



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 595*

132nd General Assembly
(As Reported by S. Judiciary)

Reps. Cupp and Rezabek, Seitz, Riedel, Manning, Anielski, Ashford, Blessing, Brown, Craig, Dever, Ginter, Green, Hambley, Holmes, Leland, Miller, Perales, Rogers, Wiggam, Wilkin

BILL SUMMARY

- Specifies the coroner's duties with regards to a deceased person, including notifying the person who has been assigned the rights of disposition for the deceased person of the deceased person's death and the disposition of the deceased person's property.
- Requires the person who receives the deceased person's possessions from the coroner to deliver them to the executor or administrator of the deceased person's estate or to any other person legally entitled to any of the possessions.
- Disqualifies a person who is convicted of involuntary manslaughter that is not a proximate result of a felony aggravated vehicular homicide or vehicular homicide offense from in any way benefiting by the death of the victim of that offense.
- Provides that if a will incorporates a trust instrument only in the event that a bequest or device is ineffective, the trust instrument must be deposited in the probate court not later than 30 days after the determination that the bequest or device is ineffective.
- Specifies terms that must be used if a testator intends to incorporate a trust instrument in a will.
- Specifies that a will's compliance with the law of the jurisdiction in which the testator was physically present at the time of the execution of a will applies to determine the admissibility of a will to probate in Ohio.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that the exception to the antilapse provisions for wills and trusts only applies to multigenerational class gifts.
- Allows for the creation of a trust for the benefit of a minor beneficiary if the minor is entitled to money or property whether by settlement for personal injury or damage to tangible or intangible property, inheritance or otherwise.
- Provides that any communication between an attorney and a client who is acting as a fiduciary is privileged and protected from disclosure to third parties to whom the fiduciary owes fiduciary duties to the same extent as if the client was not acting as a fiduciary.
- Eliminates a requirement that the probate court approve a transfer of funds received by a fiduciary in the fiduciary's name as such fiduciary to the fiduciary's attorney for deposit in an interest on lawyer's trust account (IOLTA) and allows such a transfer if nominal in amount *or* if to be held for a short period of time.
- Allows for the creation of the county probate court guardianship services fund, the multicounty probate court guardianship services fund, and the county or multicounty guardianship services board.
- Provides a procedure for a person entitled to be appointed as a personal representative of an estate or named as executor in a will to file an application with the probate court to release the decedent's medical records and medical billing records for the limited purpose of deciding whether or not to file a wrongful death, personal injury, or survivorship claim.
- Specifies that a provision in the terms of a trust, except for a testamentary trust, that requires the arbitration of disputes, other than disputes of the validity of all or part of a trust instrument, is enforceable and unless otherwise specified, the arbitration is presumed to be binding.
- Relocates the provisions regarding determining the validity of a will before the testator's death, creates a procedure for determining the validity of a trust, and makes conforming changes.
- Specifies that the probate division of the common pleas court has exclusive jurisdiction to render declaratory judgments regarding the validity of a trust, but the probate division may transfer the proceeding to the general division of the common pleas court.
- Generally prohibits a person from contesting the validity of any trust as to facts decided if the trust was submitted to the probate court by the settlor during the settlor's lifetime and was declared valid by the court.

- Allows a person to contest the validity of a trust described in the preceding dot point if the person is one who should have been named a party defendant in the action in which the trust was declared valid and if the person was not named a defendant and properly served in that action.
- Permits nonelderly, disabled applicants or recipients of Medicaid benefits or their spouses to establish their own special needs trust on or after December 13, 2016.
- Provides a uniform process for the determination that a person is an indigent litigant for purposes of a civil action and provides for the waiver of certain court costs and fees for indigent litigants.
- Provides that authenticated copies of wills "of persons not domiciled in this state," (added by the bill) executed and proved according to the laws of any state or territory, relative to property in this state, may be admitted to record in the probate court of a county where a part of that property is situated.
- Prohibits a juvenile court from exercising jurisdiction in certain cases to determine custody or child support if the following apply:
 - The child's parents are married;
 - The child's parents are not married and the child or child's sibling is subject to an existing order under another court's jurisdiction;
 - The determination is ancillary to the parent's pending divorce, dissolution of marriage, annulment, or legal separation.
- Provides that the bill's prohibition on juvenile court jurisdiction does not affect the authority to grant custody, in certain cases, of a child to a relative or place a child in kinship care.
- Permits a juvenile court to transfer jurisdiction over a support or custody action or order to an appropriate domestic relations court if the following apply:
 - The child's parents are married and not parties to a pending divorce, dissolution, legal separation, or annulment proceeding;
 - The child's parents are not married and the child or child's sibling is subject to an existing order under another court's jurisdiction;
 - The child's parents are parties to a pending divorce, dissolution, legal separation, or annulment proceeding;

- The court is exercising jurisdiction over a domestic violence protection order, and the child or the child's parents are subject to both a support order and the protection order.
- Provides that jurisdiction over a transferrable action or order must be transferred and the receiving court is to have exclusive jurisdiction if certain requirements are met.
- Provides that a juvenile court's ability and requirement to transfer jurisdiction under the bill applies to all orders in effect, and all actions or proceedings pending or initiated, on or after the bill's effective date.
- Requires, if a child is subject to a support order a domestic relations court, a juvenile court to notify the domestic relations court and child support enforcement agency (CSEA) if the juvenile court both:
 - Adjudicates the child to be delinquent, unruly, abused, neglected, or dependent;
 - Grants custody to an individual or entity other than that designated by the domestic relations court.
- States that nothing in the bill can be construed to prevent a domestic relations court from certifying a case to a juvenile court in certain situations, and a juvenile court's consent is not required for certification.
- Defines "domestic relations matters" regarding jurisdiction of domestic relations courts.

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CONTENT AND OPERATION

Coroner's duties: notice of person's death and disposition of property

The bill modifies existing law regarding notifying any known relatives of a deceased person who meets death in a specified manner by requiring the coroner to make a reasonable effort to notify those relatives. The bill removes the requirement that the next of kin, other relatives, or friends of the deceased person, in that order, have prior right as to the disposition of the body of the deceased person and that the coroner must make a diligent effort to ascertain the next of kin, other relatives, or friends of the



deceased person if relatives of the deceased are unknown. Instead, the bill requires the coroner make a reasonable effort to determine the identity of the person who has been assigned the rights of disposition for the deceased person under R.C. 2108.70 to 2108.90 (not in the bill) and must notify that person. After the coroner has completed the performance of the coroner's legal duties with respect to the body of the deceased person, the coroner must return the body to that person.¹

Existing law requires the coroner to take charge and possession of all moneys, clothing, and other valuable personal effects of the deceased person, found in connection with or pertaining to the body, and must store the possessions in the county coroner's office or other suitable place. The bill allows the person who has been assigned the rights of disposition for the deceased person to request the coroner to give those possessions to that person. After that person receives the deceased person's possessions from the coroner, the person must deliver them to the executor or administrator of the deceased person's estate or to any other person legally entitled to any of the possessions.²

Under existing law, if a firearm is included in the personal effects of a deceased person, the coroner must deliver the firearm to the chief of police of the municipal corporation within which the body is found or to the sheriff of the county if the body is not found within a municipal corporation. Upon delivery of the firearm, the chief of police or the sheriff must give the coroner a receipt for the firearm that states the date of delivery and an accurate description of the firearm. The firearm is only for evidentiary purposes. The bill allows the person who has been assigned the rights of disposition for the deceased person, rather than the deceased person's next of kin or other relative, to request that the firearm be given to that person once the firearm is no longer needed for evidentiary purposes. The chief of police or the sheriff must give the firearm to that person, instead of the next of kin or other relative, who requested the firearm only if the person may lawfully possess a firearm under applicable Ohio law or the law of the United States. The chief of police or sheriff must keep a record identifying the person, rather than the next of kin or other relative, to whom the firearm is given, the date the firearm was given to that person, and an accurate description of the firearm. The person to whom the firearm was given upon request must deliver the firearm to the executor or administrator of the deceased person's estate or to any other person legally entitled to the firearm.³

Under the bill, if the person who has been assigned the rights of disposition for the deceased person, instead of the next of kin or other relative, does not request the

¹ R.C. 313.14(A)(1).

² R.C. 313.14(A)(2).

³ R.C. 313.14(C).



firearm or is not entitled to possess the firearm, the firearm must be used at the discretion of the chief of police or sheriff.⁴

Persons prohibited from benefiting from another's death

Existing law generally prohibits: (a) any person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of a violation of or complicity in the violation of aggravated murder, murder, or voluntary manslaughter or of a substantially equivalent existing or former law of any other state, the United States, or a foreign nation, (b) any person who is indicted for a violation of or complicity in the violation of any of those offenses or laws and subsequently is adjudicated incompetent to stand trial on that charge, and (c) any juvenile who is found to be a delinquent child for committing an act that, if committed by an adult, would be a violation of or complicity in the violation of any of those offenses or laws, from in any way benefiting by the death.⁵

The bill expands the above offenses, complicity in their violation, or violation of or complicity in the violation of the above offenses to include the offense of involuntary manslaughter that is not a proximate result of a felony aggravated vehicular homicide or vehicular homicide offense. A person who commits 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 is prohibited from in any way benefiting by the death, if that involuntary manslaughter offense is not the proximate result of a felony offense of aggravated vehicular homicide or vehicular homicide.⁶

Incorporation of a written trust into a will

Existing law allows an existing document, book, record, or memorandum to be incorporated in a will by reference, if referred to as being in existence at the time the will is executed. That document, book, record, or memorandum must be deposited in the probate court when the will is probated or within 30 days after the will is probated, unless the court grants an extension of time for good cause shown. A copy may be substituted for the original document, book, record, or memorandum if the copy is certified to be correct by a person authorized to take acknowledgements.⁷

The bill states that, notwithstanding the provision in the preceding paragraph, if a will incorporates a trust instrument only in the event that a bequest or devise to a

⁴ *Id.*

⁵ R.C. 2105.19(A).

⁶ R.C. 2105.19(A).

⁷ R.C. 2107.05(A).

trust is ineffective, the trust instrument must be deposited in the probate court not later than 30 days after the final determination that such bequest or devise is ineffective.⁸

The bill also provides that if a testator intends to incorporate a trust instrument into a will, the testator's will must manifest that intent through the use of the term "incorporate," "made a part of," or similar language. In the absence of such clear and express intent, a trust instrument cannot be incorporated into or made a part of the will. Any language in the testator's will that only identifies a trust is not sufficient to manifest an intent to incorporate that trust instrument by reference in the will.⁹

The bill specifies that the preceding two paragraphs apply, and must be construed as applying, to the wills of testators who die on or after the effective date of the bill.¹⁰ Additionally, the bill states that the bill's amendment of R.C. 2107.05 as described above is intended to abrogate the holding of the Ohio Supreme Court in *Hageman v. Cleveland Trust Company*, 45 Ohio St.2d 178 (1976) and the Ohio Second District Court of Appeals in *Gehrke v. Senkiw*, 2016 Ohio 2657 (2016).¹¹

Admission of will to probate

The bill modifies current law by providing that the probate court must admit a will to probate if it appears from the face of the will, or if the probate court requires, in its discretion, the testimony of the witnesses to a will and it appears from that testimony, that the execution of the will complies with the law in force at the time of the will's execution in the jurisdiction in which "the testator was physically present when" (added by the bill) it was executed, with the law in force in Ohio at the time of the testator's death, or with the law in force in the jurisdiction of the testator's domicile at the time of death.¹² A similar change as the clause in quotation marks above is made in the law on the admission to probate of another will of a later date.¹³

Foreign wills

The bill clarifies current law by providing that authenticated copies of wills "of persons not domiciled in this state" (added by the bill) executed and proved according to the laws of any state or territory of the United States, relative to property in this state,

⁸ R.C. 2107.05(B).

⁹ R.C. 2107.05(C).

¹⁰ R.C. 2107.05(D).

¹¹ Section 3.

¹² R.C. 2107.18.

¹³ R.C. 2107.22(A)(1)(a).



may be admitted to record in the probate court of a county where a part of that property is situated.¹⁴

Exceptions to antilapse provisions

Wills

Existing law provides that, unless a contrary intent appears in the will, if a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, either of the following applies:¹⁵

(1) If the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take, per stirpes, the property to which the devisee would have been entitled had the devisee survived the testator.

(2) If the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take, per stirpes, the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. "Deceased devisee" means a class member who failed to survive the testator by at least 120 hours and left one or more surviving descendants.

The bill specifies that the exception in (2) above only applies to a class that includes more than one generation.¹⁶

Trusts

Existing law provides that, unless a contrary intent appears in the instrument creating a future interest under the terms of a trust, each of the following applies:¹⁷

¹⁴ R.C. 2129.05.

¹⁵ R.C. 2107.52(B)(2).

¹⁶ R.C. 2107.52(B)(2)(b).

¹⁷ R.C. 5808.19(B)(2).



(1) A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date by at least 120 hours.

(2) If a beneficiary of a future interest under the terms of a trust does not survive the distribution date by at least 120 hours and if the beneficiary is a grandparent of the transferor, a descendant of a grandparent of the transferor, or a stepchild of the transferor, either of the following applies:

(a) If the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. The surviving descendants take, per stirpes, the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date by at least 120 hours.

(b) If the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of the deceased beneficiary or beneficiaries. The property to which the beneficiaries would have been entitled had all of them survived the distribution date by at least 120 hours passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date by at least 120 hours. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take, per stirpes, the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date by at least 120 hours. "Deceased beneficiary" means a class member who failed to survive the distribution date by at least 120 hours and left one or more surviving descendants.

The bill specifies that the exception in (2)(b) above applies only to a class that includes more than one generation.¹⁸

Trust for benefit of minor

The bill allows a probate court, if a minor is entitled to money or property whether by settlement or judgment for personal injury or damage to tangible or intangible property, inheritance or otherwise, to order that all or a portion of the amount received by the minor be deposited into a trust for the benefit of that beneficiary until the beneficiary reaches age 25, and order the distribution of the amount in accordance with the provisions of the trust. Prior to the appointment as a trustee of such a trust, the person to be appointed must be approved by a parent or

¹⁸ R.C. 5808.19(B)(2)(b)(ii).



guardian of the minor beneficiary of the trust, unless otherwise ordered by the probate court.¹⁹

Probate court guardianship services fund

The bill permits a probate court or the probate courts of two or more counties to accept funds or other program assistance from, or charge fees for specified services described below rendered to, individuals, corporations, agencies, or organizations, including, but not limited to, a county board of alcohol, drug addiction, and mental health services or a county board of developmental disabilities, unless either or any of those county boards does not agree to the payment of those fees. Any funds or fees the probate court receives must be paid into the county treasury and credited to a fund to be known as the county probate court guardianship services fund and any funds or fees the probate courts of two or more counties receive must be paid into the county treasury of one or more of the counties and credited to a fund to be known as the multicounty probate court guardianship services fund.²⁰

The moneys in a county or multicounty probate court guardianship services fund must be used for services to help ensure the treatment of any person who is under the care of a county board of alcohol, drug addiction, and mental health services, a county board of developmental disabilities, or any other guardianships. These services include, but are not limited to, involuntary commitment proceedings and the establishment and management of adult guardianships, including all associated expenses, for wards who are under the care of a county board of alcohol, drug addiction, and mental health services, a county board of developmental disabilities, or any other guardianships.²¹

If a probate court judge determines that some of the moneys in the county or multicounty probate court guardianship services fund are needed for the efficient operation of the county or multicounty guardianship service board created as described below, the moneys may be used for the acquisition of equipment, the hiring and training of staff, community services programs, volunteer guardianship training services, the employment of magistrates, and any other related services necessary for the fulfillment of the duties of the county or multicounty guardianship service board.²²

The moneys in the county or multicounty probate court guardianship services fund that may be used in part for the establishment and management of adult guardianships may be utilized to establish a county or multicounty guardianship

¹⁹ R.C. 2111.182.

²⁰ R.C. 2111.52(A) and (B).

²¹ R.C. 2111.52(C).

²² R.C. 2111.52(D).



service.²³ A county or multicounty guardianship service is established by creating a county or multicounty guardianship service board. The probate court judge appoints one member. The board of directors of a participating county board of developmental disabilities appoints one member. The board of directors of a participating county board of alcohol, drug addiction, and mental health services appoints one member. Additional members of the guardianship service board may be added if the member or members of a guardianship service board unanimously agree. If neither the county board of developmental disabilities nor the county board of alcohol, drug addiction, and mental health services chooses to participate in the guardianship service board, the probate court may appoint additional members to the board. The term of appointment of each member is four years.²⁴

The county or multicounty guardianship services board may appoint a director. The board must determine the compensation of the director based on the availability of funds contained in the county or multicounty probate court guardianship services fund.²⁵ The county or multicounty guardianship services board may receive appointments from one or more county probate courts to serve as guardians of both the person and estate of wards. The director or any designee of a county or multicounty guardianship services board may act on behalf of the board in relation to all guardianship matters.²⁶

The director of a county or multicounty guardianship services board may hire employees subject to available funds in the county or multicounty probate court guardianship services fund.²⁷ The board may also charge a reasonable fee for services provided to wards. A probate judge must approve any fees charged by the board.²⁸

The county or multicounty guardianship services board must promulgate all rules and regulations necessary for the efficient operation of the board and the county or multicounty guardianship services.²⁹

²³ R.C. 2111.52(E).

²⁴ R.C. 2111.52(F)(1).

²⁵ R.C. 2111.52(F)(2).

²⁶ R.C. 2111.52(F)(3).

²⁷ R.C. 2111.52(F)(4).

²⁸ R.C. 2111.52(F)(5).

²⁹ R.C. 2111.52(F)(6).

Application for release of medical records and medical billing records

The bill permits any person eligible to be appointed as a personal representative of an estate under Ohio law or named as executor in a will to file an application with the probate court in the county in which the decedent resided seeking the release of the decedent's medical records and medical billing records for use in evaluating a potential wrongful death, personal injury, or survivorship action on behalf of the decedent. The application must include a decedent's estate form listing the decedent's known surviving spouse, children, next of kin, legatees, and devisees, if any.

The application may be filed prior to the filing of any application for authority to administer the decedent's estate. Nothing in the bill requires that an application to administer the decedent's estate be filed if no estate is needed to be administered, unless otherwise required by law. The probate court must send a copy of the application to those persons listed on the decedent's estate form unless otherwise directed by the court. Upon the filing of the application and the payment of a filing fee determined by the court, and not earlier than ten days after the probate court's transmission of a copy of the application to those persons listed on the decedent's estate form, the court may order the medical records and medical billing records be released without a hearing or with a hearing if needed. The court's order must direct all medical providers that provided medical care or treatment to the decedent to release those records to the applicant for the limited purpose of deciding whether or not to file a wrongful death, personal injury, or survivorship action. The medical records and medical billing records are confidential and are not available for public viewing unless otherwise provided for by law or subsequent court order.

Upon obtaining the requested applicable records, and before the expiration of the applicable statute of limitations, the applicant must file a report with the court certifying that all of those requested records have been received and indicate whether an administration of the decedent's estate will be filed.³⁰

Jurisdiction regarding inter vivos trust

Under existing law, the probate division of the common pleas court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the common pleas court to issue writs and orders and to hear and determine any action that involves an inter vivos trust.³¹ The bill specifies that the probate division of the common pleas court has exclusive jurisdiction to render declaratory judgments regarding the validity of wills and trusts. However, the probate division of the common pleas court may transfer a declaratory judgment proceeding regarding the validity of

³⁰ R.C. 2113.032.

³¹ R.C. 5802.03(A).



wills and trusts to the general division of the court of common pleas pursuant to R.C. 5817.04(A).³²

Arbitration

Under the bill, a provision in the terms of a trust, excluding a testamentary trust, that requires the arbitration of disputes, other than disputes of the validity of all or part of a trust instrument, between or among beneficiaries and a fiduciary under the trust, or a combination of those persons or entities, is enforceable.³³ Unless otherwise specified in the terms of the trust, a trust provision requiring arbitration is presumed to require binding arbitration under Chapter 2711. of the Revised Code.³⁴

Actions pertaining to revocable trusts

Existing law provides that any of the following actions pertaining to a revocable trust that is made irrevocable by the death of the settlor of the trust must be commenced by the earlier of the date that is two years after the date of the death of the settlor of the trust or that is six months from the date on which the trustee sends the person bringing the action a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing the action:³⁵

- An action to contest the validity of the trust;
- An action to contest the validity of any amendment to the trust that was made during the lifetime of the settlor of the trust;
- An action to contest the revocation of the trust during the lifetime of the settlor of the trust;
- An action to contest the validity of any transfer made to the trust during the lifetime of the settlor of the trust.

The bill specifies that no person may contest the validity of any trust as to facts decided if the trust was submitted to a probate court by the settlor during the settlor's lifetime and declared valid by the judgment of the court pursuant to R.C. 5817.10(B)(1). A person may contest the validity of that trust as to those facts if the person is one who should have been named a party defendant in the action in which the trust was

³² R.C. 5802.03(B) and 2101.24(B)(3).

³³ R.C. 5802.05(A).

³⁴ R.C. 5802.05(B).

³⁵ R.C. 5806.04(A).



declared valid, pursuant to R.C. 5817.06(A), and if the person was not named a defendant and properly served in that action.³⁶

Determining validity of will or trust

Background

The bill repeals, modifies, and relocates the existing provisions regarding a determination that a will is valid.³⁷ The bill also provides a similar procedure for determining whether a settlor's trust is valid and enforceable under its terms.

Filing a complaint to determine validity of a will

The bill allows a testator to file a complaint with the probate court to determine before the testator's death that the testator's will is a valid will subject only to subsequent revocation or modification of the will. The right to file this complaint or to voluntarily dismiss a complaint once filed is personal to the testator and cannot be exercised by the testator's guardian or an agent under the testator's power of attorney.³⁸

A testator who wishes to obtain a validity determination as to the testator's will must file a complaint to determine the validity of both the will and any related trust.³⁹ The complaint must be accompanied by an express written waiver of the testator's physician-patient privilege provided in R.C. 2317.02(B).⁴⁰ Failure to file such a complaint must not be construed as evidence or an admission that the will is invalid.⁴¹

Current law does not require that the complaint be accompanied by an express written waiver of the testator's physician-patient privilege.

Filing a complaint to determine validity of a trust

The bill allows a settlor to file a complaint with the probate court to determine before the settlor's death that the settlor's trust is valid and enforceable under its terms, subject only to a subsequent revocation or modification. The right to file this complaint

³⁶ R.C. 5806.04(E).

³⁷ R.C. 2107.081, 2107.082, 2107.083, 2107.084, 2107.085 (repealed and relocated to R.C. Ch. 5817.). Note that this part of the analysis will describe only parts of current law that are essentially different from the bill or will indicate if there is no comparable provision in current law.

³⁸ R.C. 5817.02(A).

³⁹ R.C. 5817.02(B).

⁴⁰ R.C. 5817.02(D).

⁴¹ R.C. 5817.02(C).



or to voluntarily dismiss a complaint once filed is personal to the settlor and cannot be exercised by the settlor's guardian or an agent under the settlor's power of attorney.⁴²

A settlor who wishes to obtain a validity determination as to the settlor's trust must file a complaint to determine the validity of both the trust and the related will.⁴³ The complaint must be accompanied by an express written waiver of the settlor's physician-patient privilege provided in R.C. 2317.02(B).⁴⁴ Failure to file such a complaint must not be construed as evidence or an admission that the trust is invalid.⁴⁵

"Trust" means an inter vivos revocable or irrevocable trust instrument to which, at the time the complaint for declaration of validity is filed, either of the following applies:⁴⁶

- (1) The settlor resides in, or is domiciled in, Ohio.
- (2) The trust's principal place of administration is in Ohio.

Where to file complaint for determination of validity of will or trust

The bill requires a complaint to determine the validity of a will or trust be filed with the probate court. The probate judge, upon the motion of a party or the judge's own motion, may transfer the proceeding to the general division of the common pleas court.⁴⁷

The venue for a complaint to determine the validity of a will is either (1) the probate court of the county in Ohio where the testator is domiciled, or (2) if the testator is not domiciled in Ohio, the probate court of any county in Ohio where any real property or personal property of the testator is located or, if there is no such property, the probate court of any county in Ohio.⁴⁸

Current law has no provision for the probate judge, upon the motion of a party or the judge's own motion, to transfer the proceeding to the general division of the common pleas court. Current law also does not provide that if the testator is not

⁴² R.C. 5817.03(A).

⁴³ R.C. 5817.03(B).

⁴⁴ R.C. 5817.03(D).

⁴⁵ R.C. 5817.03(C).

⁴⁶ R.C. 5817.01(F).

⁴⁷ R.C. 5817.04(A).

⁴⁸ R.C. 5817.04(B).



domiciled in Ohio, the complaint may be filed in the probate court of any county in Ohio where the testator's *personal property* is located.⁴⁹

The venue for a complaint to determine the validity of a trust is either (1) the probate court of the county in Ohio where the settlor resides or is domiciled, or (2) if the settlor does not reside in or not domiciled in Ohio, the probate court of the county in Ohio in which the trust's principal place of administration is located.⁵⁰

Contents of the complaint (will)

Party defendants

A complaint to determine the validity of a will must name as party defendants all of the following, as applicable:⁵¹

- The testator's spouse;
- The testator's children;
- The testator's heirs who would take property pursuant to R.C. 2105.06 had the testator died intestate at the time the complaint is filed;
- The testator's beneficiaries under the will;
- Any beneficiary under the testator's most recent prior will.

Such a complaint may name as a party defendant any other person that the testator believes may have a pecuniary interest in the determination of the validity of the testator's will.⁵²

Existing law does not list the types of party defendants. Current law provides that defendants are all persons named in the will as beneficiaries, and all persons who would be entitled to inherit from the testator under R.C. Chapter 2105. had the testator died intestate on the date the complaint was filed.⁵³

The bill defines "beneficiary under a will" as either of the following:⁵⁴

⁴⁹ Current R.C. 2107.081(A), not in the bill.

⁵⁰ R.C. 5817.04(C).

⁵¹ R.C. 5817.05(A).

⁵² R.C. 5817.05(B).

⁵³ Current R.C. 2107.081(A), not in the bill.

⁵⁴ R.C. 5817.01(B)(1).



(1) Any person designated in a will to receive a testamentary disposition of real or personal property;

(2) Any person that, in a capacity other than that of executor, holds a power of appointment over estate assets, but does not include the class of permitted appointees among whom the power holder may appoint.

"Beneficiary under a will" includes a charitable organization that is expressly designated in the terms of the will to receive testamentary distributions, but does not include any charitable organization that is not expressly designated in the terms of the will to receive distributions, but to whom the executor may in its discretion make distributions.⁵⁵

Information contained in complaint (will)

The complaint may contain all or any of the following:⁵⁶

- A statement that a copy of the will has been filed with the court;
- A statement that the will is in writing;
- A statement that the will was signed by the testator, or was signed in the testator's name by another person in the testator's conscious presence and at the testator's express direction;
- A statement that the will was signed in the conscious presence of the testator by two or more competent individuals, each of whom either witnessed the testator sign the will, or heard the testator acknowledge signing the will;
- A statement that the will was executed with the testator's testamentary intent;
- A statement that the testator had testamentary capacity;
- A statement that the testator executed the will free from undue influence, not under restraint or duress, and in the exercise of the testator's free will;
- A statement that the execution of the will was not the result of fraud or mistake;

⁵⁵ R.C. 5817.01(B)(2).

⁵⁶ R.C. 5817.05(C).



- The names and addresses of the testator and all of the defendants and, if any of the defendants are minors, their ages;
- A statement that the will has not been revoked or modified;
- A statement that the testator is familiar with the contents of the will.

Current law does not list the contents of a complaint to declare a will valid.

Contents of complaint (trust)

Party defendants

A complaint to determine the validity of a trust must name as party defendants the following, as applicable⁵⁷:

- The settlor's spouse;
- The settlor's children;
- The settlor's heirs who would take property pursuant to R.C. 2105.06 had the settlor died intestate at the time the complaint is filed;
- The trustee or trustees under the trust;
- The beneficiaries under the trust;
- If the trust amends, amends and restates, or replaces a prior trust, any beneficiary under the settlor's most recent prior trust.

Such a complaint may name as a party defendant any other person that the settlor believes may have a pecuniary interest in the determination of the validity of the settlor's trust.⁵⁸

"Beneficiary under a trust" means either of the following:⁵⁹

(1) Any person that has a present or future beneficial interest in a trust, whether vested or contingent.

(2) Any person that, in a capacity other than that of a trustee, holds a power of appointment over trust property, but does not include the class of permitted appointees among whom the power holder may appoint.

⁵⁷ R.C. 5817.06(A).

⁵⁸ R.C. 5817.06(B).

⁵⁹ R.C. 5817.01(A)(1).

"Beneficiary under a trust" includes a charitable organization that is expressly designated in the terms of the trust to receive distributions, but does not include any charitable organization that is not expressly designated in the terms of the trust to receive distributions, but to whom the trustee may in its discretion make distributions.⁶⁰

Information contained in complaint

The complaint may contain all or any of the following:⁶¹

- A statement that a copy of the trust has been filed with the court;
- A statement that the trust is in writing and was signed by the settlor;
- A statement that the trust was executed with the intent to create a trust;
- A statement that the settlor had the legal capacity to enter into and establish the trust;
- A statement that the trust has a definite beneficiary or is one of the following:
 - A charitable trust;
 - A trust for the care of an animal as provided in R.C. 5804.08;
 - A trust for a noncharitable purpose as provided in R.C. 5804.09.
- A statement that the trustee of the trust has duties to perform;
- A statement that the same person is not the sole trustee and sole beneficiary of the trust;
- A statement that the settlor executed the trust free from undue influence, not under restraint or duress, and in the exercise of the settlor's free will;
- A statement that execution of the trust was not the result of fraud or mistake;
- The names and addresses of the settlor and all of the defendants and, if any of the defendants are minors, their ages;
- A statement that the trust has not been revoked or modified;

⁶⁰ R.C. 5817.01(A)(2).

⁶¹ R.C. 5817.06(C).



- A statement that the settlor is familiar with the contents of the trust.

Service of process

Service of process, with a copy of the complaint and the will, and a copy of the related trust, if applicable, and service of process, with a copy of the complaint and the trust, and a copy of the related will, if applicable, must be made on every party defendant named in the filed complaint, as provided in the applicable Rules of Civil Procedure.⁶²

"Related trust" means a trust for which both of the following apply:⁶³

- (1) The testator is the settlor of the trust.
- (2) The trust is named as a beneficiary in the will in accordance with R.C. 2107.63.

"Related will" means a will for which both of the following apply:⁶⁴

- (1) The testator is the settlor of a trust.
- (2) The will names the trust as a beneficiary in accordance with R.C. 2107.63.

Current law specifies that service of process must be made on every party defendant named in the complaint by the following methods:⁶⁵

- By certified mail or other personal service permitted by the Rules of Civil Procedure if the party is an inhabitant of or is found in Ohio;
- By certified mail, with a copy of the summons and complaint, to the party's last known address or any other valid personal service permitted by the Rules of Civil Procedure if the party is not an inhabitant of, or is not found in, Ohio;
- By publication according to Civil Rule 4.4 if the party's address is unknown, if all methods of personal service under the preceding dot point were attempted without success, or if the interest of the party is unascertainable in the will or in the testator's estate if the will is declared invalid.

⁶² R.C. 5817.07.

⁶³ R.C. 5817.01(D).

⁶⁴ R.C. 5817.01(E).

⁶⁵ Current R.C. 2107.082, not in the bill.



There is no provision in current law for service of a copy of a related trust to a will.

Hearing

After a complaint to determine the validity of a will or trust is filed, the court must fix a time and place for a hearing. Notice of the hearing must be given to the testator or settlor, as applicable, and to all party defendants, as provided in the applicable Rules of Civil Procedure. The hearing is adversarial in nature and must be conducted pursuant to R.C. 2101.31 (determination of questions of fact) and 2721.10 (declaratory relief), except as otherwise provided in Chapter 5817. of the Revised Code.⁶⁶

"Court" means the probate court of the county in which the complaint under R.C. 5817.02 or 5817.03 is filed or the general division of the common pleas court to which the probate court transfers the proceedings under R.C. 5817.04(A).⁶⁷

Burden of proof

The testator or settlor has the burden of establishing prima facie proof of the execution of the will or trust, as applicable. A person who opposes the complaint has the burden of establishing one or more of the following:⁶⁸

- The lack of testamentary intent or the intent to create a trust, as the case may be;
- The lack of the testator's testamentary capacity, or the settlor's legal capacity to enter into and establish the trust;
- Undue influence, restraint, or duress on the testator or settlor;
- Fraud or mistake in the execution of the will or trust;
- Revocation of the will or trust.

A party to the proceeding has the ultimate burden of persuasion as to the matters for which the party has the initial burden of proof.⁶⁹

Current law has no provision comparable to the bill's provisions above.

⁶⁶ R.C. 5817.08.

⁶⁷ R.C. 5817.01(C).

⁶⁸ R.C. 5817.09(A).

⁶⁹ R.C. 5817.09(B).

Validity of a will or trust

The court must declare the will valid if it finds all of the following:⁷⁰

- The will was properly executed pursuant to R.C. 2107.03 or under any prior law of Ohio that was in effect at the time of execution.
- The testator had the requisite testamentary capacity, was free from undue influence, and was not under restraint or duress.
- The execution of the will was not the result of fraud or mistake.

After the testator's death, unless the will is modified or revoked after the court's declaration, the will has full legal effect as the instrument of disposition of the testator's estate and must be admitted to probate upon request.⁷¹

The court must declare the trust valid if it finds all of the following:⁷²

- The trust meets the requirements of R.C. 5804.02.
- The settlor had the legal capacity to enter into and establish the trust, was free from undue influence, and was not under restraint or duress.
- The execution of the trust was not the result of fraud or mistake.

Current law provides that any declaration of validity of a will must be sealed in an envelope along with the will and filed by the probate judge or the judge's designee in the probate court offices. The filed will is available during the testator's lifetime only to the testator. If the testator removes a filed will from the judge's possession, the declaration of validity no longer has any effect.⁷³

Unless the trust is modified or revoked after the court's declaration, the trust has full legal effect.⁷⁴

⁷⁰ R.C. 5817.10(A)(1).

⁷¹ R.C. 5817.10(A)(2).

⁷² R.C. 5817.10(B)(1).

⁷³ Current R.C. 2107.084(B), not in the bill.

⁷⁴ R.C. 5817.10(B)(2).



The court may, if it finds the will or trust to be valid, attach a copy of the valid document to the court's judgment entry, but failure to do so does not affect the determination of validity of the will or trust.⁷⁵

Impact of the validity of the will or trust

Unless the will or trust is modified or revoked, and except as otherwise provided below, no person may contest the validity of a will or trust that is declared valid in a proceeding under Chapter 5817. of the Revised Code.⁷⁶

The failure to name a necessary defendant regarding the validity of a will or trust is not jurisdictional. A declaration of a will's or trust's validity is binding upon all defendants who were named or represented, and properly served, notwithstanding the failure to name a necessary defendant. However, if a person is one who should have been named a party defendant in the action in which the will or trust was declared valid and if the person was not named a defendant and properly served in that action, that person (after the testator's death in the case of a will) may contest the validity of a will or trust declared valid.⁷⁷

In determining whether a person was a party defendant and properly served in an action to declare a will or trust valid under Chapter 5817. of the Revised Code, the representation rules of Chapter 5803. apply and a person represented in the action under those rules is bound by the declaration of validity even if, by the time of the testator's death, or challenge to the trust, the representing person has died or would no longer be able to represent the person to be represented in a proceeding under Chapter 5817.⁷⁸

Modification or revocation of a will

After a declaration of a will's validity, the will may be modified by a later will or codicil executed according to the laws of Ohio or another state, and the will may be revoked under R.C. 2107.33 or other applicable law. The revocation by a later will, or other document, of a will that has been declared valid does not affect the will or the prior declaration of its validity if the later will or other document is found by a court of competent jurisdiction to be invalid due to the testator's lack of testamentary capacity, or undue influence, restraint, or duress on the testator, or otherwise. The amendment by a later codicil of a will that has been declared valid does not affect the will or the prior declaration of its validity except as provided by the codicil. However, the codicil is not

⁷⁵ R.C. 5817.10(C).

⁷⁶ R.C. 5817.11(A).

⁷⁷ R.C. 5817.11(B) and (C).

⁷⁸ R.C. 5817.11(D).



considered validated under Chapter 5817. of the Revised Code unless its validity is also declared as provided in that Chapter.⁷⁹

Current law provides that a testator may revoke or modify a will declared valid by filing a complaint in the probate court in possession of the will and asking that the will be revoked or modified. The complaint must name as parties defendant the persons who were parties defendant in a previous action declaring the will valid, the persons who are named in any modification as beneficiaries, and the persons who would be entitled because of the revocation or modification, to inherit from the testator under R.C. Chapter 2105. had the testator died intestate on the date the complaint was filed. Service of the complaint and process are made on these parties by the methods authorized in a complaint to declare the previous will valid.⁸⁰

Under current law, unless waived by all parties, the court must conduct a hearing on the validity of the revocation or modification requested. If the court finds that the revocation or modification is valid, the revocation or modification takes full effect and is binding and revokes the will or modifies it to the extent of the valid modification. The revocation or modification, the judgment declaring it valid, and the will itself must be sealed in an envelope, filed with the probate court, and be available during the testator's lifetime only to the testator.⁸¹

Existing law also provides that a declaration of validity of a will, of a codicil to a will previously declared valid, or of a revocation or modification of a will previously determined valid generally is not subject to collateral attack and is appealable.⁸²

Modification or revocation of a trust

After a declaration of a trust's validity, the trust may be modified, terminated, revoked, or reformed under R.C. 5804.10 to 5804.16, or other applicable law. The modification, termination, revocation, or reformation by a new trust or other document of a trust that has been declared valid does not affect the trust or the prior declaration of its validity if the later trust or other document is found by a court of competent jurisdiction to be invalid due to the settlor's lack of capacity, or undue influence, restraint, or duress on the settlor, or otherwise. An amendment of a trust that has been declared valid does not affect the trust or the prior declaration of its validity except as provided by the amendment. However, the amendment is not considered validated

⁷⁹ R.C. 5817.12(C).

⁸⁰ Current R.C. 2107.084(C), not in the bill.

⁸¹ Current R.C. 2107.084(C), not in the bill.

⁸² Current R.C. 2107.084(E), not in the bill.



under Chapter 5817. of the Revised Code unless its validity is also declared as provided in that Chapter.⁸³

Admissibility of evidence

The finding of facts by a court in a proceeding brought under Chapter 5817. of the Revised Code is not admissible as evidence in any proceeding other than a proceeding brought to determine the validity of a will or trust. The determination or judgment rendered in such a proceeding is not binding upon the parties to that proceeding in any action that is not brought to determine the validity of a will or trust. The failure of a testator to file a complaint for a judgment declaring the validity of a will that the testator has executed is not admissible as evidence in any proceeding to determine the validity of that will or any other will executed by the testator. The failure of a settlor to file a complaint for a judgment declaring the validity of a trust that the settlor has executed is not admissible as evidence in any proceeding to determine the validity of that trust or any other trust executed by the settlor.⁸⁴

Conforming changes

The bill makes conforming changes regarding determining the validity of a will in R.C. 2101.24, 2107.01, 2107.07, 2107.08, 2107.09, 2107.10, 2107.11, 2107.12, 2107.16, 2107.18, 2107.20, 2107.22, 2107.33, 2107.71, 2137.01, and 2721.03 and determining the validity of a trust in R.C. 2721.03.

Attorney-client privilege when client in a fiduciary

The bill provides that any communication between an attorney and a client who is acting as a fiduciary is privileged and protected from disclosure to third parties to whom the fiduciary owes fiduciary duties to the same extent as if the client was not acting as a fiduciary.⁸⁵ This provision expands current law which provides that absent an express agreement to the contrary, an attorney who performs legal services for a fiduciary, by reason of the attorney performing those legal services, has no duty or obligation in contract, tort, or otherwise to any third party to whom the fiduciary owes fiduciary obligations.⁸⁶ Current law, unchanged by the bill, defines "fiduciary" as a trustee under an express trust or an executor or administrator of a decedent's estate.⁸⁷

⁸³ R.C. 5817.13.

⁸⁴ R.C. 5817.14.

⁸⁵ R.C. 5815.16(B).

⁸⁶ R.C. 5815.16(A).

⁸⁷ R.C. 5815.16(C).

Fiduciary funds deposited in attorney's IOLTA

The bill modifies the Fiduciaries Law's provision on the deposit of funds by providing generally that immediately after appointment and throughout the term of appointment, instead of throughout administration of a trust under current law, every fiduciary, pending payment of current obligations of the fiduciary's trust *or estate* (added by the bill), distribution, or investment pursuant to law, must deposit all funds received by the fiduciary in the fiduciary's name as such fiduciary in one or more depositories the types of which are stated in the Law. All such deposits must be in a class of account that will be most advantageous to the trust *or estate* (added by the bill), and each depository must pay interest at the highest rate customarily paid to its patrons on deposits in accounts of the same class.⁸⁸

Current law, as modified by the bill, permits a fiduciary of a trust or estate to transfer funds received by the fiduciary in the fiduciary's name as such fiduciary to the fiduciary's attorney for deposit in an interest on lawyer's trust account (IOLTA) established under the deposit of client funds provision in the Attorneys Law (R.C. 4705.09(A)(1) in the bill) that is maintained by the attorney if the attorney, in consultation with the fiduciary, has determined that the funds are nominal in amount *or*, instead of and in current law, will be held in the IOLTA for a short period of time. The bill eliminates the condition that the probate court, upon petition by the fiduciary, has approved the deposit.⁸⁹

The bill moves to the Fiduciaries Law the same provision in the Attorneys Law which provides that notwithstanding any contrary provision in the Fiduciaries Law, a probate court examining a trust or estate may only access the account information of an IOLTA created as described above for purposes of obtaining information related to that particular trust or estate and cannot access records of the IOLTA that pertain to assets of any other estate or trust held in the IOLTA.⁹⁰

The bill repeals a comparable provision in the Attorneys Law that permits any attorney, law firm, or legal professional association to establish and maintain an interest-bearing trust account, for purposes of depositing funds received by a client, in the client's name as fiduciary of a trust or estate, with the same types of depositories as stated in the Fiduciaries Law. Consistent with the bill's change in the Fiduciaries Law above, the bill eliminates the requirement that the probate court must approve the deposit.⁹¹

⁸⁸ R.C. 2109.41(A).

⁸⁹ R.C. 2109.41(C).

⁹⁰ R.C. 2109.41(D); R.C. 4705.09(A)(1)(b), repealed.

⁹¹ R.C. 4705.09(A)(1)(b).



Eligibility determinations for cases involving Medicaid programs

Under current law, the principal or income from a special needs trust is not a resource available to the applicant who applies for Medicaid or the applicant's spouse or the recipient who receives Medicaid or the recipient's spouse if the special needs trust meets all of the following requirements:⁹²

(1) The trust contains assets of an applicant or recipient under 65 years of age and may contain the assets of other individuals.

(2) The applicant or recipient is disabled as defined in rules adopted under R.C. 5163.02.

(3) The trust is established for the benefit of the applicant or recipient by a parent, grandparent, legal guardian, or a court.

(4) The trust requires that on the death of the applicant or recipient the state will receive all amounts remaining in the trust up to an amount equal to the total amount of Medicaid payments made on behalf of the applicant or recipient.

The bill modifies (3) above by providing that the trust is established for the benefit of the applicant or recipient by "any of the following: the applicant or recipient, if established on or after December 13, 2016"; a parent, grandparent, or legal guardian "of the applicant or recipient," or a court (clauses in quotation marks are added by the bill).⁹³

Waiver of additional filing fees and advance deposits in municipal and county courts

Under continuing law, a municipal court or county court must require the collection of \$26 as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies and to support the Office of the State Public Defender. The additional filing fee in the small claims division of a municipal or county court is \$11.⁹⁴

Continuing law permits a municipal court or county court, by rule, to require an advance deposit for the filing of any civil action or proceeding and publication fees, or to require an advance deposit when a jury trial is demanded. Current law permits either

⁹² R.C. 5163.21(F)(1)(a).

⁹³ R.C. 5163.21(F)(1)(a)(iii).

⁹⁴ R.C. 1901.26(A)(1)(a) and (C) and 1907.24(A)(1) and (C).



court to waive the requirement for advance deposit upon affidavit or other evidence that a party is unable to make the required deposit.⁹⁵

The bill instead requires the municipal court or county court to waive the above requirements for additional filing fees or for an advance deposit for the party that the court determines qualifies as an indigent litigant as described below in "**Procedure for determining indigency.**"⁹⁶

Waiver of additional charges for special programs in municipal and county courts

Continuing law permits a municipal court or county court to determine that for the court's efficient operation, additional funds are necessary to acquire and pay for special projects or services of the court. Upon that determination, either court by rule may charge an additional fee on the filing of a criminal cause, civil action or proceedings, or judgment by confession. If a municipal court or county court offers a special program or services in cases of a specific type, the court may by rule assess an additional charge in a case of that type.⁹⁷

Under the bill, any fee or charge assessed as described above on the filing of a civil action or proceeding must be waived if the applicable court determines that the person on whom the fee or charge is assessed qualifies as an indigent litigant as described below in "**Procedure for determining indigency.**"⁹⁸

Waiver of advance deposit if required by a court of common pleas

Current law permits a court of common pleas by rule to require an advance deposit for the filing of any civil action or proceeding. On motion of the defendant, and if satisfied that such deposit is insufficient, the court may require it to be increased from time to time, so as to secure all costs that may accrue in the cause, or may require personal security to be given. If a plaintiff makes an affidavit of inability either to prepay or give security for costs, the clerk of the court must receive and file the petition. Such affidavit must be filed with the petition and treated as are similar papers in such cases.⁹⁹

Under the bill, the court of common pleas by rule may require an advance deposit for the filing of any civil action or proceeding or of any responsive action by the

⁹⁵ R.C. 1901.26(A)(2) and (3) and 1907.24(A)(2) and (3).

⁹⁶ R.C. 1901.26(A)(1)(a), (2), and (3) and (C) and 1907.24(A)(1), (2), and (3) and (C).

⁹⁷ R.C. 1901.26(B)(1)(a) and (b) and R.C. 1907.24(B)(1)(a) and (b).

⁹⁸ R.C. 1901.26(B)(1)(c) and R.C. 1907.24(B)(1)(c).

⁹⁹ R.C. 2323.31.

defendant. On the motion of any party, and if satisfied that such deposit is insufficient, the court may require it to be increased from time to time, so as to secure all costs that may accrue in the cause, or may require personal security to be given. However, if a party makes an application to be qualified as an indigent litigant as described below in "**Procedure for determining indigency**," the clerk of the court must receive and file the civil action or proceeding or the responsive action by the defendant. If the court approves the application, the clerk must waive the advance deposit or personal security and the court must proceed with the action or proceeding or the defendant's responsive action. If the court denies the application, the clerk must retain the filing of the civil action or proceeding or the defendant's responsive action, and the court must issue an order granting the applicant 30 days to make the required deposit or personal security prior to any dismissal or other action on the filing of the action or proceeding or the defendant's responsive action.¹⁰⁰

Waiver of costs secured by plaintiff

Continuing law requires that in all actions in which the plaintiff is a nonresident of the county in which the action is brought, a partnership suing by its company name, an insolvent corporation, or any party required to furnish security as described above in "**Waiver of advance deposit if required by a court of common pleas**," the plaintiff must deposit cash or furnish security for costs. Current law provides that when a plaintiff makes an affidavit of inability to give security or a cash deposit to secure the costs, the clerk must receive and file the petition. The affidavit must be filed with it and treated as are similar papers.¹⁰¹

Under the bill, when a plaintiff makes an application to be qualified as an indigent litigant as described below in "**Procedure for determining indigency**," the clerk must receive and file the civil action or proceeding. If the court approves the application, the clerk must waive the cash deposit or the security, and the court must proceed on the action or proceeding. If the court denies the application, the clerk must retain the filing of the civil action or proceeding and issue an order granting the applicant 30 days to make the required cash deposit or security prior to any dismissal or other action on the filing.¹⁰²

Action dismissed for want of security for costs

The bill provides that current law, which provides that if security for costs is not given in a case mentioned in R.C. 2323.30 and 2323.31, as described above, the court generally must dismiss the action on motion of the defendant and give notice to the

¹⁰⁰ R.C. 2323.31.

¹⁰¹ R.C. 2323.30.

¹⁰² R.C. 2323.30.



plaintiff at any time before the commencement of the trial, does not apply if a party makes an application to qualify as an indigent litigant as described below in "**Procedure for determining indigency.**"¹⁰³

Publication of court calendars

Under current law, for the publication of court calendars, motion dockets, and notices, the fees for which are not fixed by law, the paper's publisher must receive a sum to be fixed by the judges for each case brought, to be paid in advance by the party filing the petition, transcripts for appeal, or lien, to be taxed in the costs and collected as other costs. The bill creates an exception to the above requirement if the party is determined by the court to qualify as an indigent litigant as described in "**Procedure for determining indigency,**" below.¹⁰⁴

Procedure for determining indigency

Affidavit of indigency filed when civil action or proceeding is filed

Under the bill, in order to qualify as an indigent litigant, defined as a litigant who is unable to make an advance deposit or security for fees or costs as set forth in a "civil action or proceeding" (hereafter action), the applicant's attorney or the applicant if the litigant is proceeding pro se, must file with the court in which an action is filed an affidavit of indigency in a form approved by the Supreme Court, or, until that Court approves a form, a form requesting substantially the same financial information as the financial disclosure and affidavit of indigency form used by the public defender for the appointment of counsel in a criminal case. The clerk of the court must accept the action for filing.¹⁰⁵

A judge or magistrate of the court must review the filed affidavit of indigency, and approve the application if the applicant's gross income does not exceed 187 and 5/10% of the federal poverty guidelines as determined by the United States Department of Health and Human Services for the state of Ohio and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets as specified in Ohio Administrative Code 120-1-03(C)(2) (standards of indigence – other liquid financial assets), as amended, or a substantially similar provision. If the application is approved, the clerk must waive the advance deposit or security and the court must proceed with the action. If the application is denied, the clerk must retain the filing of the action, and the court must issue an order granting the applicant 30 days to make the required

¹⁰³ R.C. 2323.33.

¹⁰⁴ R.C. 2701.09.

¹⁰⁵ R.C. 2323.311(A) and (B)(1), (2), and (3).



advance deposit or security, prior to any dismissal or other action on the filing of the action.¹⁰⁶

Affidavit of indigency filed during pendency of action or proceeding

Following the filing of the action with the clerk, the judge or magistrate, at any time while the action is pending and on the motion of an applicant or of the opposing party or on the court's own motion, may conduct a hearing to inquire into the applicant's status as an indigent litigant. The judge or magistrate must affirm the applicant's status as an indigent litigant if the applicant's gross income does not exceed the percentage of the federal poverty guidelines, and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets, both percentage and expenses as described in the preceding paragraph. The court must proceed with the action if it finds that the applicant qualifies as an indigent litigant. If the court finds that the applicant does not qualify or no longer qualifies as an indigent litigant if previously so qualified, the clerk must retain the filing of the action, and the court must issue an order granting that applicant 30 days to make a required deposit or security, prior to any dismissal or other action on the filing or pendency action.¹⁰⁷

Waiver of indigency requirements

The bill provides that nothing in its provisions prevents a court from approving or affirming an application to qualify as an indigent litigant for an applicant whose gross income exceeds the percentage of the federal poverty guidelines, or whose liquid assets equal or exceed the applicant's monthly expenses, as described above. Any indigency finding by the court must excuse the indigent litigant from the obligation to prepay any subsequent fee or cost arising in the civil case or proceeding unless the court addresses the payment or nonpayment of that fee or cost specifically in a court order.¹⁰⁸

Effect of judgment in favor of indigent litigant

Under the bill, if the indigent litigant as the prevailing party proceeds with an execution on the court's judgment as set forth in the Revised Code sections on execution of judgments, in order to provide for the recovery of applicable costs, any payment on any execution of the judgment in favor of the indigent litigant must be made through the clerk of the court. The clerk must apply that payment to any outstanding costs prior to any disbursement of funds to the indigent litigant. This requirement may be waived upon entry of the court by the judge or magistrate. The above remedy is not the

¹⁰⁶ R.C. 2323.311(B)(4).

¹⁰⁷ R.C. 2323.311(B)(5).

¹⁰⁸ R.C. 2323.311(B)(6) and (7).



exclusive remedy of the clerk for the payment of costs, and the clerk has all remedies available under the law.¹⁰⁹

Party's qualification as an indigent litigant

The bill provides that if with respect to the filing of any civil action or proceeding or of a responsive action by a defendant in any court of record, a party qualifies as an indigent litigant as described above, the clerk of the court must receive and file the action or proceeding or the defendant's responsive action and the court must waive any advance deposit or security for filing of the action or proceeding or the defendant's responsive action, any payment in advance for any taxable costs, including fees for publication or service of process by other means, and any payment in advance of any fee required in connection with prosecuting or advancing the action or proceeding or the defendant's responsive action.¹¹⁰

Jurisdiction over custody or child support

Juvenile court jurisdiction

Prohibition to exercise jurisdiction

The bill prohibits a juvenile court from exercising jurisdiction in certain situations to determine custody or support for a child if any of the following apply:¹¹¹

(1) The child's parents are married.

(2) The child's parents are not married and there is an existing custody or support order for the child or the child's sibling over which the court does not have jurisdiction.

(3) The determination is ancillary to the parents' pending action for divorce, dissolution of marriage, annulment, or legal separation.

Under current law, juvenile courts have exclusive, original jurisdiction as follows:

(1) To determine custody of any child who is not a ward of another Ohio court;

(2) To hear and determine a request for a support order when the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal

¹⁰⁹ R.C. 2323.311(C).

¹¹⁰ R.C. 2746.10.

¹¹¹ R.C. 2151.233.



separation, a criminal or civil action involving a domestic abuse allegation, or a support action involving the Uniform Interstate Family Support Act (UIFSA).

Juvenile courts also have original jurisdiction to hear and determine an application for a support order, if the child is not a ward of another Ohio court.¹¹² The juvenile court custody and child support jurisdiction under current law gives juvenile courts authority to determine custody and child support for a child with married parents, which the bill eliminates. Additionally, the bill's changes regarding juvenile court jurisdiction over existing child support or custody orders for unmarried parents is also circumscribed by the bill.

The prohibition on juvenile court jurisdiction under the bill does not affect the authority of the court to issue a custody order regarding a delinquent, unruly, abused, neglected, or dependent child or juvenile traffic offender that grants custody of the child to a relative or places the child under a kinship care agreement.¹¹³

Transfer of jurisdiction

The bill permits a juvenile court to transfer jurisdiction over a child support or custody action or order as follows:

(1) To the appropriate domestic relations court,¹¹⁴ if the parents of the child subject to the action or order are married and not parties to a pending divorce, dissolution, legal separation, or annulment proceeding;

(2) To the appropriate domestic relations court, if the child's parents are not married and there is an existing order for custody or support for the child or the child's sibling over which the juvenile court does not have jurisdiction;

(3) To the court exercising jurisdiction over a pending divorce, dissolution, legal separation, or annulment proceeding to which the child's parents are parties;

(4) To the court exercising jurisdiction over a domestic violence protection order, if the child or the child's parents are subject to both a child support order and the protection order.¹¹⁵

¹¹² R.C. 2151.23(A)(2), (A)(11), and (B)(4), not in the bill.

¹¹³ R.C. 2151.234.

¹¹⁴ For purposes of the provisions of this analysis under "**Jurisdiction over child support and custody**," "common pleas court with domestic relations jurisdiction" is referred to as "domestic relations court."

¹¹⁵ R.C. 2151.235(A).



Transfer requirements

Under the bill, jurisdiction over a transferrable action or order described above must be transferred and the receiving court is to have exclusive jurisdiction over the action or order if the following requirements are met:

- (1) The domestic relations court, the juvenile court, or an interested party makes a motion to transfer jurisdiction;
- (2) The receiving court consents to the transfer;
- (3) The juvenile court certifies all or part of the record in the action or related to the order to the receiving court.¹¹⁶

Transfer applicability

A juvenile court's ability and requirement to transfer jurisdiction under the bill are to apply to all orders in effect, and all actions or proceedings pending or initiated, on or after the bill's effective date.¹¹⁷

Child Support Enforcement Agency (CSEA) notification and review

The bill requires, if a child is subject to a support order issued by a domestic relations court, a juvenile court to notify the domestic relations court and the CSEA serving the domestic relations court's county if the juvenile court does both of the following:

- (1) Adjudicates the child to be delinquent, unruly, abused, neglected, or dependent;
- (2) Grants custody of the child to an individual or entity other than the individual or entity set forth in the order issued by the domestic relations court.

Additionally, the bill requires the CSEA to review such court child support orders as it reviews court child support orders under current law.¹¹⁸ Continuing law requires a CSEA to, periodically or upon request, review court child support orders and provides procedures for the CSEA's review for: (1) notification of proceedings, (2) determination of the necessity for and calculating a modification, and (3) notification of the right to request a hearing on modification.¹¹⁹

¹¹⁶ R.C. 2151.235(B).

¹¹⁷ R.C. 2151.235(C).

¹¹⁸ R.C. 2151.236.

¹¹⁹ R.C. 3119.60 and 3119.63 to 3119.76, not in the bill.



Certification to a juvenile court

The bill states that nothing concerning (1) juvenile court jurisdiction or CSEA notification and review under the bill or (2) the designation of common pleas court domestic relations, juvenile, and probate duties under continuing law is to be construed to prevent a domestic relations court from certifying a case to a juvenile court. The bill also provides that the juvenile court's consent is not required for the certification.¹²⁰

Domestic relations matters definition

The bill defines "domestic relations matters," as the term applies to common pleas courts' (including domestic relations divisions') jurisdiction over domestic relations matters, to mean both of the following:¹²¹

(1) Any matter committed to the jurisdiction of domestic relations courts as designated in each Ohio county;

(2) Actions and proceedings under Ohio law governing divorce, spousal support, annulment, dissolution of marriage; children; parentage; neglect, abandonment, or domestic violence; UIFSA; child support; and the Uniform Child Custody Jurisdiction and Enforcement Act.¹²²

HISTORY

| ACTION | DATE |
|----------------------------|----------|
| Introduced | 04-10-18 |
| Reported, H. Civil Justice | 06-07-18 |
| Passed House (91-0) | 06-27-18 |
| Reported, S. Judiciary | --- |

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¹²⁰ R.C. 3109.06 and 3109.061; R.C. 3109.04(D)(2), not in the bill.

¹²¹ R.C. 3105.011(B).

¹²² R.C. 3105.011(B); R.C. Chapters 3105., 3109. to 3115., and 3119. to 3127., not in the bill.

