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# OHIO LEGISLATIVE SERVICE COMMISSION

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133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Civil Justice

**Primary Sponsors:** Reps. Cupp and Rogers

Aida S. Montano, Research Analyst

Yosef Schiff, Attorney

Lisa Musielewicz, Attorney

Amy L. Archer, Research Analyst

### SUMMARY

#### Selection of automobiles by surviving spouse

- Modifies current law by providing that if the surviving spouse selected “more than one automobile,” instead of *one or more automobiles* under current law, the allowance for support is reduced by the value of the automobile having the lowest value “of the automobiles” so selected.
- Modifies existing law by providing that if the surviving spouse selected “more than one automobile,” the probate court, in considering the needs of the spouse and the minor children when allocating a support allowance, must consider the benefit derived from the transfer of the automobile having the lowest value “of the automobiles so selected.”

#### Guardianship Law changes

- Expands the powers of a guardian to include the following:
  - Disclaiming the present, contingent, or expectant interests in the ward’s property;
  - Creating, amending, or revoking revocable trusts of property of the ward’s estate that may extend beyond the ward’s minority, disability, or life; and
  - Changing beneficiaries of insurance policies, retirement plans, IRAs, and annuities.

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

- Expands the factors the court must consider to determine that a guardian's exercise of a particular power must not impair the financial ability of the ward's estate to provide for the ward's maintenance needs, to include the disposition of property by the ward's revocable trust, and if there is no knowledge of such trust, the ward's prospective heirs.
- Modifies current law requiring the probate court to cause notice to be given and a hearing to be conducted prior to its exercise or direction of the exercise of certain powers, such as the power to create, amend, or revoke a revocable trust and to exercise rights to elect options under annuities and insurance policies.
- Expands the types of persons to whom the above notice is to be given to include the ward's heirs at law and next of kin and certain beneficiaries such as those under the ward's existing will or revocable trust or under the last known will; beneficiaries of insurance policies, retirement plans, IRAs, and annuities owned by the ward; and others.

### **Nonprofit corporation as guardian of person of an incompetent**

- Provides that certain nonprofit corporations may be appointed guardian of the person of an incompetent upon being certified by the probate court.
- Requires the probate court to certify such nonprofit corporation and an individual acting as guardian on behalf of the corporation upon meeting the requirements for serving as guardian in the Rules of Superintendence for the Courts of Ohio and the rules of the probate court of the county exercising jurisdiction over the incompetent.
- Prohibits a nonprofit corporation appointed as guardian of the person of an incompetent from being the incompetent's residential caregiver, health care provider, or employer.

### **Anatomical Gift Act changes**

- Eliminates the following as a manner of making an anatomical gift: (a) specifying in the donor's will an intent to make such a gift, or (b) specifying an intent to make such gift in the donor's declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.
- Removes from existing law the provisions that an amendment of an anatomical gift made in a will is by the manner provided for amendment of wills and that a revocation of an anatomical gift made in a will is by the manner provided for revocation of wills and other statutory methods.
- Eliminates the provision for indicating a refusal to make a gift of the body or part in the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death.
- Removes from current law the provisions dealing with the effects of a conflict between an anatomical gift and a "declaration" governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.

- Eliminates the provision regarding the Second Chance Trust Fund’s money to be used to encourage attorneys to assist their clients in making anatomical gifts through their wills or their declarations governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.
- Outright repeals the existing provisions in the Declarations Law pertaining to the making of an anatomical gift in a “declaration” governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.

### **Ohio Trust Code changes**

- Repeals current law providing that upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of specified amounts determined under the Internal Revenue Code.

### **Ohio Legacy Trust Act (OLTA) changes**

- Modifies the definitions of “disposition” and “qualified trustee” in the OLTA.
- Expands the definition of “qualified trustee” to include a “family trust company” (FTC) as defined in the Ohio Family Trust Company Act (OFTCA) and which may or may not be licensed under that Act, if all of specified requirements apply regarding the FTC’s licensing status.
- Specifies that the records required to be maintained by a qualified trustee for the legacy trust be electronic or physical records.
- Expands a transferor’s powers to include a power allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust.
- Changes the reference to a court taking an action in the procedure for the determination or selection of a successor or replacement trustee of a legacy trust, to a reference to a court “entering or issuing an order.”
- Specifies that when determining whether a provision of law is similar to any provision of the Ohio Uniform Fraudulent Transfer Act if there is a conflict between that Act and the OLTA, a court must be liberal in finding that such similarity exists.
- Adds new provisions applicable if any disposition is made by a trustee of a first legacy trust to a trustee of a second legacy trust, including:
  - A provision that generally the disposition is considered a qualified disposition for the benefit of all the beneficiaries of both the first and second legacy trusts;
  - The specification of dates to apply when an item of property is to be treated as having been transferred to a trustee of the second legacy trust;
  - A provision that specifies that a qualified trustee of the first legacy trust may serve as the qualified trustee of the second legacy trust.

- Specifies that the OLTA and its provisions reflect and embody the strong public policy of Ohio.

### **Cemetery endowment care trusts**

- Establishes two different distribution methods for cemetery endowment care trusts in order to pay for cemetery expenses.
- Expands the list of allowable trust expenses to which a trust distribution can be directed to include investment expenses.
- Requires cemetery operators to report unitrust distribution percentages to the Department of Commerce's Division of Real Estate.
- Requires that the distribution method and, if a unitrust disbursement, the disbursement percentage selected, remain in effect unless the cemetery notifies the trustees and the Division of Real Estate.
- Establishes requirements and restrictions that the trustee must follow regarding distribution and disbursement from a cemetery endowment care trust.

### **Referrals of civil actions to retired judge**

- Modifies current law pertaining to referrals for adjudication of civil actions to retired judges by providing that the written referral agreement of the parties must also include a procedure for terminating the agreement and authorizing, instead of requiring, the judge before whom the action is pending to order the referral.

### **Reimbursement of assigned judges**

- Modifies the reimbursement for assigned municipal and county court judges.

### **Involuntary mental health treatment**

- Specifies that the diagnosis and prognosis of a respondent subject to involuntary mental health treatment, made by an advanced practice registered nurse with certain psychiatric training, may be considered when determining the most appropriate treatment placement for the respondent.

### **Conformity of a legal name**

- Permits a person desiring to conform the person's legal name on an official identity document to file an application in the probate court of the county in which the person resides.
- Requires name conformity application to set forth (1) that the applicant has been a resident of the county of filing for at least 60 days, (2) an explanation of the misspelling, inconsistency, or other error in the name, and (3) a description of the correction sought.
- Requires a name conformity application to be supported by an affidavit verifying information on the applicant's residency, purpose, debtor status, the truth, accuracy,

and completeness of submitted documentary evidence, and any other information the court may require.

- Permits the probate court to issue an order to conform the applicant's name on proof that (1) the facts set forth in the application show that a misspelling, inconsistency, or other error exists and (2) reasonable and proper cause exists for issuing an order that resolves the discrepancy and conforms the applicant's name.
- Permits an application to conform a legal name to be made on behalf of a minor by the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem.
- Applies the existing law notice/consent requirements, as modified under the bill, to the name conformity requirements for minors.
- Prohibits an action to conform the legal name of a person or on behalf of a minor in lieu of either (1) correction of a birth record or (2) changing a legal name to a name that is not used in any existing official identity documents.

### **Change of legal name**

- Specifies requirements for a change of name application and for the applicant's affidavit to support the application.
- Requires name change application to set forth (1) that the applicant has been a resident of the county of filing for at least 60 days (rather than one year as in current law), (2) the reason the name change is sought, and (3) the requested new name.
- Requires a name change application to be supported by an affidavit verifying information on the applicant's residency, purpose, debtor status, the truth, accuracy, and completeness of submitted documentary evidence, and any other information the court may require.
- Requires the affidavit supporting the name change application to also verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to register as a sex offender for having committed a sexually oriented offense or a child-victim oriented offense.
- Permits the court to order the applicant's change of name upon proof (1) that the facts set forth in the application show that reasonable and proper cause exists for changing the applicant's name and (2) if applicable, that proper notice was served.
- Permits an application to change a legal name to be made on behalf of a minor by the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem.
- Modifies the existing law consent/notice requirements consent requirements for the name change of a minor with the result that the minor name change requirements are the same as the minor name conformity requirements.
- Recodifies the section in current law governing the change of legal name process.

## General name change/conformity provisions

- Permits the court to hold a hearing on a name change or conformity application and, if a hearing is ordered, it must set the manner, scope, and content of the hearing (current law requires, for a name change application, a hearing and service of a hearing notice in a local newspaper 30 days prior to the hearing).
- Permits the court to grant an exception to a hearing notice if satisfactory proof that publication of the service of hearing notice or open records of the name change would jeopardize the applicant's personal safety.
- Permits the probate court, by local rule or order, to require a name conformity or name change applicant to submit a copy of the applicant's official identity documents or other documentary evidence the court deems relevant.
- Permits the probate court, on receipt of an application to conform or change a legal name, to require the applicant, at the applicant's expense, to submit to a criminal records check.

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## TABLE OF CONTENTS

Selection of automobiles by surviving spouse.....	7
Probate court as superior guardian of wards.....	8
Expansion of guardian's authority .....	8
Notice and hearing on exercise of certain powers .....	9
Nonprofit corporation as guardian of person of an incompetent.....	11
Anatomical Gift Act changes.....	11
Manner of making an anatomical gift.....	11
Indicating a refusal to make an anatomical gift.....	13
Conflict between anatomical gift and declaration (living will) .....	13
Second Chance Trust Fund .....	13
Making anatomical gift in a "declaration" governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment .....	14
Ohio Trust Code changes .....	15
Modification of noncharitable irrevocable trust.....	15
Rights of settlor's creditors – power of withdrawal .....	15
Ohio Legacy Trust Act (OLTA) changes .....	15
Definitions .....	15
Permissible retained rights of a transferor .....	17
Removal of trustee; successor trustee.....	17
Miscellaneous rules.....	18
Conflict in the laws .....	18

Disposition by trustee of nonlegacy trust to trustee of legacy trust .....	18
Court jurisdiction .....	19
Disposition by trustee of first legacy trust to trustee of second legacy trust .....	19
Miscellaneous provisions .....	20
Cemetery endowment care trusts .....	20
General overview .....	20
Distribution methods .....	21
Trustee requirements.....	21
Referrals for adjudication of civil actions to retired judges .....	22
Reimbursement of assigned judges.....	22
Involuntary mental health treatment.....	23
Overview of name change and conformity provisions .....	24
Conformity of a legal name .....	25
Conformity of an adult’s name .....	25
Application and affidavit requirements .....	25
Court order to conform .....	25
Conformity of a minor’s name .....	26
Prohibited actions .....	26
Change of legal name.....	26
Legal name change of adult .....	26
Application and affidavit requirements .....	27
Court order to change name .....	27
Legal name change for minor.....	28
Prohibited actions .....	28
Recodification.....	28
General name change/conformity provisions .....	29
Hearing and hearing notice .....	29
Relevant identity documents required by court.....	30
Criminal records check .....	30

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## DETAILED ANALYSIS

### **Selection of automobiles by surviving spouse**

Under current law, not changed by the bill, upon the death of a married resident who owned at least one automobile at the time of death, the interest of the deceased spouse in *one or more automobiles* that are not transferred to the surviving spouse due to joint ownership with right of survivorship, that are not transferred to a transfer-on-death beneficiary or

beneficiaries, and that are not otherwise specifically disposed of by testamentary disposition may be selected by the surviving spouse.<sup>1</sup>

Current law entitles a surviving spouse and any minor children to generally receive in money or property the sum of \$40,000 as allowance for support. It provides that if the surviving spouse selected *one or more automobiles* under the preceding paragraph, the allowance for support is reduced by the value of the automobile having the lowest value *if more than one automobile* is so selected.<sup>2</sup> The bill modifies current law by providing that if the surviving spouse selected “more than one automobile,” the allowance for support is reduced by the value of the automobile having the lowest value “of the automobiles” so selected.<sup>3</sup> The bill further modifies existing law by providing that if the surviving spouse selected “more than one automobile,” instead of *one or more automobiles*, the probate court, in considering the needs of the surviving spouse and the minor children when allocating an allowance for support, must consider the benefit derived by the surviving spouse from the transfer of the automobile having the lowest value “of the automobiles so selected,” instead of *if more than one automobile is so selected* under current law.<sup>4</sup>

## **Probate court as superior guardian of wards**

Continuing law regarding the probate court as the superior guardian of wards provides that generally the probate court may confer upon a guardian any power granted under that law to the probate court in connection with wards. The bill provides that nothing in that law (R.C. 2111.50) is intended to create or imply a duty upon a guardian to apply for authority to exercise any power authorized in the law; and that no inference of impropriety or liability of the guardian or others associated with the guardian arises as a result of a guardian not applying for authority to exercise a power authorized in the law.<sup>5</sup>

### **Expansion of guardian’s authority**

Under continuing law, the probate court has all the powers that relate to the ward’s person or estate and that the ward could exercise if present and not a minor or under a disability, except the power to make or revoke a will. These powers, also conferred upon a guardian, include the power to do the following as modified by the bill (modifications are italicized):<sup>6</sup>

- Convey, release, *or disclaim* the present, contingent, or expectant interests in the ward’s real or personal property, including dower and any right of survivorship incident to a

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<sup>1</sup> R.C. 2106.18(A), not in the bill.

<sup>2</sup> R.C. 2106.13(A).

<sup>3</sup> *Id.* (Quoted clauses replace the italicized clauses in current law.)

<sup>4</sup> R.C. 2106.13(C).

<sup>5</sup> R.C. 2111.50(A)(2)(b).

<sup>6</sup> R.C. 2111.50(B).



*transfer on death designation, payable on death designation, survivorship tenancy, joint tenancy, or tenancy by the entireties;*

- Exercise, release, *or disclaim* powers as a trustee, personal representative, custodian for a minor, guardian, or donee of a power of appointment;
- *Subject to the following dot point*, enter into contracts (the bill removes “create revocable trusts of property of the ward’s estate”) that may not extend beyond the ward’s minority, disability, or life;
- *Create, amend, or revoke revocable trusts of property of the ward’s estate that may extend beyond the ward’s minority, disability, or life;*
- Exercise options to purchase securities or other property;
- Exercise rights to elect options under annuities and insurance policies, *including changing beneficiaries of insurance policies, retirement plans, individual retirement accounts (IRAs), and annuities*, and to surrender an annuity or insurance policy for its cash value;
- Exercise the right to an elective share in the estate of the ward’s deceased spouse pursuant to *R.C. Chapter 2106 (rights of surviving spouses)* instead of the specific section (R.C. 2106.08) on such right of election by a surviving spouse under legal disability;
- Make gifts, in trust or otherwise, to the ward’s relatives, and to charities and the ward’s friends consistent with any prior pattern of the ward giving to charities or providing support for friends.

Continuing law provides that the exercise of a particular power must not impair the financial ability of the ward’s estate to provide for the ward’s foreseeable maintenance needs. If applicable, the court must consider any of specified factors. Two of these factors under current law are the disposition of property made by the ward’s will, and if there is no knowledge of a will, the ward’s prospective heirs. The bill expands these two factors to include the disposition of property made by the ward’s revocable trust, and if there is no knowledge of a revocable trust, the ward’s prospective heirs.<sup>7</sup>

### **Notice and hearing on exercise of certain powers**

The bill expands current law that requires the probate court to cause notice to be given and a hearing to be conducted prior to its exercise or direction of the exercise of the following powers (modifications are italicized):<sup>8</sup>

- The exercise, release, *or disclaimer* of powers as a donee of a power of appointment;

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<sup>7</sup> R.C. 2111.50(D)(2)(c) and (d).

<sup>8</sup> R.C. 2111.50(E)(1).

- Unless the amount of the gift is no more than \$1,000, the making of a gift, in trust or otherwise;
- *The power to create, amend, or revoke a revocable trust as described above under “Expansion of guardian’s authority”;*
- *The power to exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, IRAs, and annuities, and to surrender an annuity or insurance policy for its cash value, as described above under “Expansion of guardian’s authority.”*

Under continuing law, the notice is required to be given to the following:<sup>9</sup>

- Unless a guardian of a ward has applied for the exercise of a power specified in any of the four dot points above, to the guardian;
- To the ward whom the probate court has found to be an incompetent or a minor subject to guardianship;
- If known, to a guardian who applied for the exercise of a power as described in any of the four dot points above, to the prospective heirs of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship, and to any person who has a legal interest in property that may be divested or limited as the result of the exercise of a power specified in any of those four dot points;
- To any other persons the court orders.

The bill expands the types of persons to whom the above notice is to be given as follows:<sup>10</sup>

- If known, to the beneficiaries under the last known will, or under an existing revocable trust, of the ward;
- To all of the following as applicable:
  - The ward’s heirs at law and next of kin;
  - The beneficiaries under the ward’s existing will or revocable trust;
  - The beneficiaries of any insurance policies, retirement plans, IRAs, and annuities owned by the ward;
  - The beneficiaries under any proposed revocable trust and the proposed beneficiaries under any changes in the designation of beneficiaries of any insurance policies, retirement plans, IRAs, or annuities owned by the ward.

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<sup>9</sup> R.C. 2111.50(E)(2)(a), (b), (c), and (e).

<sup>10</sup> R.C. 2111.50(E)(2)(c) and (d).

## **Nonprofit corporation as guardian of person of an incompetent**

Under current law, generally, any appointment of a corporation as guardian applies to the estate only and not to the person.<sup>11</sup>

The bill provides that a nonprofit corporation domiciled in Ohio, organized under Ohio laws, and entitled to tax exempt status under Internal Revenue Code (IRC) subsection 501(a) may be appointed as a guardian of the person of an “incompetent” when certified by the probate court to receive such an appointment. The probate court must certify that nonprofit corporation and any individual acting as a guardian on behalf of the corporation upon meeting the requirements for serving as a guardian prescribed by the Supreme Court in the Rules of Superintendence for the Courts of Ohio and the rules of court adopted by the probate court of the county that has jurisdiction over the incompetent. A nonprofit corporation appointed as guardian of the person of an incompetent cannot be the incompetent’s residential caregiver, health care provider, or employer.<sup>12</sup>

Under the probate laws, including the guardianship laws, “incompetent” means either:<sup>13</sup>

- Any person who is so mentally impaired, as a result of a mental or physical illness or disability, of intellectual disability, or of chronic substance abuse, that the person is incapable of taking proper care of the person’s self or property or fails to provide for the person’s family or other persons for whom the person is charged by law to provide;
- Any person confined to a correctional institution in Ohio.

Current law, not changed by the bill, provides that a nonprofit corporation organized under the Ohio laws and entitled to tax exempt status under IRC subsection 501(a) that has a contract with the Department of Developmental Disabilities to provide protective services may be appointed as a guardian of a person with a developmental disability.<sup>14</sup>

## **Anatomical Gift Act changes**

### **Manner of making an anatomical gift**

The bill eliminates the following as a manner of making an anatomical gift: (a) specifying in the donor’s will an intent to make an anatomical gift, or (b) specifying an intent to make an anatomical gift in the donor’s declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.<sup>15</sup>

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<sup>11</sup> R.C. 2111.10.

<sup>12</sup> R.C. 2111.10(B)(2).

<sup>13</sup> R.C. 2111.01(D).

<sup>14</sup> R.C. 2111.10(B)(1).

<sup>15</sup> R.C. 2108.05(A)(2) and (3).

In addition to the above, existing law permits a donor to make an anatomical gift by any of the following:<sup>16</sup>

- Authorizing a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift;
- During the donor's terminal illness or injury of the donor, communicating in any manner to a minimum of two adults, at least one of whom is a disinterested witness, that the donor intends to make an anatomical gift;
- Following the statutory procedure in making a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry.

In relation to the elimination of making an anatomical gift by means of a donor's will, the bill also removes the following provisions:

- That an anatomical gift made by will takes effect on the donor's death whether or not the will is probated, and invalidation of the will after the donor's death does not invalidate the gift.<sup>17</sup>
- That an amendment of an anatomical gift made in a will is by the manner provided for amendment of wills or by any of the following applicable means:<sup>18</sup>
  - By a record signed by the donor or other person authorized to make an anatomical gift;
  - Generally, by a record signed by another individual acting at the direction of the donor or other person authorized to make an anatomical gift if the donor or other person is physically unable to sign;
  - By a later-executed document of gift that revokes a previous anatomical gift or portion of it, either expressly or by inconsistency;
  - By any form of communication during a terminal illness or injury addressed to at least two adults;
  - By a parent who is reasonably available, if the donor is an unemancipated minor who has died.
- That a revocation of an anatomical gift made in a will is by the manner for revoking a will or by any of the above applicable means and including by the destruction or

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<sup>16</sup> R.C. 2108.05 and by reference to R.C. 2133.16, repealed by the bill.

<sup>17</sup> R.C. 2108.05(E).

<sup>18</sup> R.C. 2108.06(A)(6) and by reference to R.C. 2108.06(A)(1) to (5).

cancellation of the document of gift, or the portion of the document of gift, used to make the gift, with the intent to revoke the gift.<sup>19</sup>

### **Indicating a refusal to make an anatomical gift**

Current law permits an individual to refuse to make an anatomical gift of the individual's body or part by doing any of the following:<sup>20</sup>

1. Indicating a refusal in a record signed by either: (a) the individual, or (b) generally, another individual acting at the direction of the individual, if the individual is physically unable to sign.
2. Indicating a refusal in the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death;
3. Indicating a refusal by any form of communication made by the individual during the individual's terminal illness or injury addressed to a minimum of two adults.

The bill removes the means of refusing to make an anatomical gift by means of a will as described in (2) above.<sup>21</sup>

### **Conflict between anatomical gift and declaration (living will)**

Current law provides the effects of a conflict between an anatomical gift and a "declaration" governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment. The bill removes the definition of "declaration" and all of the provisions dealing with the effects of such conflict.<sup>22</sup>

### **Second Chance Trust Fund**

Under current law, the state treasury has a Second Chance Trust Fund consisting of voluntary contributions under the motor vehicle drivers' and commercial vehicle drivers' licensing laws. The Director of Health uses money in the fund only for specified purposes, one of which is to cooperate with the Ohio Supreme Court, Ohio State Bar Association, and Ohio law schools to more effectively educate attorneys about the donation of anatomical gifts and to encourage them to assist their clients in donating anatomical gifts through anatomical gift declarations, durable powers of attorney for health care, declarations governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment, wills, and any other appropriate means.<sup>23</sup>

The bill removes from the above purposes of moneys of the Second Chance Trust Fund to cooperate with the Ohio Supreme Court, Ohio State Bar Association, and Ohio law schools to

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<sup>19</sup> R.C. 2108.06(B)(7) and by reference to R.C. 2108.06(B)(1) to (6).

<sup>20</sup> R.C. 2108.07(A)(1) to (3).

<sup>21</sup> R.C. 2108.07(A)(2).

<sup>22</sup> R.C. 2108.23(A) to (G).

<sup>23</sup> R.C. 2108.34(B)(6).

more effectively educate attorneys about the donation of anatomical gifts and to encourage them to assist their clients in donating anatomical gifts through wills and declarations governing the use or continuation or the withholding or withdrawal, of life-sustaining treatment.<sup>24</sup>

### **Making anatomical gift in a “declaration” governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment**

The bill outright repeals the following provisions in the current “Declarations Law.”<sup>25</sup>

Current law permits a declarant to make a gift of the declarant’s body or body part by specifying the declarant’s intent to make that gift in a space provided in the declaration. All of the following apply to a declaration that specifies the intent of the declarant to make an anatomical gift (see “**Anatomical Gift Act**” above):

- The declaration serves as a donor card or other record in which a declarant makes an anatomical gift as provided in the Anatomical Gift Act (hereafter Act).
- The declaration is considered as having satisfied the requirements specified in that Act to make an anatomical gift by a donor card or other record.
- The declaration is subject to the Act to the extent that the declaration specifies the intent of the declarant to make an anatomical gift.

A declarant who makes an anatomical gift in the above manner may amend the anatomical gift under the circumstances and by any of the means provided in the Act, and may revoke the anatomical gift under the circumstances and by any of the means provided in the Act or by cancellation of the declarant’s intent to make the anatomical gift as specified in the declaration.

A declarant may refuse to make an anatomical gift of all or part of the declarant’s body by specifying the intent of the declarant to refuse to make the anatomical gift in a space provided in the declaration.

Existing law also provides that nothing in that law requires a declarant to make, amend, or refuse to make an anatomical gift in a space provided in a declaration or otherwise limits a declarant from making, amending, or refusing to make an anatomical gift. The failure of a declarant to indicate in the space provided in the declaration the declarant’s intent to make an anatomical gift or to refuse to make an anatomical gift does not create a presumption of the intent of the declarant in regard to the matter of making or refusing to make an anatomical gift.

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<sup>24</sup> *Id.*

<sup>25</sup> R.C. 2133.16.

## Ohio Trust Code changes

### Modification of noncharitable irrevocable trust

The bill modifies the current provision on the modification of a noncharitable trust by permitting such trust to be modified, but not to remove or replace the *currently serving* (added by the bill) trustee, upon the consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.<sup>26</sup>

### Rights of settlor's creditors – power of withdrawal

Under current law, unchanged by the bill, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to that power during the period the power may be exercised.<sup>27</sup>

Current law also provides for the lapse, release, or waiver of the power of withdrawal. The bill repeals that provision, which currently states that upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the trust's settlor only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of the following amounts:<sup>28</sup>

- The amount specified in Internal Revenue Code (IRC) section 2041(b)(2) or 2514(e) (applicability of a lapse of a power of appointment to the extent the subject property exceeded the greater of certain amounts);
- If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in IRC section 2503(b);
- If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in IRC section 2503(b) (exclusion from gifts as taxable gifts).

## Ohio Legacy Trust Act (OLTA) changes

### Definitions

The bill modifies the following definitions for purposes of the OLTA:

- **“Disposition”** means a *direct or indirect* (added by the bill) transfer, conveyance, or assignment of property, including a partial, contingent, undivided, or co-ownership interest in property, and also generally includes the exercise of a general power so as to cause a transfer of property to a trustee or trustees.<sup>29</sup>

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<sup>26</sup> R.C. 5804.11(B).

<sup>27</sup> R.C. 5805.06(B)(1).

<sup>28</sup> R.C. 5805.06(B)(2), repealed by the bill.

<sup>29</sup> R.C. 5816.02(H).

- **“Qualified trustee”** means a person who is not a transferor (defined as a person who directly or indirectly makes a disposition) and to whom both of the following apply:<sup>30</sup>
  1. The person, if a natural person, is an Ohio resident (continuing law). The person, if not a natural person, is authorized by Ohio law or by an Ohio court of competent jurisdiction to act as a trustee and *either of the following* (added by the bill) applies:<sup>31</sup>
    - The person’s activities are subject to supervision by the Ohio Superintendent of Financial Institutions, instead of the Ohio Superintendent of Banks under current law, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or a successor of any of them.<sup>32</sup>
    - As added by the bill, the person is a “family trust company,” (FTC) (defined below), and that FTC may be licensed or unlicensed for purposes of the OFTCA, if all of the following also apply regardless of the FTC’s licensing status: (a) the FTC must maintain an office in Ohio, on an exclusive basis or on a shared basis with one or more other persons, (b) the FTC must open and maintain at least one bank or brokerage account in Ohio, (c) the FTC must maintain in Ohio, on an exclusive or nonexclusive basis, electronic or physical records for the legacy trust, (d) the FTC must satisfy all of the requirements imposed under certain FTC duties by the OFTCA, and (e) no beneficiary of a legacy trust, when acting for or on behalf of an FTC, or when acting as an officer, manager, director, employee, or other agent or representative of an FTC, may have any vote or authority regarding any decision to make or withhold any distribution from such legacy trust to or for the benefit of that beneficiary.<sup>33</sup>

Nothing in the preceding paragraph prohibits a beneficiary from exercising any rights, powers, privileges, or authority granted to that beneficiary by or in a trust instrument governing a legacy trust.<sup>34</sup>

“Family trust company” means a corporation or limited liability company organized under the laws of Ohio that meets all of the following requirements: (a) it is organized to serve only family clients, (b) it is wholly owned by family clients and is exclusively controlled, directly or indirectly, by one or more family members or family entities; “family entity” means any of the trusts, estates, or

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<sup>30</sup> R.C. 5816.02(S) and (V).

<sup>31</sup> R.C. 5816.02(S)(1)(a) and (b).

<sup>32</sup> R.C. 5816.02(S)(1)(b)(i).

<sup>33</sup> R.C. 5816.02(S)(1)(b)(ii), and with reference to R.C. Chapter 1112.

<sup>34</sup> R.C. 5816.02(S)(1)(b)(ii)(V).



other entities described in certain provisions of the OFTCA, except for key employees and their trusts, and (c) it acts as a fiduciary.<sup>35</sup>

The above changes regarding a “qualified trustee” as including an FTC apply to any legacy trust settled or administered on or after the bill’s effective date.<sup>36</sup>

2. The person maintains or arranges for custody in Ohio of some or all of the property that is the subject of the qualified disposition, maintains *electronic or physical* (added by the bill) records for the legacy trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the legacy trust, or otherwise materially participates in the administration of the legacy trust.<sup>37</sup>

### **Permissible retained rights of a transferor**

Continuing law permits a legacy trust to allow or provide for any or all of the enumerated rights, powers, interests, or provisions, none of which grants, or is considered to be, either alone or in any combination, a right or power to revoke a trust or to voluntarily or involuntarily transfer an interest in that trust. Some of these powers are a transferor’s power to veto a distribution from the trust, a transferor’s right to receive trust income set forth in the trust instrument, a transferor’s right to remove a trustee and appoint a new trustee, and others specified in the law.<sup>38</sup>

The bill modifies one of the provisions that a legacy trust may provide: a provision that, upon the happening of a defined event *or a stated contingency* (added by the bill), results in the termination of a transferor’s right to mandatory income or principal.<sup>39</sup>

The bill further expands a transferor’s powers to include a power allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust.<sup>40</sup>

### **Removal of trustee; successor trustee**

The bill modifies current law pertaining to the determination or selection of a successor or replacement trustee of a legacy trust by providing that the following paragraph applies if in any action involving a legacy trust or any trustee of the legacy trust a court *enters or issues any order*, instead of “takes an action” under current law, in which *or by which* (added by the bill) the court declines to apply Ohio law in determining any of the following: (1) the trust’s validity, construction, or administration, (2) the effect of any trust term or condition, including a

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<sup>35</sup> R.C. 1112.01(H), not in the bill.

<sup>36</sup> R.C. 5816.14.

<sup>37</sup> R.C. 5816.02(S)(2).

<sup>38</sup> R.C. 5816.05.

<sup>39</sup> R.C. 5816.05(A).

<sup>40</sup> R.C. 5816.05(N).

spendthrift provision, or (3) any creditor's or other suitor's rights and remedies in connection with a qualified disposition.<sup>41</sup>

Immediately upon the court's *entry or issuance of an order*, instead of the "court's action" under current law, referred to in the preceding paragraph, and without the need for any *other* (added by the bill) order of any court, any qualified trustee who is a party to that action ceases to be a trustee of the legacy trust, and the position of trustee must be occupied in accordance with the terms of the trust instrument that governed the legacy trust immediately before that cessation, or, if the trust terms do not provide for another trustee and the trust would otherwise be without a trustee, any Ohio court, upon the application of any legacy trust beneficiary, must appoint a successor qualified trustee upon the terms and conditions that it determines to be consistent with the purposes of the trust and OLTA.<sup>42</sup>

The bill defines "order" as any order, writ, judgment, entry, edict, mandate, directive, instruction, or decree issued or entered by any "court," defined in continuing law as a judicial tribunal, an administrative tribunal, or other adjudicative body or panel.<sup>43</sup>

## **Miscellaneous rules**

### **Conflict in the laws**

The bill modifies current law regarding conflict between laws by providing that in the event of any conflict between any provision of the OLTA and any provision of the Ohio Uniform Fraudulent Transfer Act (OUFTA) or any other provision of law similar to any provision of that OUFTA, *including, but not limited to, any similar provision of law adopted, promulgated, or enacted by a jurisdiction other than Ohio* (added by the bill), the provision of the OLTA controls and prevails *to the maximum extent permitted by the Ohio Constitution and the United States Constitution. When determining whether a provision of law is similar to any provision of OUFTA, a court must be liberal in finding that such similarity exists.*<sup>44</sup>

### **Disposition by trustee of nonlegacy trust to trustee of legacy trust**

Continuing law provides the effects of a disposition made by a trustee of a nonlegacy trust to a trustee of a legacy trust. One of those effects is that the date of the disposition to the legacy trust is considered to be the date on which the property that was part of the nonlegacy trust was first continuously subject to any law of a jurisdiction other than Ohio that is similar to the OLTA. Current law provides that a court must liberally construe and apply the above provision in finding that such continuity and similarity exist. Instead of the preceding sentence,

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<sup>41</sup> R.C. 5816.09(A)(1).

<sup>42</sup> R.C. 5816.09(A)(2).

<sup>43</sup> R.C. 5816.09(A)(3).

<sup>44</sup> R.C. 5816.10(A).

the bill requires that when applying the above provision, *a court must be liberal* in finding that such continuity and similarity exist.<sup>45</sup>

### **Court jurisdiction**

The bill modifies current law by providing that to the maximum extent permitted by the Ohio Constitution and the United States Constitution, the courts of Ohio must exercise jurisdiction over any legacy trust, *any legacy trust matter* (added by the bill), or any qualified disposition and must adjudicate any case or controversy brought before them regarding, arising out of, or related to, any legacy trust, *any legacy trust matter*, or any qualified disposition if that case or controversy is otherwise within the court's subject matter jurisdiction.<sup>46</sup>

### **Disposition by trustee of first legacy trust to trustee of second legacy trust**

The bill adds the new provisions described below.

If any disposition is made by a trustee of a legacy trust, referred to as the "first legacy trust," to a trustee of a second legacy trust, referred to as the "second legacy trust," whether pursuant to a trustee's power to make distributions in further trust under the Ohio Trust Code or any other applicable law, then all of the following apply to any property involved in such disposition:<sup>47</sup>

- Except to the extent expressly stated otherwise by the terms of that disposition, the disposition will be considered a qualified disposition for the benefit of all persons who are the beneficiaries of both the first legacy trust and the second legacy trust.
- An item of property is to be treated as having been transferred to a trustee of the second legacy trust on the earlier of any of the following:
  - The date of the original qualified disposition of the item to a trustee of the first legacy trust; or
  - If, before being held by the trustee of the first legacy trust, the item previously was held by a trustee of a predecessor legacy trust, or by one or more trustees of a consecutive and uninterrupted series of predecessor legacy trusts, then the date of the original qualified disposition to the first trustee to hold that item as part of any such predecessor legacy trust;
  - If, before being held by the trustee of the first legacy trust, that item was held by a trustee of a nonlegacy trust referred to in the provision described above under "**Disposition by trustee of nonlegacy trust to trustee of legacy trust**," then the date determined pursuant to that provision;
  - The earliest date determined by any combination of the dates described in the three preceding dot points.

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<sup>45</sup> R.C. 5816.10(E)(2).

<sup>46</sup> R.C. 5816.10(H).

<sup>47</sup> R.C. 5816.10(I)(1)(a) and (b), and with reference to R.C. 5808.18, not in the bill.

For purposes of the above provision that an item of property is to be treated as having been transferred to a trustee of the second legacy trust on the earlier of the above dates, any reference to an item of property must include any proceeds of or substitutes for that item.<sup>48</sup>

The bill further provides that notwithstanding the definition of “qualified trustee” as modified by the bill (see “**Definitions**,” above), a qualified trustee of the first legacy trust may serve as a qualified trustee of the second legacy trust.<sup>49</sup> The dispositions covered by these new provisions in the bill include any disposition that is made by a trustee of the first legacy trust acting pursuant to a direction issued by a person having the power to direct a distribution of trust property pursuant to the trust instrument governing the first legacy trust, including a power to direct by any person, other than the trustee, who has a power exercisable in a fiduciary capacity to direct the trustee to make any distribution of principal as provided in the Ohio Trust Code.<sup>50</sup>

### **Miscellaneous provisions**

The bill provides that any reference in the OLTA to an “action” or a “proceeding” must be broadly construed to encompass any suit or proceeding in any jurisdiction or before any judicial tribunal, administrative tribunal, or other adjudicative body or panel.<sup>51</sup>

The bill also provides that the OLTA and its provisions reflect and embody the strong public policy of Ohio.<sup>52</sup>

## **Cemetery endowment care trusts**

### **General overview**

Under existing law, with some exceptions, persons operating cemeteries must establish an endowment care trust before they may sell or offer for sale any burial lot, burial right, entombment right, or columbarium right in that cemetery. A cemetery endowment care trust must be segregated from all other assets.<sup>53</sup> Operating cemeteries must deposit at least 10% of gross sales proceeds from lot and right sales into the trust.<sup>54</sup>

The bill adds investment costs to the list of expenses the distributions from the trust fund may be used for. Existing law permits the dividend and interest income from the trust to be used for the cost and expenses incurred to establish, manage, and administer the trust and for the maintenance, supervision, and improvement of cemetery property.

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<sup>48</sup> R.C. 5816.10(I)(2).

<sup>49</sup> R.C. 5816.10(I)(3).

<sup>50</sup> R.C. 5816.10(I)(4), and with reference to R.C. 5808.18(G), not in the bill.

<sup>51</sup> R.C. 5816.10(J).

<sup>52</sup> R.C. 5816.10(K).

<sup>53</sup> R.C. 1721.21(B) and (C).

<sup>54</sup> R.C. 1721.21(D).

But primarily, the bill establishes a different method to calculate how funds from the endowment care trust can be used to pay for these expenses. Instead of the money that results from the dividend and interest from the trust, the bill requires the cemetery choose between two different types of distribution methods from the trust.<sup>55</sup>

### **Distribution methods**

Under the bill, every cemetery must choose from **either of the two** distribution methods from the endowment care trust:

1. All net ordinary income, which includes collected dividends, interest, and other income earned by the trust, reduced by any expenses, including taxes on income, fees, commissions, and costs;
2. A unitrust disbursement not exceeding 5% of the fair market value of the endowment care fund. *Fair market value*, here, means the average of the net fair market value of the assets of the endowment care trust as of the last trading day for each of the three preceding fiscal year ends.<sup>56</sup>

If the cemetery chooses the unitrust disbursement (number 2 above), then it must notify the Department of Commerce Division of Real Estate that it selected the unitrust distribution method and it must file with the Division the percentage of the unitrust distribution from the endowment care trust that it will use to pay expenses. In addition, not later than 60 days prior to the beginning of a calendar year, a cemetery that selects the unitrust disbursement distribution method must deliver to the trustees of the endowment care trust written instructions that includes the disbursement percentage selected. The distribution method and, if a unitrust disbursement, the disbursement percentage selected, must remain in effect unless the cemetery notifies the trustees and the Division of Real Estate of its desire to effect a change.<sup>57</sup>

### **Trustee requirements**

The bill requires that the trustees of the endowment care trust ensure that an investment policy is in place whose goals and objectives are supportive of the growth of the endowment care trust. Distributions from the endowment care trust must be made on a monthly, quarterly, semiannual, or annual basis, as agreed upon by the cemetery and the trustees. If the trustees do not receive written instructions from the cemetery informing the trustees of the method of calculation and distribution chosen, the trustees must then calculate and distribute the net income, as earned, on a monthly basis.<sup>58</sup>

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<sup>55</sup> R.C. 1721.21(I).

<sup>56</sup> R.C. 1721.21(K)(1).

<sup>57</sup> R.C. 1721.21(J)(3)(b) and (K)(2).

<sup>58</sup> R.C. 1721.21(K)(2)(b) and (3).

In order to withdraw a unitrust disbursement, the fair market value of the endowment care trust after the disbursement must be greater than 80% of the aggregate fair market value of the endowment care trust as of the end of the immediate preceding calendar year. If this is not the case, disbursement must be limited for that year to net ordinary income. The trustees must pay reasonable operating expenses and taxes of the endowment care trust itself. If the operating expenses and taxes paid are greater than 2½% of the fair market value for the preceding calendar yearend and the cemetery has selected a unitrust disbursement, the trustees must reduce the unitrust disbursement by the amount exceeding 2½%.<sup>59</sup>

## **Referrals for adjudication of civil actions to retired judges**

Continuing law permits parties to any civil action or proceeding pending in any court of common pleas, municipal court, or county court unanimously to choose to have the entire action or proceeding referred for adjudication, or to have any specific issue or question of fact or law in the action or proceeding submitted for determination, to a retired judge of their choosing who has registered with the clerk of that court for the purpose of receiving referrals.<sup>60</sup>

If the parties choose to have such a referral or submission made, all of them must enter into a written agreement with the retired judge that must have specified provisions under current law, such as designating the judge to whom the referral or submission is to be made, the judge's compensation, that the parties will have the responsibility for providing necessary facilities, equipment, and personnel, and other provisions.<sup>61</sup> The bill adds to these provisions in the agreement an indication of a procedure for terminating the agreement with the retired judge.<sup>62</sup>

Current law provides that upon the filing of the agreement, the judge before whom the action or proceeding is pending, by journal entry, must order the referral or submission in accordance with the agreement. The bill instead provides that such judge must address the agreement *within 14 days after its filing* and, by journal entry, *may, at the judge's discretion*, order the referral or submission in accordance with the agreement.<sup>63</sup> The bill further provides that upon conclusion of the referred action or proceeding or determination of the submitted issue or question, jurisdiction is returned to the referring judge.<sup>64</sup>

## **Reimbursement of assigned judges**

The bill requires the treasurer of the county in which a county-operated municipal court, other municipal court, or county court is located to pay the per diem compensation to which an

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<sup>59</sup> R.C. 1721.21(K)(4) and (5).

<sup>60</sup> R.C. 2701.10(B)(1).

<sup>61</sup> R.C. 2701.10(B)(1)(a) to (e).

<sup>62</sup> R.C. 2701.10(B)(1)(f).

<sup>63</sup> R.C. 2701.10(B)(2).

<sup>64</sup> R.C. 2701.10(D)(2).

assigned judge is entitled as a full-time judge or a sitting judge of the court of appeals or court of common pleas.<sup>65</sup> The bill also requires the treasurer of the county in which the county operated municipal court, other municipal court, or county court is located, subject to reimbursement, to pay the per diem compensation to which an assigned judge is entitled as a part-time judge.<sup>66</sup> The bill modifies existing law by providing that the treasurer of the county that is required to pay the *per diem* compensation to which an acting judge is entitled or *an assigned judge is entitled as a part-time judge* must submit to the Administrative Director of the Supreme Court quarterly requests for reimbursement of the *state portion* of the per diem amounts so paid. The requests must include verifications of the payment of those amounts and an affidavit from the acting judge or *assigned judge* stating the days and hours worked. The Administrative Director must cause reimbursement of the *state portion of the per diem* amounts paid to be issued to the county if the Administrative Director verifies those amounts were, in fact, paid.<sup>67</sup>

Existing law requires the Ohio Supreme Court to pay any compensation to which an assigned municipal court or county court judge is entitled. The Administrative Director, annually on August 1, is required to issue a bill to the county treasurer of any county to which an assigned judge was assigned to a municipal court or county court for reimbursement of the county or local portion of the compensation previously paid by the state for the 12-month period preceding June 30. The county or local portion of the compensation is that part of each per diem paid by the state which is proportional to the county or local shares of the total compensation of a resident judge. The bill modifies this provision by stating that *if the* Ohio Supreme Court is required to pay the *per diem* compensation to which an assigned judge is entitled, annually, on August 1, the Administrative Director must issue a billing to the county treasurer of any county to which such judge was assigned to a municipal court or county court for reimbursement of the county or local portion of the *per diem* compensation previously paid by the *Supreme Court* for the 12-month period preceding June 30. The county or local portion of the *per diem* compensation is that part of each per diem paid by the state which is proportional to the county or local shares of the total compensation of a resident judge.<sup>68</sup>

## **Involuntary mental health treatment**

When determining the most appropriate treatment placement for a respondent subject to involuntary mental health treatment, the bill authorizes a probate court to consider the diagnosis and prognosis of the respondent made by either of the following:

--A clinical nurse specialist who is certified as a Psychiatric-Mental Health Clinical Nurse Specialist by the American Nurses Credentialing Center; or

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<sup>65</sup> R.C. 1901.123(A)(2) and 1907.143(A)(2).

<sup>66</sup> R.C. 1901.123(A)(3) and 1907.143(A)(3).

<sup>67</sup> R.C. 1901.123(B) and 1907.143(B).

<sup>68</sup> R.C. 1901.123(C) and 1907.143(C).

--A certified nurse practitioner who is certified as a Psychiatric-Mental Health Nurse Practitioner by the American Nurses Credentialing Center.

Under current law, the probate court is limited to considering the diagnosis and prognosis made only by a psychiatrist or licensed clinical psychologist. Continuing law also requires the probate court to consider the respondent's preferences and projected treatment plan. The options for treatment are (1) a hospital operated by the Department of Mental Health and Addiction Services in certain circumstances, (2) a nonpublic hospital, (3) the veterans' administration or other agency of the United States government, (4) a board of alcohol, drug addiction, and mental health services or services provider the board designates, (5) receive private psychiatric or psychological care and treatment, or (6) any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent. A jail or other local correctional facility is not a suitable facility.<sup>69</sup>

## Overview of name change and conformity provisions

Under the bill, a probate court procedure is established to conform a person's legal name in an official identity document. Additionally, the bill amends the existing probate court procedure to change a legal name by permitting the court to (1) determine if a hearing is required and, if so, set the hearing notice's manner, scope, and content, (2) by local rule or order, require the applicant to submit official identity documents, and (3) require a criminal records check on the applicant. Finally, the bill recodifies (reorganizes) the existing Revised Code chapter governing the change of name process.

The bill defines the following terms:<sup>70</sup>

- "Application" is, as context requires, an application to change or conform an adult's legal name or to change or conform a legal name on behalf of the minor.
- "Applicant" is, as context requires, a person who makes the filing required to change an adult's legal name or conform an adult's legal name, or the minor on whose behalf a filing is made for a name change or conformity.
- "Conform" is to make a person's legal name consistent in all official identity documents by correcting a misspelling, inconsistency, or other error in an official identity document.
- "Official identity document" is a birth record, marriage record, divorce decree, driver's license, state issued identification card, Social Security card with the Social Security number redacted, passport, or any other official government-issued document required or commonly used to verify a person's identity.

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<sup>69</sup> R.C. 5122.15(E).

<sup>70</sup> R.C. 2717.01(A) to (D).



## Conformity of a legal name

### Conformity of an adult's name

The bill permits a person desiring to conform the person's legal name on an official identity document to file an application in the probate court of the county in which the person resides.<sup>71</sup>

#### Application and affidavit requirements

The bill requires, subject to the possible requirement of submission of official identity documents and a criminal records check (see "**Relevant identity documents required by court**" and "**Criminal records check**," discussed below), an application to conform a legal name in an official identity document to set forth all of the following:

- That the applicant has been a bona fide resident of the county where the applicant is filing for at least 60 days prior to the filing of the application;
- An explanation of the misspelling, inconsistency, or other error in the name;
- A description of the correction sought to conform the name on all official identity documents.<sup>72</sup>

Additionally, the bill requires an application to be supported by the applicant's affidavit verifying all of the following:<sup>73</sup>

- The applicant's residency in the county for a period of at least 60 days;
- That the application is not made for the purpose of evading any creditors or other obligations;
- That the applicant is not a debtor in any currently pending bankruptcy proceeding;
- That all of the documentary evidence submitted with the application is true, accurate, and complete;
- Any other information the probate court may require.

#### Court order to conform

Under the bill, on proof that (1) the facts set forth in the application to conform a legal name show that a misspelling, inconsistency, or other error of the applicant's legal name on an official identity document exists and (2) reasonable and proper cause exists for issuing an order that resolves the discrepancy and conforms the applicant's legal name, the probate court may issue an order to conform the person's name.<sup>74</sup>

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<sup>71</sup> R.C. 2717.04.

<sup>72</sup> R.C. 2717.05.

<sup>73</sup> R.C. 2717.06.

<sup>74</sup> R.C. 2717.10.

## Conformity of a minor's name

The bill also permits an application to conform a legal name to be made on behalf of a minor by either of the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem, subject to certain consent/notice requirements.<sup>75</sup>

The proof of consent/notice requirements for a name change application on behalf of a minor under continuing law, as modified by the bill, are applied to a name conformity application on behalf of a minor under the bill. So, when a name conformity application is made on behalf of a minor, in addition to the proof required under the name conformity application requirements applicable to adults (see "**Application and affidavit requirements**" discussed above) and, if applicable, proof of notice, one of the following also shall apply:

- The consent of both of the minor's living, legal parents must be filed;
- Notice of the hearing must be given to the parent or parents not consenting by certified mail, return receipt requested.

If there is no known father of the minor, the notice must be given to the person who the minor's mother alleges to be the father. If no father is alleged, or if either parent or the address of either parent is unknown, notice by publication in the county's newspaper of general circulation at least 30 days before the hearing must be sufficient as to the father or parent.

Any additional notice may be waived in writing by any person entitled to the notice.<sup>76</sup>

## Prohibited actions

The bill prohibits an action to conform the legal name of a person or on behalf of a minor in lieu of either of the following:<sup>77</sup>

- Correction of a birth record;<sup>78</sup>
- Changing a legal name to a name that is not used in any existing official identity documents.

## Change of legal name

### Legal name change of adult

Continuing law permits a person desiring a change of name to file an application in the probate court where the person resides.<sup>79</sup>

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<sup>75</sup> R.C. 2717.13.

<sup>76</sup> R.C. 2717.14.

<sup>77</sup> R.C. 2717.18.

<sup>78</sup> R.C. 3705.15, not in the bill.

<sup>79</sup> R.C. 2717.02.

## Application and affidavit requirements

The bill requires, subject to the possible requirement for the submission of official identity documents and a criminal records check (see “**Relevant identity documents required by court**” and “**Criminal records check**,” discussed below), a change of name application to set forth that the applicant has been a bona fide resident of the county for at least 60 days (instead of one year, as in current law) prior to filing the application. Continuing law requires the application to set forth the reason for which the name change is sought and the requested new name.<sup>80</sup>

Additionally, the bill requires the application to be supported by the applicant’s affidavit verifying all of the following:

- The applicant’s residency in the county for a period of at least 30 days;
- That the application is not made for the purpose of evading any creditors or other obligations;
- That the applicant is not a debtor in any currently pending bankruptcy proceeding;
- That all of the documentary evidence submitted with the application is true, accurate, and complete;
- Any other information the probate court may require.

The affidavit supporting a legal name change application must also verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to register as a sex offender because the applicant was convicted of, or pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.

Under current law, the application (instead of the affidavit as required by the bill) requires the applicant to state whether the applicant has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or has a duty to register as a sex offender because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.<sup>81</sup>

## Court order to change name

The bill substantially preserves the law that permits the probate court to order the applicant’s change of name upon proof (1) that the facts set forth in the application show that reasonable and proper cause exists for changing the applicant’s name and (2) if applicable, that proper notice was served.<sup>82</sup>

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<sup>80</sup> R.C. 2717.03.

<sup>81</sup> R.C. 2717.06.

<sup>82</sup> R.C. 2717.09.

## Legal name change for minor

The bill maintains current law permitting a name change application to be filed on behalf of a minor by the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem, subject to certain consent/notice requirements.<sup>83</sup>

The bill generally maintains the consent/notice requirements of current law with respect to name change applications for minors, except for the changes as explained above regarding the following:<sup>84</sup>

- The addition of the supporting affidavit for the name change and the change from one year to 60 days regarding the county residency requirement (see "**Application and affidavit requirements**" discussed above);
- The hearing notice and hearing changes that replace current law (see "**Hearing and hearing notice**" discussed below).

The bottom line, however, is that the consent/notice requirements for a minor name change are the same as for minor name conformity (see "**Conformity of a minor's name**" discussed above).

## Prohibited actions

The bill substantially maintains current law that prohibits the probate court from ordering a change of name if either of the following apply to the applicant:

- Has a duty to register as a sex offender because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense;
- Has pleaded guilty to, been convicted of, or been adjudicated a delinquent child for identity fraud or theft, unless the guilty plea, conviction, or adjudication has been reversed on appeal.<sup>85</sup>

## Recodification

The bill recodifies the section in current law governing the change of legal name process under Chapter 2717 of the Revised Code. The table below gives a brief description of each recodified section, the new section number under the bill, and the section number under current law.

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<sup>83</sup> R.C. 2717.13.

<sup>84</sup> R.C. 2717.14.

<sup>85</sup> R.C. 2717.16.

Recodification of R.C. Chapter 2717		
Subject	New section number	Current section number
Definitions applicable to R.C. Chapter 2717	R.C. 2717.01(E)	R.C. 2717.01(C)(3)
Permission to file for adult name change	R.C. 2717.02	R.C. 2717.01(A)(1)
Requirements for adult name change application	R.C. 2717.03	R.C. 2717.01(A)(1)
Affidavit requirements (part of application requirements under current law)	R.C. 2717.06	R.C. 2717.01(A)(1)
Hearing notice	Repealed	R.C. 2717.01(A)(2)
Exception to hearing notice requirement	R.C. 2717.11	R.C. 2717.01(A)(4)
Granting application for adult name change	R.C. 2717.09	R.C. 2717.01(A)(3)
Court prohibited from ordering name change	R.C. 2717.16	R.C. 2717.01(C)(1) and (2)
Permission to file for minor name change	R.C. 2717.13	R.C. 2717.01(B)
Notice requirements for minor name change	R.C. 2717.14	R.C. 2717.01(B)

## General name change/conformity provisions

### Hearing and hearing notice

The bill permits the probate court to hold a hearing on the application to change or conform a legal name. If a hearing is ordered, the court must set the manner, scope, and content of the hearing notice the applicant must serve. Current law governing the name change application (which the bill replaces) provides for a hearing and for the hearing notice to (1) be given once by publication in a newspaper of general circulation in the county at least 30 days before the hearing and (2) set forth the probate court where the application was filed, the case number, and the hearing date and time.<sup>86</sup>

Under the bill, the probate court may grant an exception to a hearing notice requirement if the applicant submits, with the application, satisfactory proof that open records of the name change or conformity, or publication of the hearing notice would jeopardize the applicant's personal safety.

If the hearing notice exception is granted in order to protect the applicant's personal safety, the bill requires both of the following to apply:

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<sup>86</sup> R.C. 2717.08.

- The probate court must waive the hearing notice requirement.
- If the probate court orders the change of name or name conformity, it must order the records of the proceeding to be sealed and to be opened only by order of the court for good cause shown or at the request of the applicant for any reason.

Current law requires, in order for the court to grant an exception to a hearing notice requirement, a name change applicant to submit, along with the application, satisfactory proof that the publication of notice would jeopardize personal safety.<sup>87</sup>

### **Relevant identity documents required by court**

Under the bill, a probate court may, by local rule or order, require an applicant to submit a copy of any or all of the applicant's official identity documents or other documentary evidence relating to the applicant's identity that the court deems relevant to the application.<sup>88</sup>

### **Criminal records check**

The bill permits the probate court, on receipt of an application, to order a criminal records check. Any fee required for the criminal records check must be paid by the applicant.<sup>89</sup>

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## **HISTORY**

Action	Date
Introduced	01-09-20
Reported, H. Civil Justice	---

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H0464-RH-133/ks

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<sup>87</sup> R.C. 2717.11.

<sup>88</sup> R.C. 2717.07.

<sup>89</sup> R.C. 2717.19.