



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 432 of the 131st G.A.

**Date:** December 1, 2016

**Status:** As Reported by Senate Civil Justice

**Sponsor:** Reps. Cupp and Rezabek

**Local Impact Statement Procedure Required:** No

**Contents:** Decedent's estates, court and court clerk's computerization fees, Franklin County Guardianship Program, access to digital assets

### State Fiscal Highlights

- No direct fiscal effect on the state.

### Local Fiscal Highlights

- The bill's changes to the law governing decedent's estates may produce a savings effect for local civil and criminal justice systems that otherwise might be required to adjudicate matters related to a decedent's estate.
- The bill's computerization fees provisions create the potential to generate additional revenue for courts and court clerks to computerize and to make technological advances. The potential annual revenue is likely to vary significantly across the state, from several thousand dollars in a low volume court to tens of thousands of dollars or more in a high volume court.
- The Franklin County Probate Court and Franklin County Guardianship Service Board are authorized to charge fees for services to wards, with the money being deposited into the existing Franklin County Probate Court Mental Health Fund. The money is used for services to help ensure the treatment of persons under the care of certain Franklin County boards or other guardians.
- Courts of common pleas could see an increase in the number and complexity of certain hearings related to digital assets, but any increase in workload can be handled with current staffing levels. There may also be a minimal at most annual gain in filing fee revenue.

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## Detailed Fiscal Analysis

The bill: (1) revises the law regarding decedent's estates, (2) raises the ceilings on the optional computerization fees that certain courts may charge, (3) permits the Franklin County Probate Court and the Franklin County Guardianship Service Board to charge fees for services to wards, and (4) provides access to digital assets to specified actors and agents in certain circumstances.

### **Decedent's estates**

#### **Deposit of a will**

Under current law, a testator may deposit a will for safekeeping with the probate court. The bill changes the state minimum fee for this service and requires a will to be kept for 100 years and an electronic copy to be made prior to destruction for all wills that have not been delivered. Destruction of the will is not mandatory, so fees associated with electronic copies are not mandatory, but there is a potential cost to scan and store the wills should a court decide to do that. The increase in the fee should offset the cost.

The bill raises the statutory fee for the deposit of a will with a probate court from \$5 to \$25. Probate courts in the state may already charge an amount greater than the \$5 statutory fee. The increased fee may result in a fee in some courts that is greater than \$25. The average fee for the deposit of a will is \$12.50.

#### **Reductions in probate court activity**

Under the bill: (1) a person acting in good faith upon a determination of death by a qualified determiner of death has no civil or criminal liability, and (2) a guardian is permitted to sell property on behalf of an estate if all parties agree in writing (e.g., spouse, beneficiaries) rather than requiring a hearing to be conducted by the court as under current law. These provisions may produce a savings effect for local civil and criminal justice systems, as there will likely be some reduction in the time and effort that otherwise might have been expended in adjudicating related probate filings and possible criminal charges.

### **Court and court's clerk computerization fees**

The bill: (1) raises, from \$3 to \$6, the additional maximum filing fee that a probate, domestic relations, juvenile, municipal, or county court or the Cuyahoga County Juvenile Court may charge to fund computerization of the court or court clerk's office, (2) raises, from \$10 to \$20, the additional maximum filing fee that any of those courts may require to computerize the office of the clerk of court, and (3) authorizes the additional clerk's fees to fund technological advances.

As a result of these provisions, the potential is created for a court charging such fees to generate additional revenue for computerization and to use those funds for a purpose that might not be viewed as permissible under current law. Courts with a relatively large number of case filings (high volume) are likely to be in a position to generate considerably more computerization fee revenue per year than are courts with a comparatively smaller number of case filings (low volume). Thus, the potential annual revenue is likely to vary significantly across the state, from several thousand dollars in a low volume court to tens of thousands of dollars or more in a high volume court.

### **Franklin County Guardianship Program**

The bill allows the Franklin County Probate Court and the Franklin County Guardianship Service Board to charge fees for certain services in connection with the establishment and management of adult guardianships for certain wards. The amount of money that may be generated annually by these fees is uncertain.

The fees will be charged to the ward, deposited into the existing Franklin County Probate Court Mental Health Fund, and used to pay fees for services to third-party providers. Under current law, fees charged by these providers may go unpaid and/or services are not provided. The Franklin County Guardianship Program currently acts as guardian of last resort for approximately 100 adult wards.

The fund was created in 2013 to be used by the Franklin County Probate Court for services to ensure the treatment of any person under the care of the Franklin County Alcohol, Drug Addiction, and Mental Health Services (ADAMHS) or Developmental Disabilities (DD) boards.<sup>1</sup> Subsequent legislation expanded the use of the money in the fund for services for persons under the care of other guardianships, in addition to the Franklin County ADAMHS and DD boards, and authorized its use to establish a Franklin County guardianship service by creating a Franklin County Guardianship Service Board.<sup>2</sup>

### **Digital assets**

The bill generally authorizes an agent acting under a power of attorney, an executor or administrator of an estate, a guardian, or a custodian access to the digital assets of the person on whose behalf the agent is acting. The bill provides methods for an agent to gain access to digital assets from a custodian (defined as a person that carries, maintains, processes, receives, or stores a digital asset of a user). In addition, a court of common pleas: (1) is permitted to direct a custodian not to disclose or allow access to digital assets to an agent and (2) is required to provide an opportunity for a hearing when granting a guardian access to the digital assets of a ward.

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<sup>1</sup> Am. Sub. H.B. 59 of the 130th General Assembly.

<sup>2</sup> Am. Sub. H.B. 483 of the 130th General Assembly.

These digital asset provisions could lead to an increase in the number and complexity of certain hearings, but any increase in workload can be handled with current staffing levels. Additional hearings would result in increased filing fee revenue that will be minimal at most annually.

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