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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 301\*  
135<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 301's Fiscal Note](#)

**Version:** As Reported by Senate Judiciary

**Primary Sponsor:** Rep. Swearingen

Joe McDaniels, Division Chief

## SUMMARY

### Nonprofit corporation changes

- Requires nonprofit corporation directors to be natural persons (i.e., individuals rather than business entities).
- Authorizes a committee consisting of one or more directors of a nonprofit corporation to create a subcommittee, unless otherwise provided in the articles, the regulations, or the resolution of the original committee.
- Specifies the fiduciary duty required of an officer of a nonprofit corporation.
- Expands the circumstances in which provisional directors may be appointed.
- Revises the standards for determining liability of directors when nonprofit corporations make loans and the interest rate relating to that liability.
- Establishes that a loan made in violation of the law governing nonprofit corporation does not affect the borrower's liability on the loan.
- Authorizes a majority of the incorporators of a nonprofit corporation to amend the articles of incorporation if (1) the articles do not name initial directors, (2) a meeting of voting members has not yet occurred, and (3) the incorporators have not yet elected directors.
- Establishes that a certificate issued by the Secretary of State confirming that a nonprofit corporation is in good standing is conclusive evidence of certain facts.

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

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June 26, 2024

- Limits the liability of those who provide goods to, or perform services for, nonprofit corporations or their members to only the person or entity to whom the goods or services were provided.
- Provides an exception to religious organizations excluded from the definition of an unincorporated nonprofit association in the Unincorporated Nonprofit Association Law.
- Allows a dissolving corporation to provide certain tax-related information as an alternative to securing a certificate from the Department of Taxation confirming that all state taxes have been paid.
- Classifies an order that restrains or restricts enforcement of a state statute or regulation as a final appealable order.

### **Conciliation for custody disputes between unmarried parents**

- Allows a court to order unmarried parents who are in a custody dispute to undergo conciliation with a magistrate.
- Requires a magistrate to resolve disputes through conciliation procedures and, upon resolution, to issue an order regarding the allocation of parental rights and responsibilities, parenting time, or companionship or visitation.
- Specifies that conciliation procedures may include the use of family counselors and service agencies, community health services, physicians, licensed psychologist, and clergy.

### **Ashtabula County County Court**

- Replaces the two part-time judgeships of the Ashtabula County County Court with one full-time judge and provides that those part-time judgeships cease to exist on January 1, 2031.
- Provides that the part-time judge of the Ashtabula County County Court to be elected in 2028, must be elected for a two-year term commencing on January 1, 2029, and ending on December 31, 2030, and that one full-time judge must be elected in 2030, for a six-year term to commence on January 1, 2031.

### **Conneaut Municipal Court**

- Beginning January 1, 2025, expands the territorial jurisdiction of the Conneaut Municipal Court to include the municipal corporation of North Kingsville, and within Kingsville, Monroe, and Sheffield townships, in Ashtabula County.
- Requires that all cases arising in the municipal corporation of North Kingsville in Ashtabula County and in Kingsville, Monroe, and Sheffield townships in Ashtabula County that are pending in the Eastern County Court in Ashtabula County on January 1, 2025, be adjudicated by the Ashtabula County County Court.
- Requires that all cases arising in the municipal corporation of North Kingsville in Ashtabula County and in Kingsville, Monroe, and Sheffield townships in Ashtabula County on or after January 1, 2025, be brought before the Conneaut Municipal Court.

## Ohio Criminal Sentencing Commission

- Requires the Ohio Criminal Sentencing Commission to re-establish a standing juvenile committee.
- Re-establishes requirements for the Commission to review and develop a juvenile justice policy for the state, as well as assisting policymakers with legislation related to juvenile justice issues.

## Political subdivision soldiers' memorial

- Expands the authority of a board of trustees of a political subdivision soldiers' memorial.

## Public depositories

- Eliminates the prohibition against financial institutions that are subject to a cease-and desist order from serving as a public depository.
- Requires public depositories to notify the governing board if the depository becomes party to an active prompt corrective action directive.
- Specifies that institutions are ineligible to serve as public depositories while under a prompt corrective action directive unless authorized by a governing board.
- Relieves certain public officials from liability for loss of public moneys deposited in a failed public depository.

## Cemeteries

- Modifies the laws governing the repair or replacement of a mausoleum or columbarium.
- Allows the disinterment of the cremated remains of a decedent who died of a contagious or infectious disease, without a permit issued by the local board of health.

## Judicial release and transitional control

- Reiterates that amendments to the judicial release and transitional control processes made in S.B. 288 of the 134<sup>th</sup> General Assembly apply only to prisoners serving prison terms on or after April 4, 2023, the effective date of that act.

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## DETAILED ANALYSIS

### Nonprofit Corporation Law

The bill makes numerous changes to the Nonprofit Corporation Law, including changes related to director qualifications and appointment, director and officer liability, and certificates of good standing from the Secretary of State. It also makes one change to the Unincorporated Nonprofit Association Law and one change to the General Corporation Law.

#### Director qualifications

The bill requires nonprofit corporation directors to be natural persons (i.e., not business entities). Current law simply requires directors to have the qualifications, if any, stated in the nonprofit corporation's articles of incorporation or regulations.<sup>1</sup>

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<sup>1</sup> R.C. 1702.27(A)(3).

## Director duties

### Evaluating duties

Continuing law requires a nonprofit corporation director to perform their duties (1) in good faith, (2) in a manner the director reasonably believes to be in, or not opposed to, the best interests of the corporation, and (3) with care that an ordinarily prudent person in a like position would use under similar circumstances. In determining what is in the best interests of the corporation, or what is not opposed to those interests, current law, changed in part by the bill, requires the director to consider the purposes of the corporation and allows the director to consider the following:

- The interests of the corporation's employees, suppliers, creditors, and customers;
- The economy of the state and nation;
- Community and societal considerations;
- The long- and short-term interests of the corporation, including the possibility that the interests may be best served by the corporation's continued independence.

The bill modifies the application of these criteria in two ways: First, it clarifies that the director's consideration of the permissive criteria (the bulleted items above) is discretionary. Second, it specifies that both the mandatory criterion (the purposes of the corporation) and the permissive criteria apply only to determining what is in the best interests of the corporation. It retains the requirement that the director act in a manner that is not opposed to the corporation's interests, but eliminates guidelines as to how the director may determine what is, or is not, opposed to those interests.<sup>2</sup>

### Committees and subcommittees

The bill authorizes any committee consisting of one or more nonprofit corporation directors to create subcommittees and delegate any or all of the committee's power to the subcommittee. This authority, however, may be withheld by the corporation's regulations or the resolution that created the original committee.

The bill does not change provisions in current law that provide for the creation of committees by nonprofit corporation boards of directors. It only establishes the new authority for those committees to create subcommittees.<sup>3</sup>

### Provisional directors

The bill expands the circumstances in which a court may appoint provisional directors for nonprofit corporations. Currently, a provisional director may be appointed by a court upon the complaint of at least one fourth of the directors. In order to make an appointment, the

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<sup>2</sup> R.C. 1702.30(B) and (F).

<sup>3</sup> R.C. 1702.33(G).

plaintiffs must establish that the continued operation of the corporation is substantially impeded or impossible because of irreconcilable differences among the existing directors.

The bill expands the field of eligible complainants to include at least one fourth of a nonprofit corporation's voting members. It also expands the circumstances allowing appointment to include situations where there are no directors and the voting members are unable to elect directors, making the continued operation of the corporation substantially impeded or impossible.<sup>4</sup>

## **Corporate officers**

### **Fiduciary duties**

The bill establishes a default fiduciary duty that applies to a nonprofit corporation's officers (e.g., president, treasurer, etc.) unless the corporation's articles or regulations, or a written agreement with an officer, establishes *additional* fiduciary duties.

These new provisions largely mirror existing law regarding fiduciary duties for directors. Under the bill, officers must perform their duties in good faith, in a manner reasonably believed to be in or not opposed to the corporation's best interests, and with the care an ordinarily prudent person in a like situation would use. When performing their duties, officers may rely on information, including financial statements and other data, prepared or presented by either:

- The corporation's directors, officers, or employees who the officer in question reasonably believes to be reliable and competent;
- Counsel, accountants, and other professionals working in their scope of practice.<sup>5</sup>

### **Liability for failure to fulfill fiduciary duties**

Under the bill, in order for a court to find that a corporate officer failed to act in good faith, in a manner reasonably believed to be in or not opposed to the corporation's best interests (i.e., to have violated the relevant fiduciary duty), the failure must be proved by clear and convincing evidence. Clear and convincing evidence is evidence indicating something is highly likely or reasonably certain. That is a higher standard than the normal evidentiary standard in civil cases, which is a preponderance of the evidence (the evidence for a proposition outweighs the evidence against, even if only slightly). The bill further provides, however, that an officer will not be considered to be acting in good faith if the officer knows something about the matter in question that would make reliance on information provided by other corporate personnel or professional advisors unwarranted.<sup>6</sup>

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<sup>4</sup> R.C. 1702.521.

<sup>5</sup> R.C. 1702.341(A) and (B).

<sup>6</sup> R.C. 1702.341(C), *Black's Law Dictionary* (11<sup>th</sup> ed. 2019), and *Ohio Trial Practice (Baldwin's Ohio Handbook Series)* § 9:3 (2021 ed.).

The bill has additional provisions for actions seeking to make a nonprofit corporation's officer liable for money damages. In those cases, it must be shown by clear and convincing evidence that the officer's action or inaction was undertaken with deliberate intent to cause the corporation injury or with reckless disregard for its best interests. The bill does provide that this requirement can be nullified by the corporation's articles or regulations or a written agreement with the officer in question.<sup>7</sup>

### **Limitation of fiduciary duty provisions**

The bill limits its new fiduciary duty provisions for corporate officers to those instances where they are acting as corporate officers. The fiduciary duties do not apply when corporate officers are acting in any other capacity.<sup>8</sup>

### **Director and officer liability**

Under continuing law, directors and officers of nonprofit corporations are not personally liable for the corporation's obligations. They may, however, be liable to the corporation itself under certain circumstances. Those are where there is a distribution of corporate assets to members contrary to law or the corporation's articles, where there is a distribution of assets without making sure creditors are paid when winding up the corporation's affairs, and when the corporation makes certain loans. The bill modifies the liability provisions regarding loans.

Under current law, directors and officers may be liable to the corporation when, other than in the usual conduct of the corporation's affairs or in accordance with the corporation's articles, the corporation makes a loan to a corporate officer, director, or member. The bill removes the liability application for loans to members. It also removes the liability provision altogether if, at the time of the loan, the majority of disinterested directors voted for the loan after taking into account its terms and provisions and determining that it could reasonably be expected to benefit the corporation.

The bill also adjusts the interest rate applicable to a director's liability on improper loans from 6% annually to the federal short-term rate as determined by the Tax Commissioner under continuing law. Finally, it adds a new provision establishing that even if a loan is made in violation of the nonprofit corporation law, that violation does not affect the borrower's liability on the loan.<sup>9</sup>

### **Amendment of articles**

Nonprofit corporations are formed when articles of incorporation are filed with the Secretary of State. The articles may be filed by one or more persons, called incorporators, and may name the corporation's initial directors. Once incorporated, articles may be amended by a majority vote of the corporation's voting members. The bill adds a new provision allowing

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<sup>7</sup> R.C. 1702.341(D).

<sup>8</sup> R.C. 1702.341(E).

<sup>9</sup> R.C. 1702.55(A), (B), and (H); R.C. 1343.03 and 5703.47, not in the bill.

articles of incorporation that do not name the initial directors to be amended, if certain circumstances are met. Specifically, under the bill, the incorporators may adopt an amendment to the articles at any time prior to both:

- A meeting of the corporation's voting members;
- Election of directors by the incorporators.<sup>10</sup>

### **Certificate of good standing**

The bill specifies that a certificate of good standing issued for a nonprofit corporation by the Secretary of State is conclusive evidence of certain facts for seven days after it is issued. The facts the certificate demonstrates are:

- That an Ohio nonprofit corporation's authority has not been limited by provisions of continuing law dealing with its termination or dissolution and the winding up of its affairs, provided that the person relying on the certificate has no knowledge that the corporation's articles have been canceled and the certificate is not presented as evidence against the state;
- That an out-of-state nonprofit corporation's license to do business in Ohio has not expired, been canceled, or been surrendered.<sup>11</sup>

### **Dissolution**

Current law requires corporations filing for dissolution with the Secretary of State include with their certificate of dissolution a certificate or other evidence from the Department of Taxation showing that the corporation has paid all taxes owed to the Tax Commissioner, or an "adequate guarantee" that the taxes will be paid. The bill removes the "adequate guarantee" option.<sup>12</sup>

Instead, the bill permits corporations filing for dissolution to substitute the certificate or other evidence with an affidavit stating the date upon which the Department of Taxation was advised in writing of the scheduled effective date of the corporation's dissolution and of the corporation's acknowledgement of its potential liability for unlawful loans, dividends, and distribution of assets. Furthermore, the affidavit must contain an acknowledgement by the corporation that the dissolution does not automatically relieve it from its tax liabilities, and a statement confirming that the corporation has submitted to the Department of Taxation information regarding the corporation's state tax circumstances. The statement shall be submitted on a form prescribed by the tax commissioner. However, the bill prohibits that form from requiring any covenants, agreements, or certifications by the corporation related to

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<sup>10</sup> R.C. 1702.38(C)(1); R.C. 1702.01, 1702.04, and 1702.20, not in the bill.

<sup>11</sup> R.C. 1702.53(D).

<sup>12</sup> R.C. 1701.86(H)



payment of taxes, filing of returns, or closing of accounts. The form may require the corporation to certify that the information provided is accurate.<sup>13</sup>

### **Providers of goods and services**

The bill adds a new provision to the nonprofit corporation law providing that, absent express agreement, those who provide goods or services to a nonprofit corporation do not incur legal liability or owe any duties to the corporation's members or creditors, or the members' creditors, by reason of providing the goods or services. Similarly, the bill specifies that those who provide goods or service to a nonprofit's corporations members do not incur legal liability or owe any duties to the corporation or its creditors by virtue of providing those goods or services.<sup>14</sup>

### **Nonsubstantive changes**

The bill makes numerous stylistic edits to statutory language that do not appear to substantively change the law.<sup>15</sup>

### **Unincorporated nonprofit associations**

Unincorporated nonprofit associations are organizations, consisting of two or more members pursuant to an agreement for one or more common nonprofit purposes. Continuing law exempts several entities from the definition, including religious organizations. The bill permits religious organizations to opt into the unincorporated association law by having the religious organization's governing principles specially state that the exemption does not apply.<sup>16</sup>

### **Final appealable order**

The bill includes as a final order that may be reviewed, affirmed, modified or reversed, with or without retrial, an order restraining or restricting enforcement, whether on a temporary, preliminary, or permanent basis, of any state statute or regulation, in whole or in part, facially or as applied, including, but not limited to, orders in the form or injunctions, declaratory judgments, or writs.<sup>17</sup>

### **Conciliation for custody disputes between unmarried parents**

The bill specifies that if a child is born to an unmarried woman and the father of the child has established paternity, the court may, on its own motion or the motion of one of the parties, order the parents to undergo conciliation with a magistrate in order to resolve any disputes regarding the allocation of parental rights and responsibilities between the parents in

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<sup>13</sup> R.C. 1701.86(l) and R.C. 1701.95, not in the bill.

<sup>14</sup> R.C. 1702.531.

<sup>15</sup> R.C. 1701.86(l) and 1702.30(C) through (E).

<sup>16</sup> R.C. 1745.05(M)(5).

<sup>17</sup> R.C. 2505.02(B)(8).

a pending case. An order must include the name of the magistrate who will serve as the conciliator and the manner that the costs of any conciliation procedures are to be paid.

The bill requires a magistrate who serves as a conciliator to use conciliation procedures to resolve disputes regarding the allocation of parental rights and responsibilities. Conciliation procedures may include, without limitations, the use of family counselors and service agencies, community health services, physicians, licensed psychologists, or clergy. If the magistrate orders the parties to undergo family counseling, the magistrate must name the counselor and set forth the required type of counseling, the length of time for counseling, and any other specific conditions.

Upon the resolution of a dispute, the magistrate must issue an order regarding the allocation of parental rights and responsibilities, parenting time, or companionship or visitation pursuant to existing law. Such an order may be issued only when the conciliation has concluded and been reported to the magistrate.<sup>18</sup>

## **Ashtabula County County Court**

Existing law provides that in the Ashtabula County County Court, one part-time judge is elected in 1980, and one part-time judge is elected in 1982. The most recent elections for these judges were in 2022 and 2024, respectively. The bill provides that this provision applies until December 31, 2030.<sup>19</sup>

Under the bill, notwithstanding any contrary law that requires that judges of a county court must be elected for a term of six years commencing on the first day of January following the election for the county court or on the dates specified in the law, the part-time judge of Ashtabula County County Court to be elected in 2028 (i.e., the judge initially elected in 1980) must be elected for a term of two years commencing on January 1, 2029, and ending on December 31, 2030. The bill provides that the Ashtabula County County Court part-time judgeships cease to exist on January 1, 2031. One full-time judge must be elected in 2030, for a six-year term to commence on January 1, 2031.<sup>20</sup>

Effective January 1, 2031, notwithstanding the provisions in continuing law designating the annual compensation of county court judges, the full-time judge of the Ashtabula County County Court under the bill must receive the compensation set forth in the law providing the compensation of municipal court judges.<sup>21</sup>

## **Conneaut Municipal Court**

The bill expands the jurisdiction of the Conneaut Municipal Court beginning January 1, 2025, to the municipal corporation of North Kingsville, and Kingsville, Monroe, and

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<sup>18</sup> R.C. 3109.055.

<sup>19</sup> R.C. 1907.11(A).

<sup>20</sup> R.C. 1907.11(A) and by reference to R.C. 1907.13(C), not in the bill.

<sup>21</sup> R.C. 1907.11(A) and by reference to R.C. 141.04(A)(5) and (A)(6) and 1907.16(A), not in the bill.

Sheffield townships, in Ashtabula County.<sup>22</sup> Currently the Conneaut Municipal Court has jurisdiction within the corporate limits of the municipal corporation of Conneaut, and within Ashtabula County northerly beyond the south shore of Lake Erie to the international boundary line between the United States and Canada.<sup>23</sup>

Under the bill, all cases arising in the municipal corporation of North Kingsville in Ashtabula County that are pending in the Eastern County Court in Ashtabula County on January 1, 2025, must be adjudicated by the Ashtabula County County Court. All cases arising in the municipal corporation of North Kingsville in Ashtabula County on or after January 1, 2025, must be brought before the Conneaut Municipal Court.<sup>24</sup>

The bill further provides that all cases arising in Kingsville, Monroe, and Sheffield townships in Ashtabula County that are pending in the Eastern County Court in Ashtabula County on January 1, 2025, must be adjudicated by the Ashtabula County County Court. All cases arising in Kingsville, Monroe, and Sheffield townships in Ashtabula County on or after January 1, 2025, must be brought before the Conneaut Municipal Court.<sup>25</sup>

## Ohio Criminal Sentencing Commission

### Standing juvenile committee

The bill requires the Criminal Sentencing Commission to re-establish its standing juvenile committee.<sup>26</sup> The juvenile committee was eliminated as part of the sunset review process in 2021.<sup>27</sup> Under the bill, the Chief Justice of the Ohio Supreme Court or the standing juvenile committee chairperson may designate the following members to serve on the committee:

Criminal Sentencing Commission – proposed standing juvenile subcommittee membership		
Chief Justice of the Ohio Supreme Court, or designee	Director of Youth Services, or designee	Three juvenile court judges
One court of common pleas judge, who is not a juvenile judge	One county prosecuting attorney experienced in juvenile cases involving alleged delinquent and unruly children and juvenile	One attorney whose practice of law primarily involves representing alleged delinquent and unruly children and juvenile traffic

<sup>22</sup> R.C. 1902.02.

<sup>23</sup> R.C. 1901.023, not in the bill.

<sup>24</sup> Section 4(A).

<sup>25</sup> Section 4(B)

<sup>26</sup> R.C. 181.21(D)(1).

<sup>27</sup> [S.B. 331](#), 133<sup>rd</sup> General Assembly (2021), available on the Ohio General Assembly website, [legislature.ohio.gov](http://legislature.ohio.gov).

<b>Criminal Sentencing Commission – proposed standing juvenile subcommittee membership</b>		
	traffic offenders	offenders
A former crime victim	A county commissioner	A legislator from each political party
A sheriff	A municipal corporation or township peace officer with experience investigating cases involving juveniles	Any other persons the Chief Justice or committee chairperson designates

The bill requires the Chief Justice to designate a committee member as chairperson. The committee must meet at the call of the chair or at the request of four or more committee members. The committee must select a vice-chairperson and any other necessary officers and adopt rules to govern its proceedings. The committee must meet as necessary at the call of the chairperson or on the written request of four or more of the committee's members. A majority of the committee's members constitute a quorum and a vote of a majority of the quorum is required for the committee to act. The bill requires both the Commission and the standing committee to comply with the Commission's juvenile justice responsibilities, outlined below.

### **Commission responsibilities regarding juvenile justice**

The bill restores, with changes, a number of responsibilities for the Commission related to juvenile justice policies, outlined as follows:<sup>28</sup>

- Review juvenile justice-related laws;
- Review state and local resources, including facilities and programs, for juvenile justice, including the youthful offender populations in those facilities and programs;
- Develop a statewide juvenile justice policy, designed to:
  - Assist in managing population levels and costs associated with juvenile justice facilities and programs;
  - Further the principles of providing for the care, education, and mental and physical development of children in the juvenile justice system;<sup>29</sup>
  - Provide greater certainty, proportionality, uniformity, fairness, and simplicity regarding juvenile justice services while retaining reasonable judicial discretion.

Additionally, the Commission must do all of the following:<sup>30</sup>

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<sup>28</sup> R.C. 181.26(A).

<sup>29</sup> R.C. 2152.01, not in the bill.

<sup>30</sup> R.C. 181.26(B).

- Assist in the implementation of juvenile justice-related laws;
- Monitor the operation of juvenile justice related laws, periodically report to the General Assembly on the laws' operation and impact on juvenile justice-related resources, and biennially recommend necessary changes to the juvenile justice laws to the General Assembly;
- Review introduced legislation on juvenile justice matters, make recommendations to the General Assembly about the legislation, and assist the General Assembly in making legislation consistent with the juvenile justice policy adopted by the Commission.

## **Political subdivision soldiers' memorial**

The bill authorizes the Board of Trustees of a political subdivision soldiers' memorial to make rules and regulations for entertainment, retail, educational, sporting, social, cultural, or arts opportunities at the memorial. Under existing law, the Board may only make rules and regulations for the use, administration, and maintenance of the memorial as is necessary to carry out the purposes of the memorial.

The bill also authorizes the Board, with the approval of the Board of County Commissioners, to enter into contracts with political subdivisions or nonprofit organizations for the use of other facilities separate and apart from the memorial, and to provide other services. Such use must adhere to the rules and regulations established by the Board of Trustees to carry out the purposes of the memorial.<sup>31</sup>

## **Public depositories**

Banks and other eligible financial institutions may become public depositories and receive public moneys of the state, political subdivisions, school districts, and other public entities. Under current law, no institution is eligible to become a public depository or receive any new public deposit if it or any of its directors, officers, employees, or controlling shareholders or persons is currently a party to an active final or temporary cease-and-desist order issued to ensure the safety and soundness of the institution.<sup>32</sup>

The bill removes this prohibition and instead requires any financial institution, including an eligible credit union, designated as a public depository to notify the designating governing boards if the institution becomes party to an active prompt correction action directive ("directive") issued by a regulatory authority of the United States.<sup>33</sup> A prompt corrective action directive is a directive issued by the National Credit Union Administration Board, the Office of

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<sup>31</sup> R.C. 345.13.

<sup>32</sup> R.C. 135.032 and 135.321, repealed.

<sup>33</sup> New R.C. 135.032(B).

the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.<sup>34</sup>

While party to a directive, an institution is generally ineligible to serve as a public depository. However, the bill permits a governing board to allow the public depository to continue to operate as a public depository, or to designate the institution as a public depository for subsequent designation periods, if the governing board determines that doing so is in the public interest.<sup>35</sup> If a governing board makes this determination and public moneys are lost due to the failure of the public depository, the following people are relieved from liability for that loss: the governing board's treasurer and deputy treasurer; an executive director, director, or other person employed by the governing board, its treasurer, or its deputy treasurer; and bondspersons and surety of any of the above.<sup>36</sup>

## **Cemeteries**

### **Repairing or replacing a mausoleum or columbarium**

The bill establishes a process cemeteries must follow to disinter and reinter remains when repairing or replacing a mausoleum or columbarium. Existing law generally allows the disinterment and reinterment of remains only in limited circumstance – to correct an error, for instance. The process under the bill begins with the cemetery filing an application (to disinter and reinter the remains) with the probate court in the county where the mausoleum or columbarium is situated. The probate court must schedule a hearing, of which the cemetery must give notice<sup>37</sup> to the surviving spouses of the affected decedents and to the persons who have been assigned or reassigned the rights of disposition for the affected remains.

After the hearing, the court is required to issue an order of disinterment if all of the following are satisfied:

- The cemetery provided the required notice;
- The affected remains will be held in a permanent or temporary structure on cemetery property that allows for access for visitation during the times that the cemetery's other grounds and facilities are open for visitation;
- The affected remains will be properly identified and held in a secure manner without any commingling of cremated remains;

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<sup>34</sup> R.C. 135.032(A); 12 United States Code (U.S.C.) 1790d, 12 U.S.C. 1831o.

<sup>35</sup> R.C. 135.032(C) and (D).

<sup>36</sup> R.C. 135.032(E).

<sup>37</sup> By certified mail, return receipt requested. Or, if the names or addresses are unknown and cannot with reasonable diligence be ascertained, the notice must be made by publication in a newspaper of general circulation in the county where the probate court is located. The probate court can order notice by other means as well.

- The affected remains will not be held for a period exceeding 18 months unless an extension of time is granted by the court for good cause;
- If a mausoleum or columbarium is being replaced, the replacement mausoleum or columbarium will be built on property that is owned by the cemetery and that is either the same property upon which the original mausoleum or columbarium was located or property that is contiguous thereto;
- Lastly, the court must consider the following and find there are one or more compelling reasons to issue the requested disinterment:
  - The cost, feasibility, and timetable for the repairs or replacement;
  - The current condition of the structure to be repaired or replaced;
  - The location, design, features, and overall quality of the proposed replacement structure;
  - The input of the persons receiving notice.

The bill specifies that a cemetery is not liable in damages in a civil action if the cemetery changes the specific location of entombment rights or columbarium in accordance with an order issued by the probate court under this process.<sup>38</sup>

### **Miscellaneous**

The bill allows the disinterment of the cremated remains of a decedent who died of a contagious or infectious disease, without a permit issued by the local board of health. The permit is required under continuing law for other remains.<sup>39</sup>

Finally, the bill replaces references to “buried” or “burial” with the more inclusive term “interred” or “interment.”<sup>40</sup>

### **Judicial release and transitional control**

Senate Bill 288 of the 134<sup>th</sup> General Assembly modified the availability of judicial release, a form of early release available to offenders under specified circumstances. Similarly, S.B. 288 modified several processes related to transitional control, a program operated by the Department of Rehabilitation and Correction for the purpose of closely monitoring a prisoner’s adjustment to community supervision during the final 180 days of the prisoner’s confinement. This bill reiterates that those changes are effective April 4, 2023, the effective date of that act.<sup>41</sup>

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## **HISTORY**

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<sup>38</sup> R.C. 517.23(F).

<sup>39</sup> R.C. 517.23(B).

<sup>40</sup> R.C. 517.23.

<sup>41</sup> R.C. 2929.20(A)(3)(a) and 2967.26(A)(2).

Action	Date
Introduced	10-18-23
Reported, H. Civil Justice	2-7-24
Passed, House (92-0)	4-24-24
Reported, S. Judiciary	---