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S.B. 202*
134th General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsors: Sens. Hackett and Antonio

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SUMMARY

Disability generally barred as a factor for minor's caretaker

- Prohibits a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) from using a person's disability as the sole basis to deny or limit that person from doing any of the following:
 - Exercising custody, parenting time, or visitation rights with a minor;
 - Adopting a minor;
 - Serving as a foster caregiver for a minor;
 - Appointment as a guardian for a minor.
- Requires a court, PCSA, PCPA, or PNA, when determining whether to grant a person with a disability the right to conduct an activity or exercise authority as described above, to determine whether modifications or supportive services to assist the person regarding the activity or authority are necessary or reasonable.
- Requires a court, PCSA, PCPA, or PNA to implement modifications or supportive services to help the person with a disability to conduct the activity or exercise the authority in question, if modifications or supportive services are determined to be necessary and reasonable.
- Requires the court, PCSA, PCPA, or PNA to deny or limit the conduct of the activity or exercise of the authority in question by the person with a disability, if modifications or supportive services are not determined to be reasonable.

* 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.

- Allows a person with a disability to bring an action or, in the case of a court determination, file a motion, to challenge either:
 - The modifications or supportive services imposed on the person;
 - The limitation or denial of the conduct of the activity or exercise of the authority in question.
- Requires the court to do one of the following, upon the bringing of an action or filing of a motion:
 - Affirm the modifications or supportive services required or the limitation or denial imposed and make specific findings of fact and conclusions of law providing the basis for its decision;
 - Rescind the modifications or supportive services or limitation or denial and grant the person the right to conduct the activity or exercise the authority in question, with or without reasonable modifications or supportive services.

Challenge of administrative order responding to state of emergency

- Modifies current law by providing that a civil action challenging an order of an administrative department or head, state agency, or state elected officer issued in response to a state of emergency must be brought as follows: (1) if the action is for damages, only in the Court of Claims, (2) if the action is for declaratory judgment, injunctive relief, or other appropriate relief other than damages, in an appropriate court located in the county where the person's residence or business is located or in the Court of Claims, and (3) if the action is for damages and also is for declaratory judgment, injunctive relief, or other appropriate relief, only in the Court of Claims.

Attorney in fact signatures

- Statutorily upholds the validity of a recorded real property instrument signed by an attorney in fact even if the attorney in fact signs the instrument in an individual capacity, rather than a representative capacity.

DETAILED ANALYSIS

Disability generally barred as a factor for minor's caretaker

The bill prohibits a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) from denying or limiting a person from any of the following solely on the basis that the person has a disability:

- Exercising custody, parenting time, or visitation rights with a minor;
- Adopting a minor;

- Serving as a foster caregiver for a minor;
- Appointment as a guardian for a minor.¹

However, the bill specifies that this provision cannot be construed to guarantee or grant a person with a disability a right to conduct the activities or exercise the authority as described above.²

Under the bill, “disability” has the same meaning as in the Americans with Disabilities Act of 1990. In that federal law, “disability” with respect to an individual means “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual, (B) a record of such an impairment, or (C) being regarded as having such an impairment.” A few examples of major life activities listed in the Act are: caring for oneself, performing manual tasks, seeing, hearing, walking, standing, speaking, communicating, working, and the operation of a major bodily function.³

Modifications or supportive services determination

The bill requires a court, PCSA, PCPA, or PNA, when determining whether to grant a person with a disability the right to conduct the activity or exercise the authority in question, to determine whether modifications or supportive services designed to assist the person regarding the activity or authority are necessary and reasonable. The court, PCSA, PCPA, or PNA must provide its reason for its determination.⁴ A court, in particular, must make specific findings of fact and conclusions of law providing the basis for its determination.⁵

“Supportive services” are defined under the bill as any service provided through a program or agency at the federal, state, or local level that is intended to assist a person with a disability with day-to-day responsibilities and activities, including those associated with the care and supervision of a minor.⁶

When modifications or supportive services imposed

If modifications and supportive services are determined to be necessary and reasonable, the court, PCSA, PCPA, or PNA that made the determination may require the modifications or services to be implemented to assist the person with a disability in conducting the activity or exercising the authority in question. The court, PCSA, PCPA, or PNA imposing the modifications

¹ R.C. 2131.031(A).

² R.C. 2131.031(B).

³ R.C. 2131.03(A); 42 United States Code 12102, not in the bill.

⁴ R.C. 2131.032(A) and (B).

⁵ R.C. 2131.032(C).

⁶ R.C. 2131.03(B).

or supportive services must review their continued necessity and reasonableness after a reasonable amount of time.⁷

When modifications or supportive services denied or limited

If modifications and supportive services are not determined reasonable, the court, PCSA, PCPA, or PNA that made the determination must deny or limit the conduct of the activity or exercise of the authority in question by the person with a disability.⁸

Challenging a determination

A person with a disability may bring an action or, in the case of a court determination, file a motion, to challenge either: (1) the modifications or supportive services imposed or (2) the limitation or denial of the conduct or the activity or exercise of the authority in question, if modifications or supportive services are not determined to be required.⁹

A court must do one of the following regarding such an action or motion:

- Affirm the modifications or supportive services (if they were determined to be required) or the limitation or denial (if modifications or supportive services were not determined to be required), and make specific findings of fact and conclusions of law as to why reasonable modifications or supportive services are necessary in order to conduct the activity or exercise the authority in question or insufficient to alleviate any concerns. For a motion to challenge a court determination, the court must consider, and address in its decision, any new arguments or evidence provided with the motion.
- Rescind the modifications or supportive services or limitation or denial and grant the person the right to conduct the activity or exercise the authority in question, with or without reasonable modifications or supportive services.¹⁰

Challenge of administrative order responding to state of emergency

In a provision of current law that specifies that, notwithstanding any other Revised Code provision, a person who challenges an order or rule adopted by an administrative department, administrative department head, state agency, or statewide elected officer that is issued or adopted in response to a state of emergency, in an action for damages, declaratory judgment, injunctive relief, or other appropriate relief may do so in an appropriate court located in the county where the person's residence or business is located, the bill instead specifies that,

⁷ R.C. 2131.033.

⁸ R.C. 2131.034.

⁹ R.C. 2131.035.

¹⁰ R.C. 2131.036.

notwithstanding any other Revised Code provision, the person may challenge the order or rule in whichever of the following courts is applicable regarding the action:¹¹

1. If the civil action is for damages, the action may be brought only in the Court of Claims.
2. If the civil action is for declaratory judgment, injunctive relief, or other appropriate relief other than damages, the action may be brought in an appropriate court located in the county where the person's residence or business is located or in the Court of Claims.
3. If the civil action is for damages and also is for declaratory judgment, injunctive relief, or other appropriate relief, the action may be brought only in the Court of Claims.

Attorney in fact signatures

Continuing law provides that no instrument conveying real estate, or any interest therein, and of record in the office of the county recorder of the county in which the real estate is situated can be considered defective nor can the validity of the conveyance be affected because of a variety of technical errors, including because the executor, administrator, guardian, assignee, or trustee making the instrument signed or acknowledged the same individually instead of in a representative or official capacity. In other words, if a trustee, for example, signs the instrument without adding “, Trustee” after the signature, the signature, and so the instrument, is still valid.

The bill adds attorneys in fact (a person who holds a power of attorney) to the list of parties whose signatures remain valid. This statutorily upholds the validity of a recorded real property instrument signed by an attorney in fact even if the attorney in fact signs the instrument in an individual capacity, rather than a representative capacity.¹²

HISTORY

Action	Date
Introduced	06-22-21
Reported, S. Judiciary	05-25-22
Passed Senate (30-0)	05-25-22
Reported, H. Civil Justice	---

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¹¹ R.C. 107.43(D)(1).

¹² R.C. 5301.071.