



David M. Gold

*Bill Analysis*  
Legislative Service Commission

## **H.B. 255**

127th General Assembly  
(As Introduced)

**Reps. Latta, J. McGregor, Zehringer, Stebelton, Brown, Webster**

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### **BILL SUMMARY**

- Authorizes a probate judge to appoint a public agency to serve as guardian of an estate or of a person and to appoint a nonprofit corporation to serve as guardian of a person.
- Authorizes the executor or administrator of a decedent's estate to accept the county auditor's valuation of real property in the estate when filing an inventory with the probate court.
- Creates exceptions to the physician-patient testimonial privilege in cases involving guardianships and conservatorships, protective services for elderly and incapacitated adults, hospitalization of mentally ill individuals, and treatment of mentally retarded or developmentally disabled individuals.
- Eliminates the authority of a probate court to act as a school board when the board fails to perform its duties and requires that the probate court promptly fill a vacancy on the board if the board fails to do so within 30 days after the vacancy occurs.

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### **CONTENT AND OPERATION**

#### **Public agencies and nonprofit corporations as guardians**

Existing law authorizes a probate judge to appoint guardians for the person or estate of a minor or incompetent. The judge may appoint a corporation as guardian only of a ward's estate, not of a ward's person, except that a nonprofit corporation organized under Ohio law and entitled to tax-exempt status under the Internal Revenue Code may be appointed as guardian of the person of a mentally retarded or other developmentally disabled person if the nonprofit corporation has a contract with the Department of Mental Retardation and Developmental

Disabilities to provide protective services. The bill retains existing law and additionally authorizes the judge to appoint a public agency to serve as guardian of an estate or of a person and to appoint a nonprofit corporation to serve as guardian of a person, without limiting the appointments to particular types of wards or nonprofit corporations. Neither existing law nor the bill defines "public agency" for purposes of the guardianship law. (R.C. 2111.10.)

### **Appraisal of decedent's estate**

Within three months after a probate court appoints an executor or administrator of a decedent's estate, the executor or administrator must file with the court an inventory of the decedent's interest in real estate located in Ohio and of the tangible and intangible personal property of the decedent that is to be administered and that has come to the executor's or administrator's possession or knowledge. The inventory must set forth values as of the date of the decedent's death. Existing law requires that appraisal be done by a "suitable disinterested person" appointed by the executor or administrator and approved by the court. The bill allows the executor or administrator, in lieu of appointing an appraiser for real estate, to accept the county auditor's valuation of the real estate. (R.C. 2115.02--not in the bill, and 2115.06.)

### **Testimonial privilege for confidential communications between a physician or dentist and a patient**

Existing law prohibits a physician or a dentist from testifying concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, subject to various exceptions. For example, a physician or dentist may testify in a malpractice claim brought against him or her by the patient or the patient's representative, in certain civil cases in which the patient received court-ordered treatment, and in criminal actions concerning alcohol or drug tests. The bill creates new exceptions, allowing the physician or dentist to testify concerning communications with or advice to the patient in a proceeding filed under R.C. Chapter 2111. (guardianship and conservatorship), in an action seeking the provision of protective services filed under R.C. 5101.60 to 5101.72 (elderly and incapacitated adults), in a proceeding filed under R.C. Chapter 5122. (hospitalization of mentally ill individuals), and in a proceeding filed under R.C. Chapter 5123. (treatment of mentally retarded or developmentally disabled individuals). (R.C. 2317.02(B)(1)(e).)

### **Failure of board of education to perform duties or fill vacancy**

Under existing law, if a board of education or governing board of an educational service center fails to perform the duties imposed upon it or fails to fill a vacancy in the board within 30 days after the vacancy occurs, the probate court

of the county in which the district or service center is located acts as the board and performs all duties imposed upon such board. The bill removes the language relating to the board's failure to perform its duties and to the authority of the probate court to perform those duties. It specifies that if the board fails to fill a vacancy within 30 days, the court must act as the board to fill the vacancy as promptly as possible. (R.C. 3313.85.)

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	06-05-07

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