cannot be notified;

[26] R.C. 2111.01(B), (D), (G), and (H).

[27] R.C. 2111.03(C)(1), (2), and (3).

4. Name and residence address of the person having custody of the minor.

The bill eliminates (4) above and replaces it with an affidavit attached to that pleading in a child custody proceeding that must give information if reasonably ascertainable under oath as to the child's present address or whereabouts, the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period, and other specified information.[28]

The bill adds to the contents of the application the name and contact information of any person nominated in a writing as guardian of the nominator's person, estate, or both.[29]

Selection and nomination of guardian of minor

The bill modifies current law by providing that a minor over the *age of 12 years*, instead of over the age of 14 years, may select a guardian who must be appointed if a suitable person. If a minor over the *age of 12 years*, instead of over the age of 14 years, fails to select a suitable person, an appointment may be made without reference to the minor's wishes. A surviving parent by a will in writing may *nominate*, instead of appoint, a guardian for any of the surviving parent's children, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time. When the *parent*, instead of father or mother, of a minor *nominates* (the bill replaces "names" and "named" with *nominates* and *nominated* in this provision), a person as guardian of the estate of that minor in a will, the person *nominated* must have preference in appointment over the person selected by the minor. A person *nominated* in that will as guardian of the person of that minor must have no preference in appointment over the person selected by the minor, but in that event the probate court may appoint the person named in the will, the person selected by the minor, or some other person.[30]

The bill eliminates current law's provision providing that whenever a testamentary guardian is appointed, the testamentary guardian's duties, powers, and liabilities in all other respects must be governed by the law regulating guardians not appointed by the will.[31]

Nonresident guardian of the estate of a minor

Under current law, a guardian of the estate must be a resident of Ohio, except that the court may appoint a nonresident of Ohio as a guardian of the estate if the nonresident is selected by a minor over the age of 14 years. The bill changes the age of a minor who may select a nonresident guardian of the estate to over 12 years of age.[32]

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[28] R.C. 2111.03(C)(4) and by reference to R.C. 3127.23, not in the bill.

[29] R.C. 2111.03(C)(5) and by reference to R.C. 2111.121, not in the bill.

[30] R.C. 2111.12(A) and (B).

[31] R.C. 2111.12(B).

[32] R.C. 2109.21(C)(1)(b).

Guardianship of minors – duration

The bill modifies current law by providing that when a guardian has been appointed for a minor before the minor is *over 12*, instead of over 14, years of age, the guardian's power must continue until the ward arrives at the age of majority, unless removed for good cause or the ward selects another suitable guardian.[33]

Natural guardians of minors

The bill provides that the married parents are the joint natural guardians of their minor children. It eliminates the following provisions in current law:[34]

The wife and husband are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare, and education and the care and management of their estates. The wife and husband have equal powers, rights, and duties and neither parent has any right paramount to the right of the other concerning the parental rights and responsibilities for the care of the minor or the right to be the residential parent and legal custodian of the minor, the control of the services or the earnings of such minor, or any other matter affecting the minor; provided that if either parent, to the exclusion of the other, is maintaining and supporting the child, that parent must have the paramount right to control the services and earnings of the child. Neither parent must forcibly take a child from the guardianship of the parent who is the child's residential parent and legal custodian.

If the wife and husband live apart, the court may award the guardianship of a minor to either parent, and the state in which the parent who is the residential parent and legal custodian or who otherwise has the lawful custody of the minor resides has jurisdiction to determine questions concerning the minor's guardianship.

Definition

The bill modifies the definition of "parent" as used in the Guardianship Law as described above under "**Definitions**."[35]

Guardian of an incompetent

Application for appointment of guardian of incompetent

Under current law, in addition to the general requirements for an application for the appointment of a guardian, the application for an appointment of a guardian of an alleged incompetent are the following:[36]

1. Name, age, and residence of the person for whom such appointment is sought;

[33] R.C. 2111.46.

[34] R.C. 2111.08.

[35] R.C. 2111.01(G).

[36] R.C. 2111.03(D)(1), (2), and (3).

2. Facts upon which the application is based;
3. Name, degree of kinship, age, and address of the next of kin of the alleged incompetent.

The bill revises the definition of "incompetent" as described above under "**Definitions**."

The bill adds the following to the contents of the application:[37]

1. The proposed ward's military service, if applicable;
2. The name and contact information of any person nominated in a durable power of attorney for health care as guardian of the person, estate, or both, of the principal, or nominated in a writing as guardian of the nominator's person, estate, or both;
3. A statement of expert evaluation under Superintendence Rule 66 by a licensed physician, licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, clinical nurse specialist, certified nurse practitioner, physician assistant, or other qualified person as determined by the court, who has evaluated or examined the proposed ward within three months prior to the date of the statement as to the need for establishing the guardianship.

Determining need for guardianship

The bill modifies existing law by providing that in connection with an application for the appointment of a guardian for an alleged incompetent, the court may appoint physicians, and other qualified persons *as determined by the court,* to examine, investigate, or represent the alleged incompetent, to assist the court in deciding whether a guardianship is necessary.[38]

Investigating circumstances of alleged incompetent

Under current law as modified by the bill, at the time of the service of notice upon an alleged incompetent, the court must require (the bill removes "regular") a probate court investigator, or appoint a temporary probate court investigator, to investigate the circumstances of the alleged incompetent, and, to the maximum extent feasible, to communicate to the alleged incompetent in a language or method of communication that the incompetent can understand, the alleged incompetent's rights, and subsequently to file with the court a report that contains information specified in continuing law.[39]

Guardian of ward's minor children

The bill modifies existing law by providing that, except when the guardian of an incompetent is an agency under contract with the Department of Developmental Disabilities for the provision of protective services under the Department's statewide system of protective

[37] R.C. 2111.03(D)(4), (5), and (6) and by reference to R.C. 1337.12(E) and 2111.121, not in the bill.

[38] R.C. 2111.031.

[39] R.C. 2111.041(A).

service*, or another agency or corporation appointed by the court*, the guardian of an incompetent, by virtue of the appointment as guardian, must be the guardian of the minor children of the guardian's ward, *upon the filing of a separate application under a new case number,* unless the court appoints some other person as their guardian.[40]

The bill also corrects the R.C. section reference in the current provision pertaining to the nomination of a guardian of an incompetent adult child in a durable power of attorney for health care.[41]

Guardianship guide

The bill modifies current law by requiring the clerk of the probate court to furnish a guardianship guide, prepared by the Attorney General with the approval of the Ohio Judicial Conference or by the Ohio Judicial Conference, to a guardian *of an incompetent* upon the appointment of the guardian and at other specified times under existing law not changed by the bill.[42]

Report of guardian of an incompetent

Current law generally requires the guardian of an incompetent to file a guardian's report with the court two years after the date of the issuance of the guardian's letters of appointment and biennially after that time, or at any other time upon the motion or a rule of the probate court. The report must be in a form prescribed by the court and include specified information.[43] The bill modifies one piece of information included in the report by providing that the report must include a statement by a licensed physician, licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, *clinical nurse specialist, certified nurse practitioner, physician assistant,* developmental disability team *member, or other qualified person* who has evaluated or examined the ward within three months prior to the date of the report as to the need for continuing the guardianship. The bill adds the provision that the court may waive the requirement of filing further biennial statements of expert evaluation if, in the opinion of the qualified evaluator, it is reasonably certain that the ward's condition will not improve and that the necessity for guardianship will continue to exist.[44]

The bill eliminates the following provision in current law:[45]

Except as provided in this provision, for any guardianship, upon written request by the ward, the ward's attorney, or any other interested party made at any time after the expiration

[40] R.C. 2111.02(A).

[41] R.C. 2111.02(D)(2) and with reference to R.C. 1337.12(E), not in the bill.

[42] R.C. 2111.011.

[43] R.C. 2111.49(A)(1).

[44] R.C. 2111.49(A)(1)(i).

[45] R.C. 2111.49(C).

of 120 days from the date of the guardian's original appointment, a hearing must be held in accordance with R.C. 2111.02 to evaluate the continued necessity of the guardianship. Upon written request, the court must conduct a minimum of one hearing under this provision in the calendar year in which the guardian was appointed, and upon written request, must conduct a minimum of one hearing in each of the following calendar years. Upon its own motion or upon written request, the court may, in its discretion, conduct a hearing within the first 120 days after appointment of the guardian or conduct more than one hearing in a calendar year. If the ward alleges competence, the burden of proving incompetence must be upon the applicant for guardianship or the guardian, by clear and convincing evidence.

Termination or evaluation of guardianship of an incompetent

Under continuing law, upon reasonable notice to the guardian, to the ward, and to the person on whose application the appointment was made, and upon satisfactory proof that the necessity for the guardianship no longer exists or that the letters of appointment were improperly issued, the probate court must order that the guardianship of an incompetent terminate and make an appropriate entry upon the journal.[46]

The bill adds to continuing law above the provision that except as provided in this provision, for any guardianship of an incompetent, upon written request by the ward, the ward's attorney, or any interested party made at any time after the original appointment of the guardian, a hearing must be held in accordance with the law on a hearing on the appointment of a guardian to evaluate the continued necessity of the guardianship. Upon such written request, the court must conduct a minimum of one hearing in the calendar year in which the guardian was appointed, and upon such written request, must conduct a minimum of one hearing in each of the following calendar years. On its own motion or upon written request by the ward, the ward's attorney, or any interested party, the court may, in its discretion, conduct a hearing within the first 120 days after appointment of the guardian or conduct more than one hearing in a calendar year.[47]

Under the bill, if the ward alleges competence, the burden of proving incompetence must be upon the guardian, by clear and convincing evidence. The statement of expert evaluation filed with the application for appointment of the guardian or the most recent statement of expert evaluation filed with the guardian's annual or biennial report, or both statements, may satisfy the guardian's burden of proof unless contradicted by medical evidence or a statement from a licensed physician, licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, clinical nurse specialist, certified nurse practitioner, physician assistant, or developmental disabilities team member, submitted by the ward.[48]

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[46] R.C. 2111.47(C).

[47] R.C. 2111.47(A).

[48] R.C. 2111.47(B).

Representative to act on behalf of alleged incompetent

Application; purposes

The bill provides that if found necessary, a probate court, on its own motion or on application by any interested party, may appoint a representative to act on behalf of an alleged incompetent, for the following limited purposes:[49]

1. Taking all actions necessary to make an application for medical assistance pursuant to applicable Revised Code provisions and Department of Medicaid administrative rules and regulations;
2. Executing on behalf of the alleged incompetent, pursuant to those administrative rules and regulations, any affidavits or other documents that are necessary to attest all of the following:
    a. The alleged incompetent has a physical or mental impairment that substantially limits the ability to access verifications or documents necessary for the Department of Medicaid to process Medicaid applications.
    b. The alleged incompetent has no available representative to assist in accessing any public assistance.
    c. To the best of the affiant's or representative's knowledge, the alleged incompetent has not granted any person a durable power of attorney, or if a durable power of attorney has been granted, the agent under that power of attorney is unavailable or has failed to act on behalf of the alleged incompetent in accessing any public assistance.
    d. The alleged incompetent has no court-appointed guardian.
3. Executing on behalf of the alleged incompetent any documents that may be necessary to seek public assistance from the Department of Medicaid or its designees, the county departments of job and family services or other agencies administering public benefits as designees of the Department of Medicaid. Those documents include, but are not limited to, forms and applications related to home and community-based services Medicaid waivers, level of care assessments, supplemental nutrition assistance programs, and the Ohio works first program established under R.C. Chapter 5107.
4. Executing on behalf of the alleged incompetent the documents that may be necessary to maintain medical assistance or other public assistance for which the alleged incompetent has previously been determined to be eligible.

Court proceedings

The bill generally requires the probate court to conduct a hearing on the motion or application for the appointment of a representative. However, if an application for guardianship

[49] R.C. 2111.023(A).

of the alleged incompetent is pending before the court, the court may appoint such representative without conducting such hearing. At the hearing on the application for guardianship, the court must address the continued need for a representative of the alleged incompetent.[50]

The proposed representative must appear at the hearing on the motion or application for the appointment of a representative.[51]

Appointed representative's attestations

If appointed by the probate court, the representative must attest all of the following under oath:[52]

- The representative has made reasonable efforts to determine if the alleged incompetent has a physical or mental impairment that substantially limits the ability to access verifications or documents necessary for an application for public assistance or to access the means of self-support.
- The representative has made reasonable efforts to determine if another person is available to represent the alleged incompetent in the actions by the bill and in reference to 42 C.F.R. §435.907.
- The representative will notify any administrative agency to which an application is made by the representative on behalf of the alleged incompetent, of any changes in circumstances that would permit the alleged incompetent, or a legal representative on behalf of the alleged incompetent, to obtain necessary verifications or documents or to access the means of self-support, within ten calendar days of being made aware of those changes.
- The representative will maintain the confidentiality of any information provided by the applicable state or federal agency, as required by the applicable state or federal law.

Petition for conservatorship

The bill eliminates the requirement that a competent adult must be physically infirm in order to petition the probate court of the county in which the petitioner resides, to place, for a definite or indefinite period of time, the petitioner's person, any or all of the petitioner's real or personal property, or both under a conservatorship with the court.[53]

[50] R.C. 2111.023(B).

[51] R.C. 2111.023(C).

[52] R.C. 2111.023(C)(a) to (d).

[53] R.C. 2111.021.

Notice of hearing on application for a guardianship in general

Under current law, except for an interim or emergency guardian appointed as provided in the law, no guardian of the person, the estate, or both can be appointed until at least seven days after the probate court has caused written notice setting forth the time and place of the hearing, to be served to specified individuals. The bill excludes the appointment of a successor guardian from the requirement of notice. In the appointment of a guardian of a minor, the bill requires that the notice to the minor must be served by personal service upon the minor if over *the age of 12*, instead of over the age of 14 under current law.[54] The bill retains current law regarding the other persons to be given notice.

The bill replaces current law's provision that "[n]otice may not be waived by the person for whom the appointment is sought" with the provision that *for good cause shown, the requirement of notice may be waived except for the notice to the proposed ward*.[55]

Extension of interim guardianship

Under continuing law, if a guardian is temporarily or permanently removed or resigns, and if the ward's welfare requires immediate action, at any time after the removal or resignation, the probate court may appoint, ex parte and with or without notice to the ward or interested parties, an interim guardian for a maximum period of 15 days.

Under current law, for good cause shown, after notice to the ward and interested parties and after a hearing, the court may extend an interim guardianship for a specified period, but not to exceed an additional 30 days. The bill modifies the period of extension to not exceed two subsequent 30-day periods.[56]

Appointment of successor guardian

The bill provides that if a guardian appointed under continuing law dies, resigns, is removed, or an interim guardianship expires, and the ward is still in need of a guardian of the person, the estate, or both, notice of the vacancy must be provided to the ward and sent to the ward's nearest next of kin by regular U.S. mail, provided the court knows that next of kin's address. The court may appoint a successor guardian upon application by any interested party after providing notice to the ward, or may appoint a successor guardian, subject to continuing law's requirement of a hearing and preference for a guardian nominated under certain instruments, if the court finds it necessary to determine the suitability of the applicants or it would otherwise be in the ward's best interest. If a successor guardian application has not been filed by an interested party within 30 days of the notice of the vacancy, the court may appoint a successor guardian sua sponte and without a hearing or further notice to the ward, except that

[54] R.C. 2111.04(A)(1)(a).

[55] R.C. 2111.04(C).

[56] R.C. 2111.02(B)(2).

the court must provide notice to the ward following the appointment of the successor guardian.[57]

Guardianship of wards in general

Guardian of the person

The bill provides that a guardian of the person of an incompetent must oversee the physical placement, maintenance, and care of the ward.[58]

The bill modifies existing law by providing that a guardian of the person of a minor must be appointed as to a minor having no *living parent*, instead of having no father or mother**;** whose parents are unsuitable persons to have the custody of the minor (the bill deletes "and to provide for the education of the minor as required by Section 3321.01 of the Revised Code,") or whose interests, in the opinion of the court, will be promoted by the appointment of a guardian.[59]

The bill eliminates current law's provision that a guardian of the person must have the custody and provide for the maintenance of the ward, and if the ward is a minor, the guardian must also provide for the education of the ward as required by R.C. 3321.01, and replaces it with the following provision:

The guardian of the person of a minor must have the legal custody of the minor. "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the minor, and to determine where and with whom the minor shall live, and the right and duty to protect, train, and discipline the minor, and to provide the minor with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.[60]

The bill then outright repeals the provision in current law that requires each person appointed guardian of the person and estate of a minor to have the custody of the ward, the obligation to provide for the education of the ward as required under R.C. 3321.01, and the management of the ward's estate during minority, unless the guardian is removed or discharged from that trust or the guardianship terminates from any of the causes specified in the probate court laws.[61]

Duties of the guardian of a ward

The bill expands the duties of a guardian appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor,

[57] R.C. 2111.02(B)(3).

[58] R.C. 2111.06(B).

[59] R.C. 2111.06(C).

[60] R.C. 2111.06(D).

[61] R.C. 2111.07, repealed by the bill.

to include the duty to identify both family and nonfamily members with whom the ward desires to communicate and facilitate the contact that the guardian believes is in the best interest of the ward. Any dispute regarding visitation of the ward must be reviewed as provided in Superintendence Rule 66.[62]

Current law, as modified by the bill, provides the following duties of the guardian of the person of a ward:[63]

- To *oversee the physical placement, maintenance, and care of the ward*, instead of to protect and control the person of the ward;
- To provide suitable maintenance for the ward when necessary, which must be paid out of the ward's estate upon the order of the guardian of the person;
- To provide the maintenance and education for the ward that the amount of the ward's estate justifies if the ward is a minor and has no *parent*, instead of "father or mother," or has a *parent,* instead of *"*father or mother" who fails to maintain or educate the ward, which must be paid out of such ward's estate upon the order of the guardian of the person;
- To obey all the orders and judgments of the probate court touching the guardianship.

The bill repeals outright current law's provision that when a person is appointed to have the custody of the person and to take charge of the estate of a ward, such person must have all the duties required of a guardian of the estate and of a guardian of the person.[64]

Restriction on attorney representing a guardian

The bill modifies current law by prohibiting any attorney who represents *a guardian,* instead of *"*any other person and who is appointed as a guardian," under the Guardianship Law or any other provision of the Revised Code from: (a) acting as a person with co-responsibility for any guardianship asset for which the guardian is responsible, or (b) being a cosignatory on any financial account related to the guardianship.[65]

Claim for injury to ward or damage to property – settlement

Under continuing law, with the probate court's advice, approval, and consent, the guardian of the estate of a ward may settle a claim of the ward for personal injury or damage to

[62] R.C. 2111.13(A)(5).

[63] R.C. 2111.13(A)(1) to (4).

[64] R.C. 2111.15, repealed by the bill. Note that the bill does not modify the law regarding the duties of a guardian of the estate of a ward under continuing R.C. 2111.14, not in the bill.

[65] R.C. 2111.091.

tangible or intangible property caused by wrongful act, neglect, or default that would entitle the ward to maintain an action for damages or other relief.[66]

Under current law, as modified by the bill, if it is proposed that a claim be settled for the net amount of $25,000 or less after payment of fees and expenses as allowed by the court, the court, upon application by a *guardian of the person of the ward* or any suitable person whom the court may authorize to receive and receipt for the settlement, may authorize the settlement without the appointment of a guardian *of the estate of the ward* and authorize the delivery of the moneys as provided in the law on termination of a guardianship based on the value of a ward's estate.[67]

The bill provides that nothing in the above provisions is intended to create or imply a duty upon a guardian of the person of the ward to apply for authority to exercise any power authorized in the provisions. No inference of impropriety or liability of a guardian of the person of the ward or others associated with the guardian of the person of the ward arises as a result of the guardian of the person of the ward not applying for authority to exercise a power authorized in the above provisions.[68]

Marriage of a ward

The bill outright repeals the current provision that the marriage of a ward must terminate the guardianship as to the person, but not as to the estate, of the ward.[69]

Transactions dealing with ward's property

Completion of real property contracts

Current law provides that a guardian, whether appointed by a court in Ohio or elsewhere, may complete the contracts of the ward for the purchase or sale of real property "or any authorized contract relating to real property entered into by a guardian who has died or been removed." The bill deletes the above quoted clause and instead provides that an appointed successor guardian may complete any authorized contract relating to real property entered into by a guardian who has died or been removed. The bill modifies current law by requiring an appointed *successor* guardian to proceed in the manner provided by the probate court law on completion of a contract to sell land.[70]

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[66] R.C. 2111.18(A).

[67] R.C. 2111.18(A).

[68] R.C. 2111.18(B).

[69] R.C. 2111.45, repealed by the bill.

[70] R.C. 2111.19.

Sale of personal estate

Under current law, as modified by the bill, the guardian of the person and estate, or of the estate only, may sell all or any part of the personal property of the ward if the sale is for the *best* interest of the ward*, with prior court approval*.[71]

Lease of real property

The bill modifies existing law by providing that a guardian may lease *to others* (the bill removes "the possession and use of") the real property of the (the bill deletes "guardian's") ward or any part of it for a term of years, renewable or otherwise, by perpetual lease, with or without the privilege of purchase, or may lease upon the terms and for the time that the probate court approves any lands belonging to the ward containing mineral substances for the purpose of drilling, mining, or excavating for and removing any of those substances, or the guardian may modify or change any lease previously made.[72]

Improvement of real property – procedure

Under current law, a guardian may use the ward's moneys and personal property to improve the ward's real property. The guardian must file in the probate court in which the guardian was appointed a "petition" containing the following:[73]

1. A description of the premises to be improved;
2. The amount of rent the premises yield at the time the petition is filed;
3. In what manner the improvement is proposed to be made;
4. The proposed expenditures for the improvement;
5. The rent the premises will probably yield when so improved;
6. A statement of the value of the ward's personal property;
7. Other facts that are pertinent to the question whether the improvement should be made;
8. A prayer that the guardian be authorized to use so much of the ward's money and personal property that is necessary to make the improvement;
9. The character of the disability of the ward, and if it is incompetency, whether the disability is curable or not, temporary, or confirmed, and its duration;
10. The names, ages, and residence of the ward's family, including the spouse and those known to be residents of the county who have the next estate of inheritance from the

[71] R.C. 2111.20.

[72] R.C. 2111.26.

[73] R.C. 2111.33(A).

ward. All of those persons, as well as the ward, must be made defendants and notified of the pendency and prayer of the petition in the manner that the court directs.

The bill modifies current law by providing that, *upon motion,* a guardian may use the ward's moneys and personal property to improve the ward's real property. The guardian must file in the probate court in which the guardian was appointed a *motion*, instead of petition, containing the following:[74]

- The same information in (1), (3), (4), (6), and (7) as in current law above.
- The information in (2) and (5) above, modified as follows:
  - (2) *If applicable,* the amount of rent the premises yield at the time the *motion* is filed;
  - (5) The rent the premises will probably yield when so improved*, if any*.
- The bill eliminates (8), (9), and (10) in current law above.

Existing law provides that if the property is so situated that, to the best interests of the ward's estate, it can be advantageously improved in connection with the improvement of property adjacent to it, the petition must show this and have a prayer to so improve the property.[75] The bill eliminates that existing provision and instead provides that the court may appoint a guardian ad litem to report to the court the guardian ad litem's opinion whether the improvement proposed will be necessary, reasonable, and beneficial to the estate of the ward.[76]

Proceedings; amount used for improvement; guardian's report

The bill outright repeals the following provisions in current law dealing with the improvement of the ward's property:

- Upon the filing of the petition described above in current law in "**Improvement of real property – procedure**," similar proceedings must be had as to pleadings and proof as on petition by a guardian to sell the real property of a ward under the probate laws on sale of lands. The probate court must appoint three disinterested freeholders of the county as commissioners to examine the premises to be improved and the surroundings, and to report to the court their opinion whether the improvement proposed will be advantageous to the estate of the ward.[77]
- On the final hearing of a guardian's proceeding to improve the ward's real property, if the prayer of the petition is granted, the probate court must fix the amount of money

[74] R.C. 2111.33(A).

[75] R.C 2111.33(B).

[76] R.C. 2111.33(B).

[77] R.C. 2111.34, repealed by the bill.

and personal property that may be used in making the improvement. The court may authorize the guardian to unite with the owners of adjacent property, upon equitable terms and conditions approved by the court, for the improvement of the ward's premises and the proper management and repair of the property when so improved.[78]

- A guardian must distinctly report to the probate court the amount of money and personal property expended in making an improvement to the ward's real property as described in the preceding dot point, within 40 days after the improvement is completed. If the ward dies before the removal of the disability and there are heirs who inherit real property only from the ward, the money expended must descend and pass in the same manner as the ward's other personal property and must be a charge on the premises improved in favor of the heirs who inherit the personal property.[79]

Termination of guardianship based on value of ward's estate

The bill modifies or retains current law as follows:

- When the whole estate of a ward does not exceed $25,000 in value, the guardian may apply to the probate court for an order to terminate the guardianship *of the estate*. Upon proof that it would be for the best interest of the ward to terminate the guardianship, the court may order the guardianship terminated (the bill relocates "and direct the guardian" to the following dot point).[80]
  - If the ward is a minor, the court may direct the guardian to deposit the assets of the guardianship in a depository authorized to receive fiduciary funds, payable to the *minor upon attaining the age of majority,* instead of "to the ward when the ward attains majority" (the bill eliminates "or the court may authorize the delivery of the assets to the natural guardian of the minor, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor's own self"). The bill instead provides that *a receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the minor must be by court order, including the release of funds to the minor upon attaining the age of majority. In the alternative and for good cause shown, the court may direct the guardian to deliver the assets to a suitable person. The person receiving the assets must hold and dispose of them in the manner the court directs.*[81]
  - If the ward is an incompetent, and the court orders the guardianship terminated, the court may authorize the deposit of the assets of the guardianship in a depository

[78] R.C. 2111.35, repealed by the bill.

[79] R.C. 2111.36, repealed by the bill.

[80] R.C. 2111.05(A).

[81] R.C. 2111.05(A)(1).

authorized to receive fiduciary funds in the name of a suitable person to be designated by the court. *A receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the incompetent must be by court order.* If the assets do not consist of money, the court may authorize delivery to a suitable person to be designated by the court. The person receiving the assets must hold and dispose of them in the manner the court directs.[82]

- As in existing law, unchanged by the bill, if the court refuses to grant the application to terminate the guardianship, or if no such application is presented to the court, the guardian only must be required to render account upon the termination of the guardianship, upon order of the probate court made on its own motion, or upon the order of the court made on the motion of a person interested in the wards or their property, for good cause shown, and set forth upon the journal of the court.[83]
- If the estate *of a minor* is $25,000 or less (the bill deletes "and the ward is a minor"), the court, without the appointment of a guardian by the court, or, *if a guardian is appointed by the court* without the giving of bond, may authorize the deposit in a depository authorized to receive fiduciary funds, payable to the guardian when appointed, or to the *minor,* instead of ward, *upon attaining the age of majority*, rather than "when the ward attains majority" (the bill eliminates "or the court may authorize delivery to the natural guardian of the minor, to the person by whom the minor is maintained, to the executive director who is responsible for the administration of children services in the county, or to the minor's own self"). *A receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the minor must be by court order, including release of funds to the minor upon attaining the age of majority. In the alternative and for good cause shown, the court may authorize delivery of the assets to a suitable person. The person receiving the assets must hold and dispose of them in the manner the court directs.[84]*
- If the whole estate of a person *18 years of age or older*, instead of a person "over 18 years of age," who has been adjudged incompetent, does not exceed $25,000 in value, the court, without the appointment of a guardian by the court or, *if a guardian is appointed by the court without* the giving of bond, may authorize the deposit of the estate *assets* in a depository authorized to receive fiduciary funds in the name of a suitable person to be designated by the court. *A receipt verifying the deposit of assets must be submitted to the court. Release of any funds held in a depository for the benefit of the incompetent must be by court order*. If the assets do not consist of money, the court may authorize delivery to a suitable person to be designated by the court. The

[82] R.C. 2111.05(A)(2).

[83] R.C. 2111.05(B).

[84] R.C. 2111.05(C).

person receiving the assets must hold and dispose of them in the manner the court directs.[85]

Guardian for nonresident

The bill modifies current law by providing that if a nonresident minor *or* incompetent (the bill removes "or person confined in a state, charitable, or correctional institution") has real property or rights, credits, moneys, or other personal property in Ohio, the probate court of the county in which the property or a part of it is situated may appoint a resident guardian of the ward to manage, collect, lease, and take care of the ward's property. The appointment may be made whether or not a ward has a guardian, trustee, or other conservator in the state of the ward's residence, and, if the ward has such a guardian, trustee, or other conservator, the control and authority of the resident guardian appointed in Ohio must be superior as to all property of the ward in Ohio.[86]

Resident guardian's duties; duration of appointment

Under current law, as modified by the bill, unless removed by the probate court, a resident guardian of a nonresident minor must hold that appointment until the minor dies or arrives at the age of majority, whether or not the minor *was* over 14 years of age at the time of appointment *prior to the bill's effective date or whether or not the minor is over 12 years of age at the time of appointment on or after the bill's effective date*. A resident guardian of any other nonresident ward must hold that appointment until the death of the ward or until the court is satisfied that the necessity for the guardianship no longer exists. All moneys due to the nonresident ward while the resident guardianship continues shall be paid over to the ward's foreign guardian *if it is in the ward's best interest* (the bill removes **"**so far as necessary or proper for the ward's support and maintenance").[87]

Foreign representative may collect money

The bill modifies current law by providing that when a foreign legal representative of a nonresident *minor or incompetent,* instead of ward, applies to have all or any of the moneys or property in the possession or under the control of the resident guardian of the *nonresident minor or incompetent*, instead of ward, paid or delivered to the foreign representative, the foreign representative must file a petition or motion in the probate court by which the resident guardian was appointed. Upon continuing law's requirements of notice, authentication of the foreign representative's appointment and qualification, and a hearing, the bill requires the court to make an order that it considers for the best interests of the *nonresident minor or incompetent,* instead of "nonresident ward or the nonresident ward's estate."[88]

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[85] R.C. 2111.05(D).

[86] R.C. 2111.37.

[87] R.C. 2111.38.

[88] R.C. 2111.39.

Sale of real property of nonresident minor or incompetent

Under existing law, applications for the sale of real property by guardians of wards who live outside Ohio must be made in the county in which the land is situated. If the real property is situated in two or more counties, the application must be made in one of the counties in which a part of it is situated. Additional security that may be approved by the probate court of the county in which the application is made must be required from the guardian if considered necessary.[89]

Under the bill modifying existing law, *proceedings* for the sale of real property by resident guardians of *nonresident minors or incompetents* must be made in the county in which the land is situated. If the real property is situated in two or more counties, the *proceedings* must be *commenced* in one of the counties in which a part of it is situated. Additional *bond* may be *ordered* by the court of the county in which *the proceedings are commenced* if considered necessary and *in the nonresident minor's or incompetent's best interest*.[90]

Probate court as superior guardian of wards

The bill modifies current law by providing that the probate court must cause notice to be given and a hearing to be conducted prior to its exercise or direction of the exercise of any of the following powers pursuant to its powers as guardian of wards:[91]

- The exercise or release of powers as a donee of a power of appointment;
- *If* the amount of the gift is more than $1,000, instead of unless the amount of the gift is no more than $1,000, the making of a gift, in trust or otherwise.

Other provisions in R.C. Chapter 2111

Court order for payments of no more than *$25,000* due to minor

The bill modifies current law by providing that the probate court may enter an order that authorizes a person under a duty to pay or deliver money or personal property to a minor who does not have a guardian of the person and estate or a guardian of the estate, to perform that duty in *an amount not exceeding $25,000*, instead of amounts not exceeding $5,000 (the bill removes annually), by paying or delivering the money or property to any of the following:[92]

The guardian of the person only of the minor;

1. The minor's natural guardians who are the minor's married parents, if any;
2. The minor;

[89] R.C. 2111.44.

[90] R.C. 2111.44.

[91] R.C. 2111.50(E)(1).

[92] R.C. 2111.131(A) and by reference to R.C. 2111.08.

3. Any person who has the care and custody of the minor and with whom the minor resides, other than a guardian of the person only or a natural guardian;
4. A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor. A receipt verifying the deposit must be submitted to the court. Release of any funds held in a depository for the benefit of the minor must be upon court order, including release of funds to the minor upon attaining the age of majority.
5. A custodian designated by the court in its order, for the minor under the Ohio Transfers to Minors Act;
6. A trust for the benefit of the minor pursuant to the law pertaining to a court order for all or a portion of funds received by a minor to be deposited in trust.[93]

An order entered as described above authorizes the person or entity specified in it, to receive the money or personal property on behalf of the minor from the person under the duty to pay or deliver it, in an *amount not exceeding $25,000*, instead of amounts not exceeding $5,000 (the bill removes annually). Money or personal property so received by guardians of the person only, natural guardians, and custodians as described above may be used by them only for the support, maintenance, or education of the minor involved.[94]

Guardian ad litem for the ward or minor

Continuing law provides that when a ward, for whom a guardian of the estate or of the person and estate has been appointed, is interested in any suit or proceeding in the probate court, such guardian must in all such suits or proceedings act as guardian ad litem for such ward, except as to suits or proceedings in which the guardian has an adverse interest. The bill requires that in a suit or proceeding in which the guardian has an adverse interest, the court must appoint a guardian ad litem to represent that ward.[95]

Under current law, as modified by the bill, when a minor or other person under legal disability, for whom no guardian of the estate or of the person and estate has been appointed, is interested in any suit or proceeding in the probate court, the court may appoint a guardian or a guardian ad litem *to represent such minor or other person under legal disability*. The bill eliminates the provision that "[i]n a suit or proceeding in which the guardian has an adverse interest, the court must appoint a guardian ad litem."[96]

Settlement of claim of emancipated minor

Under current law, as modified by the bill, if personal injury, damage to tangible or intangible property, or damage or loss on account of personal injury or damage to tangible or

[93] By reference to R.C. 2111.182, not in the bill.

[94] R.C. 2111.131(B).

[95] R.C. 2111.23.

[96] R.C. 2111.23.

intangible property is caused to a minor who claims to be emancipated, by wrongful act, neglect, or default that would entitle the minor to maintain an action and recover damages for the injury, damage, or loss, and if any minor who claims to be emancipated is entitled to maintain an action for damages or other relief based on any claim, or is subject to any claim to recover damages or other relief based on any claim, that minor may file an application in the probate court praying for a finding by the court that the minor is in fact emancipated *for the sole purpose of settlement of the claim,* and authorizing, approving, and consenting to the settlement of the claim by the minor without the appointment of a guardian.[97]

The bill replaces ward with *minor* in a subsequent provision pertaining to the delivery and payment of the moneys.[98]

Emergency order to freeze assets of missing person

Under current law, as modified by the bill, a probate court, on its own motion or on application of an interested party, may issue an emergency ex parte order freezing the financial assets of an individual whom the court or applicant has reason to believe is missing or has gone or been *taken away*, instead of "taken to another state" if it is reasonably certain that immediate action is required to prevent significant financial harm to the individual. The order may freeze the individual's assets for a period not exceeding 72 hours.[99]

Persons prohibited from benefiting by another's death

Under continuing law, generally, none of the following persons can in any way benefit by the death of another caused by the person:[100]

- A person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of, or complicity in, the offense of aggravated murder, murder, voluntary manslaughter, or involuntary manslaughter by causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony that is not a proximate result of aggravated vehicular homicide as a felony;
- A person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of, or complicity in, a violation of an existing or former law of any other state, the United States, or a foreign nation, substantially equivalent to any of those offenses in the preceding dot point or complicity in committing any of them;

[97] R.C. 2111.181.

[98] R.C. 2111.181.

[99] R.C. 2111.022.

[100] R.C. 2105.19(A).

- A person who is indicted for any of those offenses or violations or complicity in committing any of them and subsequently is adjudicated incompetent to stand trial on that charge;
- A juvenile who is found to be a delinquent child by reason of committing an act that, if committed by an adult, would be any of those offenses or violations or complicity in committing any of them.

The law provides that all property of the decedent, and all money, insurance proceeds, or other property or benefits payable or distributable in respect of the decedent's death, must pass or be paid or distributed as if the person who caused the death of the decedent had predeceased the decedent.[101]

The bill provides that if a probate court determines by clear and convincing evidence that if an individual committed an act that would be an offense or violation described in continuing law above, and the victim of the act was the individual's spouse, the court, at its discretion and in the interests of justice, may choose to apply the rule of law described in the preceding paragraph. This provision is notwithstanding the simultaneous death law which provides for the passing of certain property rights depending upon an individual's survivorship of the death of another individual and that an individual who is not established by clear and convincing evidence.[102]

Qualifications for judges

Practice of law qualification

Current law provides that a judge of the municipal court, county court, court of common pleas, or court of appeals, or a justice of the Supreme Court must have been admitted to the practice of law in Ohio and, for a total of at least six years preceding appointment or the commencement of the judge's or justice's term, must have engaged in the practice of law in Ohio or, except for a county court judge, served as a judge of a court of record in any jurisdiction in the United States, or both.[103]

The bill modifies current law by providing that a judge of the municipal court, county court, court of common pleas, or court of appeals, or a justice of the Supreme Court must have been admitted to the practice of law in Ohio *for at least one year prior to appointment or the commencement of the judge's or justice's term*, and for a total of at least six years preceding appointment or the commencement of the judge's or justice's term, must have either served as a judge of a court of record in any jurisdiction in the United States, except for a county court judge, *or done any of the following:*[104]

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[101] Id.

[102] R.C. 2105.19(D).

[103] R.C. 1901.06(A), 1907.13(A), 2301.01(A), 2501.02(A), and 2503.01.

[104] R.C. 1901.06(A), 1907.13(A), 2301.01(A), 2501.02(A), and 2503.01.

1. Engaged in the practice of law in Ohio;
2. *Practiced in a federal court in Ohio, regardless of whether at the time of that practice the person was admitted to the practice of law in Ohio or practiced in the courts of Ohio;*
3. *Engaged in the authorized practice of law as in-house counsel for a business in Ohio or as an attorney for a government entity in Ohio, regardless of whether at the time of that practice the person was admitted to the practice of law in Ohio or practiced in the courts of Ohio.*

Other qualifications

Continuing law provides that in order to be elected or appointed, judges must have the qualifications of an elector, and must not have attained 70 years of age on or before the day of assuming the office and entering upon the discharge of its duties.[105] Regarding the qualifications of residency and of being a qualified elector, continuing law specifies the following:

- A municipal judge, during the judge's term, must be a qualified elector and a resident of the territory of the court to which the judge is elected or appointed.[106]
- A county court judge, at the time of filing a nominating petition for the office or at the time of appointment to the office and during the judge's term of office, must be a qualified elector and, generally, a resident of the county court district in which the judge is elected or appointed.[107]

Fulton County County Court judgeship

Background

Sub. H.B. 518 of the 134th General Assembly, which has been enacted, abolishes the Fulton County County Court effective January 1, 2024, and creates the Fulton County Municipal Court. That act requires that effective January 1, 2023, the part-time judgeship in the Fulton County County Court originally elected in 1980 be abolished; and effective January 1, 2024, the part-time judgeship in the Fulton County County Court originally elected in 1982 be abolished.[108]

The bill

The bill requires that effective January 1, 2023, the part-time judgeship of the Fulton County County Court originally elected in 1982, be converted to the full-time judgeship of the

[105] Ohio Constitution, Article IV, Section 6 and Article XV, Section 4.

[106] R.C. 1901.06(A).

[107] R.C. 1907.13(A).

[108] Section 3(D), Sub. H.B. 518. The term of the judge originally elected in 1980 ends December 31, 2022. The term of the judge originally elected in 1982 ends December 31, 2024.

Fulton County County Court until the Fulton County County Court is abolished on January 1, 2024.[109]

The bill requires that effective January 1, 2023, notwithstanding the statutes providing for the compensation of judges of the county court, the full-time judge of the Fulton County County Court under the preceding paragraph receive the compensation for a judge of the municipal court until the Fulton County County Court is abolished on January 1, 2024.[110]

Scout's Honor Law

Background – civil action based on childhood sexual abuse

An action for assault or battery may be brought by a victim of childhood sexual abuse based on childhood sexual abuse or by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse.[111] "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in the Childhood Sexual Abuse Law and would constitute any of the following criminal offenses, if the victim of the violation is at the time of the violation a child under 18 years of age or a child with a developmental disability or physical impairment under 21 years of age:[112]

- Rape;
- Sexual battery committed under certain circumstances specified in the Sexual Battery Law in which the offender is a person in authority over the victim;
- Gross sexual imposition or sexual imposition committed under specified circumstances in which the offender is a person in authority over the victim.

Statute of limitations

Current law provides the period of limitation for an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by such victim asserting any claim resulting from childhood sexual abuse, is 12 years after the cause of action accrues.[113]

As an exception to the above period of limitation, the bill specifies that only for purposes of making claims against a bankruptcy estate, an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by

[109] Section 3(E).

[110] Section 3(F).

[111] R.C. 2305.111(C).

[112] R.C. 2305.111(A)(1)(a) and (b).

[113] R.C. 2305.111(C)(1).

a victim asserting any claim resulting from childhood sexual abuse, may be brought at any time after the cause of action accrues.[114]

Under continuing law, relocated by the bill, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority.[115]

By its provisions described in the 2nd preceding paragraph, the bill enacts the Scout's Honor Law.[116]

Voluntary permanent surrender of child in temporary custody

The bill allows the parents of a child *who is in the temporary custody* of a public children services agency (PCSA) or private child placing agency (PCPA) to enter into an agreement with the PCSA or PCPA to surrender the child to the PCSA's or PCPA's permanent custody. Continuing law only allows a child's parents, guardian, or other persons *having custody* of the child to enter into a surrender agreement with a PCSA or PCPA.

The new surrender agreement created under the bill is also subject to the continuing law requirement of juvenile court approval applicable to voluntary surrender agreements under continuing law. In addition, the continuing law exception to juvenile court approval applies to the new surrender agreement if it involves a child less than six months old surrendered for the sole purpose of putting the child up for adoption. The bill also specifies that the PCSA or PCPA requesting the court's approval of an agreement must file *an original or amended* case plan, rather than *a* case plan as under current law, with the court.[117]

Emergency hospitalization

Existing Ohio law establishes a process under which certain health professionals or law enforcement officers may initiate an individual's involuntary treatment for mental illness when an emergency exists. This process is referred to as emergency hospitalization or "pink slipping." Currently, before the emergency hospitalization process may be initiated, an individual must (1) meet one or more statutory categories to be considered a "mentally ill person subject to a court order" and (2) represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The bill creates an additional statutory category under which an individual may be considered a "mentally ill person subject to a court order" and modifies the requirement that an individual also represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination to remove the requirement that the substantial risk of harm be a risk of ***physical*** harm.

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[114] R.C. 2305.111(C)(2).

[115] R.C. 2305.111(C)(3).

[116] Section 3.

[117] R.C. 5103.15, with conforming changes in R.C. 2151.412, 3107.071, and 5103.153.

Mentally ill person subject to a court order

Under Ohio law, an individual is a "mentally ill person subject to a court order" if, because of the individual's mental illness, the individual falls into one of five specified categories. Those categories are:[118]

- The individual represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- The individual represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- The individual represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the individual is unable to provide for and is not providing for the individual's basic physical needs because of the individual's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
- The individual would benefit from treatment for the individual's mental illness and is in need of treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the individual;
- The individual would benefit from treatment as manifested by evidence of behavior that indicates all of the following:
  - The individual is unlikely to survive safely in the community without supervision, based on a clinical determination;
  - The individual has a history of lack of compliance with treatment for mental illness and either (1) at least twice within the preceding 36 months, the lack of compliance has been a factor in necessitating hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility or (2) within the preceding 48 months, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others, or threats of, or attempts at, serious physical harm to self or others;
  - The individual, as a result of the individual's mental illness, is unlikely to voluntarily participate in necessary treatment;
  - In view of the individual's treatment history and current behavior, the individual is in need of treatment to prevent a relapse or deterioration that would likely result in substantial risk of serious harm to the individual or others.

[118] R.C. 5122.01(B).

An individual who only meets this final category without also meeting at least one other category is not subject to emergency hospitalization.[119]

The bill establishes a new category under which an individual may be considered a "mentally ill person subject to a court order." Under this category, an individual is considered a "mentally ill person subject to a court order" if the individual represents a substantial risk of harm to self or others as manifested by evidence that indicates all of the following:

- The person's judgment is impaired by a lack of understanding of having an illness or a need for treatment, or both;
- The person refuses treatment or is not adhering to prescribed treatment;
- The person has been diagnosed with one or more of the following conditions as defined in the most recent addition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association:
  - Schizophrenia;
  - Schizoaffective disorder;
  - Bipolar disorder;
  - Delusional disorder;
  - Major depressive disorder.
- If not treated and based on the individual's prior history, the individual is reasonably expected to suffer mental deterioration and, as a result of that deterioration, will meet one of the first four categories described above.[120]

Substantial risk of physical harm to self or others

In addition to being considered a "mentally ill person subject to a court order," to be eligible for emergency involuntary hospitalization, an individual also must represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The bill modifies this requirement to remove the restriction that the substantial risk of harm be a risk of ***physical*** harm. Therefore, under the bill, an individual must be considered a "mentally ill person subject to a court order" and represent a substantial risk of harm to self or others if allowed to remain at liberty pending examination to be eligible for emergency involuntary hospitalization.

Required written statement

Under current law, specified individuals who believe that a person is a "mentally ill person subject to a court order" and represents a substantial risk of harm to self or others if allowed to

[119] R.C. 5122.01(B)(6)(b).

[120] R.C. 5122.01(B)(5).

remain at liberty pending examination are authorized to detain a person and initiate emergency involuntary hospitalization by transporting the person to a general hospital or hospital licensed by the Ohio Department of Mental Health and Addiction Services (OhioMHAS).[121] Existing law further specifies that when an authorized individual does so, the transporting individual must give the receiving hospital a written statement detailing the circumstances under which the person was taken into custody and the reasons for believing emergency involuntary hospitalization is necessary.[122] The bill adds state highway patrol troopers to the list of individuals who are authorized to detain a person and initiate emergency involuntary hospitalization.[123]

Additionally, the bill makes two changes regarding this required written statement. First, the bill specifies that a written statement is not invalid if it is given to a general hospital rather than a hospital licensed by OhioMHAS. The bill requires a general hospital that receives a written statement to transmit that statement to a hospital licensed by OhioMHAS when the general hospital transfers a person to an OhioMHAS hospital.[124]

Second, the bill requires that an individual transporting a person they believe to be a "mentally ill person subject to a court order" under the psychiatric deterioration category established by the bill specify, in addition to the required written statement described above, any available relevant information about the history of the person's mental illness, if the transporting individual determines that the additional information has a reasonable bearing on the decision to transport the person. This additional information may include (1) information from anyone who has provided mental health or related support services to the person being transported, (2) information from one or more family members of the person being transported, or (3) information from the person being transported or anyone designated to speak on the person's behalf.[125]

Authority of a general hospital

Under current law, a general hospital may admit and provide care to a "mentally ill person subject to a court order" who is taken into custody and transported to the general hospital. However, the general hospital must transport the person to a hospital that is licensed by OhioMHAS not later than 24 hours after the person arrives at the general hospital.[126] The bill permits a general hospital to continue to provide care to a person for longer than 24 hours if either of the following is the case:

[121] R.C. 5122.10(A).

[122] R.C. 5122.10(B)(1).

[123] R.C. 5122.10(A)(1)(j).

[124] R.C. 5122.10(B)(1).

[125] R.C. 5122.10(B)(2).

[126] R.C. 5122.10(D).

- At the end of the 24-hour period, the general hospital determines that the person is not medically stable to be transferred[127];
- Within the 24-hour period, the general hospital is unable to identify an OhioMHAS-licensed hospital that is willing to accept the person.[128]

Additionally, the bill provides that if a licensed physician responsible for diagnosing or treating mental illness, a licensed clinical psychologist, a psychiatrist, or other health officer examines a "mentally ill person subject to a court order" who is transported to a general hospital, and determines that the person is not a "mentally ill person subject to a court order," the general hospital may release the person, unless a court has issued a temporary order of detention for the person. The bill specifies that this provision is not to be construed as requiring a general hospital to have the resources for or provide licensed professionals to make a determination as to whether someone is a "mentally ill person subject to a court order."[129]

Background

For a more detailed explanation of current Ohio law regarding the emergency hospitalization process, please see LSC's Members Brief, Involuntary Treatment for Mental Illness, which may be accessed under the "Publications" tab on LSC's website: lsc.ohio.gov.

Medicaid prior authorization requirements for prescription drugs

The bill adds drugs that are prescribed for the treatment of schizophrenia, schizotypal disorder, or delusional disorder to the list of drugs for which a Medicaid managed care organization is prohibited from imposing a prior authorization requirement.[130] Under existing law, Medicaid managed care organizations are prohibited from imposing a prior authorization requirement for antidepressant and antipsychotic drugs that (1) are administered in a standard tablet or capsule form, or long-acting injectable, (2) are prescribed by a physician, psychiatrist, or certified nurse practitioner or clinical nurse specialist certified in psychiatric mental health, and (3) are prescribed for a use that is indicated on the drug's labeling, as approved by the U.S. Food and Drug Administration.[131]

[127] R.C. 5122.10(E).

[128] R.C. 5122.10(F).

[129] R.C. 5122.10(G).

[130] R.C. 5167.12(B)(1).

[131] R.C. 5167.12(B).

MAT drug prior authorization under managed care

The bill prohibits Medicaid managed care organizations from imposing prior authorization requirements for a drug used in medication-assisted treatment (MAT) or in withdrawal management or detoxification if both of the following apply:[132]

- The drug is prescribed by a prescriber who has a waiver under federal law to dispense narcotic drugs for maintenance treatment or detoxification treatment;
- The drug is prescribed for a use indicated on the drug's label, as approved by the federal Food and Drug Administration (FDA).

Current law defines "drug used in medication-assisted treatment" as an FDA-approved drug for use in MAT, including an oral drug, an injectable drug, or a long-acting or extended-release drug. It includes full and partial agonist drugs, as well as antagonist drugs.[133] "Drug used in withdrawal management or detoxification" is defined as an FDA-approved drug for use in, or a drug in standard use for, mitigating opioid or alcohol withdrawal symptoms or assisting with detoxification, including an oral drug, an injectable drug, or a long-acting or extended-release drug. It includes drugs that are full, partial, and alpha-2 adrenergic agonists, as wells antagonist drugs.[134]

Towing authorizations

Towing of vehicles under conservancy district jurisdiction

The bill allows a conservancy district's police department to take certain actions regarding towing motor vehicles. Under current law, only entities such as county sheriffs and municipal, township, and port authority police departments are allowed to take these actions. Specifically, a conservancy district police department may order the towing and storage of the following vehicles within the conservancy district's jurisdiction:

- An abandoned junk motor vehicle;
- A motor vehicle that has come into the conservancy district police department's possession;
- A motor vehicle that has been left on public streets or other public property for more than 48 hours or on private property without the property owner's permission for more than four hours; and
- A vehicle that has been in an accident.[135]

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[132] R.C. 5167.12(B)(2).

[133] R.C. 5119.191(A)(1).

[134] R.C. 5119.191(A)(2). See also R.C. 5119.191(A)(5) for the definition of "withdrawal management or detoxification."

[135] R.C. 4513.60, 4513.61, 4513.63, and 4513.66.

A conservancy district is a political subdivision of the state that is created for certain purposes, generally related to the prevention of floods and the disposal of wastewater. Conservancy districts also may operate various recreational facilities on lands owned by the district.

Other conservancy district towing authorizations

In addition to the authority specified above, the bill authorizes a conservancy district police department to do the following:

- Receive the required notice that must be provided by a towing and storage company to law enforcement when the company tows a motor vehicle from a private tow-away zone;
- Maintain records of motor vehicles towed from private tow-away zones within the department's jurisdiction;
- Receive the required notice that must be provided by repair garages and places of storage prior to obtaining title to a motor vehicle abandoned at the repair garage or place of storage;
- Make a determination that a motor vehicle abandoned at a towing and storage company facility or items in the vehicle are not necessary to criminal investigation prior to the company taking title to the vehicle;
- Undertake the sale or disposition of a motor vehicle towed by order of the police department from private or public property;
- Provide the required notice to a person who willfully leaves an abandoned junk vehicle on private property and to a person who allows a junk motor vehicle to remain on their property.[136]

Towing of vehicles under ODNR jurisdiction

The bill generally allows natural resource officers and wildlife officers employed by the Department of Natural Resources (ODNR) to order the towing and storage of the following vehicles within the Department's jurisdiction:

- An abandoned junk motor vehicle;
- A motor vehicle that has come into the Department's possession as a result of law enforcement duties;
- A motor vehicle that has been left on public streets or other public property under the Department's jurisdiction for more than 48 hours; and

[136] R.C. 4505.101, 4505.104, 4513.601, 4513.62, 4513.64, and 4513.65.

- A vehicle that has been in an accident.[137]

The bill also authorizes ODNR to provide the required notice to a person who willfully leaves an abandoned junk vehicle on private property and to a person who allows a junk motor vehicle to remain on their property.[138]

Similar to the authorizations granted to a law enforcement agency under current law, the bill authorizes the Department to dispose of, sell at public auction, or allow the towing service or storage facility to take title to any unclaimed motor vehicle in the Department's possession. The money accrued by the Department from the sale and disposition of an unclaimed motor vehicle or of an abandoned junk motor vehicle must be credited as follows:

- To the Wildlife Fund if the vehicle was removed from property under the control or jurisdiction of the Division of Wildlife; or
- To the State Park Fund if the vehicle was removed from any other property under the control or jurisdiction of the Department.[139]

Transfer of title through public auction

Background

Under current law, after the owner of a titled automobile dies, the title to the automobile either transfers automatically through a nonprobate transfer (e.g., joint ownership with right of survivorship, a transfer-on-death designation, or a trust) or must be transferred by the executor or administrator of the decedent's estate through probate. Under certain circumstances, when the executor or administrator transfers the title, the probate court's prior approval for the transfer is required. The following table denotes when the court's prior approval of the transfer is required and when it is not.

Transfer of automobile title through probate[140]	
Approval required[141]	**Approval not required[142]**
When the automobile is transferred to any of the following: ▪ The decedent's spouse, when the spouse elects to purchase one or more of the	When the automobile is transferred to any of the following: ▪ A legatee entitled to the automobile

[137] R.C. 4513.61, 4513.63, and 4513.66.

[138] R.C. 4513.64 and 4513.65.

[139] R.C. 4513.62 and 4513.63.

[140] R.C. 2106.18.

[141] R.C. 2106.18(B); R.C. 2106.16, not in the bill.

[142] R.C. 2106.18(C); R.C. 2113.29 and 2113.55, not in the bill.

Transfer of automobile title through probate[140]	
Approval required[141]	**Approval not required[142]**
decedent's automobiles that have a value greater than the base $68,000 to which the spouse is automatically entitled; ▪ A distributee; or ▪ A purchaser.	under the terms of the decedent's will; ▪ A distributee, if the distribution is made under a general court order pertaining to distribution in kind; ▪ A purchaser if the decedent's will authorizes the sale.

Sale at public auction

The bill authorizes the executor or administrator of the estate to transfer a titled automobile to a purchaser at a public auction without obtaining the prior approval of the probate court for the transfer. The executor or administrator must conduct the auction in accordance with the current law proceedings for a public auction of personal property within an estate (e.g., meet advertising requirements for the auction). However, the purchaser of the automobile through the auction may take title and possession of the automobile without waiting for the court's final approval.[143]

Vehicles and watercraft

The bill clarifies that, for purposes of the automobile title law provisions, "automobile" includes any motor vehicle titled under R.C. Chapter 4505 and any all-purpose vehicle and off-highway motor vehicle titled under R.C. Chapter 4519. Thus, an executor or administrator may transfer any titled vehicle in accordance with current law unchanged by the bill and the bill's provisions. Additionally, the transfer of title through public auction applies equally to a decedent's titled watercraft, a watercraft trailer, or an outboard motor.[144]

Residential PACE lien priority

Under the bill, generally a residential "property assessed clean energy" (PACE) lien is:

- Subordinate to all liens on the qualifying residential real property recorded prior to the time the residential PACE lien is recorded;
- Subordinate to a first mortgage on the qualifying property recorded after the residential PACE lien is recorded;
- Subject to the preceding paragraph, superior to any other lien on the qualifying residential real property recorded after the residential PACE lien is recorded.

[143] R.C. 2106.18(C)(4); R.C. 2113.41, not in the bill.

[144] R.C. 2106.18(D); R.C. 2106.19, not in the bill.

A residential PACE lien is the encumbrance on qualifying residential real property (a single family residential dwelling, or other residential dwelling of three or fewer units) created by the special assessment for a residential PACE loan. A residential PACE loan is the extension of financing that is offered to pay for the installation of cost-effective energy improvements on a homeowner's qualifying residential real property and is repayable by the homeowner through a special assessment.

In the event of a foreclosure sale of a qualifying residential real property, the holders of any mortgages or other liens, including delinquent special assessments secured by residential PACE liens, receive proceeds in accordance with the priorities established above.

The bill also exempts PACE liens from the provision stating that the state has the first lien on the lands and lots described in the delinquent land list, for the amount of taxes, assessments, interest, and penalty charged prior to the delivery of that list. (R.C. 5301.93 and 5721.10.)

Cremation procedure

The bill corrects a drafting error relating to a prohibition against removing dental gold, body parts, organs, or other items of value from a body prior to or after cremation without proper authorization.[145]

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 122nd General Assembly and H.B. 479 of the 129th 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.[146]

[145] R.C. 4717.26(F)(1).

[146] R.C. 2131.09.

HISTORY

Action	Date
Introduced	06-16-21
Reported, S. Judiciary	03-02-22
Passed Senate (30-0)	03-16-22
Reported, H. Civil Justice	--

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