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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 those modifications or supportive services if they are determined to be necessary and reasonable.
- Requires the court, PCSA, PCPA, or PNA to deny or limit the activity or authority in question by the person with a disability, if modifications or supportive services are not determined to be reasonable.
- 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 activity or authority in question.
- Requires the court to do one of the following when an action or motion is filed:

- 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.

Judge qualification

- Modifies the qualifications for office for judges of municipal courts, county courts, courts of common pleas, courts of appeals, and justices of the Supreme Court.

Challenge of administrative order responding to state of emergency

- Requires that a civil action challenging a state of emergency order or rule and seeking damages be brought in the Court of Claims, and allows such an action to be brought in the Court of Claims if the action is for declaratory judgment, injunctive relief, or other appropriate relief.

Fulton County County Court

- Converts a part-time judgeship of the Fulton County County Court to a full-time judgeship until January 1, 2024, when the court is abolished and the Fulton County Municipal Court is created.

Task Force on Bail

- Establishes a Task Force on Bail to collect and evaluate data regarding the current use of bail in Ohio.

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 administration, the trustee must send both (1) a written notice with specific information and (2) up to four years of trustee reports to all beneficiaries of the trust and other parties.

- 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 of probate court proceedings that involve the settlement of claims made by guardians on behalf of minors.

Presentment of claims against an estate

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

Anti-lapse statute

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

Technical changes relating to effective dates

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

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.

Lucas County land conveyance

- Authorizes the conveyance of state-owned land in Lucas County to the Lucas County Commissioners.

TABLE OF CONTENTS

Disability generally barred as a factor for minor’s caretaker	4
Modifications or supportive services determination	5
When modifications or supportive services imposed	5
When modifications or supportive services denied or limited	6
Challenging a determination	6
Judge qualification	6
Challenge of administrative order responding to state of emergency	7

Fulton County County Court	7
Disinterment of bodies buried in cemeteries	8
Application to cemetery for disinterment	9
Probate court order	10
Right of Disposition Law	10
Irrevocable trusts	11
Trust-terminating distributions	11
Written notice	12
Distributions objection period	13
No objection	13
Objection	13
Consent and bar to claim against trustee	14
Departing trustee	15
Written notice	15
No objection	16
Objection	17
Consent and bar to claim against trustee	17
Bar to claims against a fiduciary of an estate or subtrust	18
Delivery of notice and trustee's reports	18
Disclosures relating to settlement of claims for minors	19
Presentment of claims against an estate	19
Anti-lapse statute	20
Technical changes relating to effective dates	20
Attorney in fact signatures	21
Lucas County land conveyance	21

DETAILED ANALYSIS

Disability generally barred as a factor for minor's caretaker

The act 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 act 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 act, “disability” has the same meaning as in the federal Americans with Disabilities Act of 1990 (ADA). In the ADA, “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 ADA 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 act 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. A court, in particular, must make specific findings of fact and conclusions of law providing the basis for its determination.⁴

“Supportive services” are defined under the act 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.⁵

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 them 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 or supportive services must review their continued necessity and reasonableness after a reasonable amount of time.⁶

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 act.

⁴ R.C. 2131.032.

⁵ R.C. 2131.03(B).

⁶ R.C. 2131.033.

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.⁷

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) if modifications or supportive services are not determined to be reasonable, the limitation or denial of the conduct or the activity or exercise of the authority in question.⁸

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 necessary and reasonable) or the limitation or denial (if modifications or supportive services were not determined to be reasonable), 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.⁹

Judge qualification

The act modifies the qualifications for office for justices of the Supreme Court and for judges of municipal courts, county courts, courts of common pleas, and courts of appeals. To qualify for office, the act adds a new requirement that a judge or justice must have been admitted to the practice of law in Ohio for at least one year preceding appointment or the commencement of the judge's or justice's term.

Continuing law for justices of the Supreme Court and for judges of municipal courts, courts of common pleas, and courts of appeals requires the judge or justice to have either engaged in the practice of law in Ohio or served as a judge in any court of record in the United States for a total of at least six years preceding appointment or the commencement of the judge's or justice's term. However, serving as a judge in a court of record outside of Ohio does not qualify a person to be a county court judge. Continuing law for county courts requires the

⁷ R.C. 2131.034.

⁸ R.C. 2131.035.

⁹ R.C. 2131.036.

judge to have been engaged in the practice of law in Ohio for a total of at least six years preceding appointment or the commencement of the judge's term.

The act adds two additional circumstances that may be used to satisfy the continuing law six-year practice requirement for all five types of judge or justice:

1. The judge or justice 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; or
2. The judge or justice 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.¹⁰

Challenge of administrative order responding to state of emergency

Former law specified 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 in the county where the person's residence or business is located. The act instead specifies that, notwithstanding any other Revised Code provision, the person may challenge the order or rule in whichever of the following courts applies:¹¹

1. If the civil action is for damages, it 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, it may be brought in an appropriate court 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 for declaratory judgment, injunctive relief, or other appropriate relief, the action may be brought only in the Court of Claims.

Fulton County County Court

Beginning January 1, 2023, the act converts the part-time judgeship of the Fulton County County Court originally elected in 1982 into a full-time judgeship of the Fulton County County Court until that court is abolished on January 1, 2024. Additionally, the act specifies that the judge must be compensated during this time at the statutory rate set for a full-time municipal court judge, not at the rate set for a county court judge.¹²

¹⁰ R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01.

¹¹ R.C. 107.43(D)(1).

¹² Section 6, and by reference to R.C. 141.04(A)(5) and (6) and 1907.16(A), not in the act.

Task Force on Bail

The act establishes the “Task Force on Bail,” consisting of three members of the House, to be appointed by the Speaker, and three members of the Senate, to be appointed by the Senate President. The minority leaders of the House and Senate must each recommend at least one of the appointed members of the Task Force. The Task Force is to collect and evaluate data regarding the current use of bail in Ohio, develop a standardized questionnaire form and provide the form to each county sheriff to fill out on a daily basis for two months, and hear testimony on the alleged cost of compliance with the questionnaire. The standardized questionnaire form must collect the following information:

- The total number of people currently housed in the jail;
- Of that total population, the total number of inmates currently serving sentences, and the total number being held pretrial;
- The total number of people being held on felony charges pretrial, broken down by the level of the felony charged, and for what length of time;
- The total number of people being held on misdemeanor charges pretrial, broken down by the level of the misdemeanor charged, and for what length of time.

Within six months after all questionnaires are submitted, the Task Force must prepare and submit a report to the General Assembly detailing its findings and recommendations. Upon submitting the report, the Task Force ceases to exist.¹³

Disinterment of bodies buried in cemeteries

The act 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 former law, the person or persons having control of a cemetery were required to disinter any remains buried in the cemetery in either of the following circumstances:¹⁴

1. A decedent’s adult surviving spouse files an application and pays the reasonable costs and expenses;
2. On the 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

¹³ Section 5.

¹⁴ R.C. 517.23(A).

and disposition arrangements.¹⁵ The act 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 act, 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.¹⁶

Prior law permitted the person having control of the cemetery to disinter or grant permission to disinter and, if appropriate, to reinter or grant permission to reinter, any remains buried in the cemetery to correct an interment error if the person complied with the cemetery's internal rules pertaining to disinterment and provided notice to the decedent's last known next of kin. The act instead requires the notice to be given to the person who has been assigned or reassigned the rights to disposition for the deceased.¹⁷

Under former law, a person who was an interested party, age 18 or older, and of sound mind could apply to the probate court of the county in which the decedent was buried for an order to prevent the decedent's surviving spouse from having the remains disinterred. Under the act, 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.¹⁸

Application to cemetery for disinterment

The act 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 as described in (1) or (2).¹⁹

¹⁵ R.C. 2108.70, not in the act.

¹⁶ R.C. 517.23(A) and (C) and conforming changes in R.C. 517.24 and 517.25.

¹⁷ R.C. 517.23(D).

¹⁸ R.C. 517.23(E)(1).

¹⁹ R.C. 517.24(A) and (B)(1)(g).

Probate court order

Under the act, 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 prior law, the court could grant the order if good cause was shown. The act replaces this with the factors that must be considered under the Ohio Right of Disposition Law, described below, which the act also revises.²⁰

Right of Disposition Law

The act 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, to assign to any person the right of disposition for a declarant or deceased person. In making this determination, that law requires the court to consider the following:²¹

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 act expands the considerations to also apply to the declarant's or deceased person's redistribution or disinterment desires and adds to the list of factors a probate court must consider when assigning the right of disposition to include the following:²²

- 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;

²⁰ R.C. 517.24(B)(3)(a).

²¹ R.C. 2108.82(A) and (B).

²² R.C. 2108.82(B)(6) through (9).

- 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 to (1) the physical or environmental conditions of the cemetery or other location of the bodily remains or the surrounding area, (2) the cemetery's financial condition, (3) the residence of the deceased person's family members, or (4) the burial arrangement for the deceased person's family members. A change of circumstances does not include a mere change of the representative who has been assigned the right to direct the disposition of the deceased person's bodily remains.

The act 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.²³

Irrevocable trusts

The act 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 applies 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.²⁴ "Trust-terminating distributions" means distributions that, when completed, will distribute the remaining net assets of a trust and thereby effectively terminate the trust.²⁵

Trust-terminating distributions

When a trust is to terminate as a result of trust-terminating distributions and the trustee elects to use the act's provisions, the trustee must serve on the "terminating distributions necessary parties" both a written notice, executed by or on behalf of the trustee and one or more trustee's reports covering the applicable reporting period. "Terminating distributions necessary parties" means: (1) the current beneficiaries of the trust, determined as of the date of the notice, (2) if the trust-terminating distributions include one or more mandatory distributions under the terms of the trust, all other persons living at the date of the notice who were current beneficiaries of the trust immediately prior to the triggering event that is the basis for the mandatory distributions, and (3) any co-trustee.²⁶ 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

²³ R.C. 2108.82(C).

²⁴ R.C. 5801.21.

²⁵ R.C. 5801.20(I).

²⁶ R.C. 5801.20(G) and 5801.22(A) and (B).

values.²⁷ The act defines “applicable reporting period” as either the most recent four years, as of the date of preparation of a notice under the act, or if the trust became irrevocable during that 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, 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 whom 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.²⁸

Written notice

The written notice must include the following information:²⁹

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 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 on the written statement of a recipient of the notice that the person consents to the proposed trust-terminating distributions and

²⁷ R.C. 5801.20(K) and R.C. 5808.13(C), not in the act.

²⁸ R.C. 5801.20(A) and 5801.22(A).

²⁹ R.C. 5801.22(A) and (B).

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 before the distributions objection period expires if all 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 completing the trust-terminating distributions but not yet received or disbursed, including trustee fees remaining to be paid.

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, the notice and trustee's reports served are considered approved by each recipient, and the trustee, within a reasonable period of time after the distributions objection period expires, 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.³⁰

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 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 within the distributions objection period. If the trustee receives a written objection within the 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 the 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

³⁰ R.C. 5801.22(C).

notice, subject to any modifications provided for in the terms of the document setting forth the resolution of each objection.³¹

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 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 reports and all other matters pertaining to the trustee's administration of the trust. The distributions described in the notice may be completed before the distributions objection period expires if all persons on whom the notice and reports were served have delivered to the trustee similar written consents and irrevocable waivers.

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 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.³²

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.³³

³¹ R.C. 5801.20(C) and 5801.22(D).

³² R.C. 5801.22(E) and (F).

³³ R.C. 5801.22(G).

Departing trustee

When a trustee resigns or is removed from an irrevocable trust and the departing trustee elects to use the provisions of this act, 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 and the successor trustee if one has been appointed or designated.³⁴ In addition, in the case of a trustee's resignation, the necessary parties must include the following:³⁵

- 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 the resignation or removal.³⁶

Written notice

The written notice must include all of the following:³⁷

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;

³⁴ R.C. 5801.20(E) and 5801.23(A) and (B)(2).

³⁵ R.C. 5801.20(E)(1).

³⁶ R.C. 5801.20(E)(2) and 5801.23(A).

³⁷ R.C. 5801.23(B)(1).

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, before the trustee succession objection period expires if all 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, the notice and trustee's reports served is considered approved by each recipient and the departing trustee. And within a reasonable period of time after the trustee succession objection period expires, 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 the notice and reports is barred from bringing a claim against the trustee, and from challenging the validity of the trust.³⁸

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, 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.³⁹

Consent and bar to claim against trustee

The departing trustee may rely on the written statement of a recipient of the notice and trustee's reports 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 before the trustee succession objection period expires if all persons on whom the notice and reports were served have delivered to the departing trustee similar written consents and irrevocable waivers. Any person who was served a notice and reports that comply with these requirements and who either consented to the delivery of the trust's net assets to the successor trustee or co-trustees, 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 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 have been served a notice and reports that comply with the act's requirements and have either consented to the delivery of the net assets of the trust to the

³⁸ R.C. 5801.23(C).

³⁹ R.C. 5801.23(D).

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 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.⁴⁰

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 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 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.⁴¹

Delivery of notice and trustee's reports

Under the act, 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.⁴² The notice and reports must be served on a person by any of the following means:⁴³

- 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;

⁴⁰ R.C. 5801.23(E) and (F).

⁴¹ R.C. 5801.24(A).

⁴² R.C. 5801.21(D).

⁴³ R.C. 5801.24(B).

- 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, if notice and trustee’s reports are served and a written objection is received by the trustee within the objection period, a trustee indemnification clause may be included in an agreement or other written instrument executed by the objecting party. “Trustee indemnification clause” means a provision that indemnifies the trustee against loss arising from a claim relating to the trustee’s administration of the trust.⁴⁴

Disclosures relating to settlement of claims for minors

The Guardianship Law sets forth the procedure in probate court for settling claims for minors, or other persons a probate court has found to be incompetent, who are subject to guardianship. Under that 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 ward’s estate may adjust and settle a claim with the advice, approval, and consent of the probate court. The act 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.⁴⁵

Presentment of claims against an estate

The act 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 the law, unchanged by the act, 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

⁴⁴ R.C. 5801.20(J) and 5801.24(C).

⁴⁵ R.C. 2111.18.

distributees of the decedent's estate who may share liability for payment of the claim. Former law provided three ways a creditor could present a claim after the appointment of executor or administrator and prior to the filing of a final account or a certificate of termination. The act modifies the three methods in the following manner:

1. Prior law allowed the claim to be presented to the executor or administrator in writing. The act allows, in addition, the claim to be presented to the executor's or administrator's counsel in writing.
2. Prior law allowed 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 act, 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. Prior law allowed the claim to be presented in a writing that was sent by ordinary mail addressed to the decedent and that was actually received by the executor or administrator within the appropriate time. The act modifies this option by eliminating the requirement that it is sent by ordinary mail. And the act 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.⁴⁶

Anti-lapse statute

The act revises the definition of "devise" under the anti-lapse statute. Generally, under continuing law, if a devisee fails to survive the testator, a substitute gift may be created in the surviving descendants of any deceased devisee, if certain conditions are met. Under former law, a "devise" meant *an alternative devise, a devise in the form of a class gift, or an exercise of a power of appointment*. The act amends the definition to specify that "devise" additionally includes a primary devise.⁴⁷ The act 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 where doing so would invalidate or supersede any instrument that conveys real property or any interest in the real property that has been recorded.⁴⁸

Technical changes relating to effective dates

The act 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

⁴⁶ R.C. 2117.06 and 2117.07.

⁴⁷ In the 2021 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.

⁴⁸ R.C. 2107.52.

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 act 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, 2013.⁴⁹

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 can be considered defective nor can the validity of the conveyance be affected because the executor, administrator, guardian, assignee, or trustee making the instrument signed or acknowledged it individually instead of in a representative or official capacity.

The act adds attorneys in fact as 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.⁵⁰

Lucas County land conveyance

The act supersedes Section 22 of H.B. 377 of the 134th General Assembly, enacted in 2022, which had authorized the sale of 1.079 acres of state-owned land in Lucas County, under control of the Department of Public Safety (DPS), to the highest bidder. The property at 10391 Airport Highway in Swanton includes an approximately 2,300 square foot building.

The act instead authorizes the real estate to be sold to the Lucas County Commissioners for \$1. The Director of Administrative Services (DAS Director) must offer the real estate to the Lucas County Commissioners through a real estate purchase agreement. If the county commissioners do not complete the purchase within the time provided in the agreement, the DAS Director may use any reasonable method of sale considered acceptable by DPS to determine an alternate grantee willing to complete the purchase for a consideration acceptable to DPS. DPS must pay all advertising costs, additional fees, and other costs incident to the sale of the real estate to an alternate grantee. The conveyance authority expires April 3, 2026 (three years after the act’s effective date).

The deed must contain a restriction stating that, prior to any subsequent sale or transfer of the real estate, the purchaser must offer the real estate to the state at the same price for which it was purchased, at the sole option and discretion of the DAS Director and DPS. The deed may contain a restriction prohibiting the grantee from leasing the real estate or any portion of it for purposes other than a proper public purpose, and may contain reversion to the state for violation of the restriction. The deed may contain other terms and conditions the DAS

⁴⁹ R.C. 2131.09.

⁵⁰ R.C. 5301.071.

Director determines to be in the best interest of the state. After the conveyance, the state or DPS may release any restrictions, exceptions, reservations, reversionary interests, or other terms and conditions in the deed without needing further legislation.

Other than costs related to sales to alternate grantees, the grantee must pay all costs associated with the purchase, closing, and conveyance. The proceeds of the sale must be deposited in the state treasury to the credit of the Public Safety – Highway Purposes Fund (Fund 5TM0).

HISTORY

Action	Date
Introduced	06-22-21
Reported, S. Judiciary	05-25-22
Passed Senate (30-0)	05-25-22
Reported, H. Civil Justice	12-14-22
Passed House (66-24)	12-14-22
Senate concurred in House amendments (30-0)	12-14-22
