



# Ohio Legislative Service Commission

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## Bill Analysis

Lisa Sandberg

### **Sub. H.B. 247**

129th General Assembly  
(As Recommitted to S. Judiciary)

**Reps.** Butler, R. Adams, Beck, Grossman, Henne, Huffman, Letson, Murray, Stebelton, Slaby, Bulp, Amstutz, Anielski, Antonio, Blair, Blessing, Boose, Carey, Clyde, Combs, Conditt, Damschroder, Duffey, Foley, Garland, Hackett, C. Hagan, Hall, Hayes, Hill, Lundy, Martin, Milkovich, Newbold, O'Brien, Pelanda, Peterson, Phillips, Rosenberger, Ruhl, Schuring, Sears, Sprague, Szollosi, Thompson, Weddington, Winburn, Batchelder

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## **BILL SUMMARY**

- Authorizes a court to cancel claims for amounts due the court if the amounts are uncollectible.
- Requires that a court give a criminal defendant notice of the consequences of a failure to pay a judgment for costs only if the court imposes a community control sanction or other nonresidential sanction.
- Gives a sentencing court continuing jurisdiction to waive, suspend, or modify the payment of the costs of prosecution by the defendant.
- Defines "case" for purposes of criminal costs statutes as the prosecution of all the charges that result from the same act, transaction, or series of acts or transactions and that are given the same case type designator and case number under Supreme Court rules.
- Abolishes the Felony Sentence Appeal Cost Oversight Committee.
- Specifies that if a rental agreement with a self-service storage facility contains a limit on the value of the property stored in an occupant's storage space, that limit is presumed to be the maximum value of the property stored in that space for the purposes of an owner's lien.

- Provides that an owner's lien in personal property stored at a self-service storage facility is not effective against a person who has a valid security interest in a watercraft, whether or not the security interest in the watercraft is filed.
- Requires that all persons holding liens on any motor vehicle or watercraft amongst the property stored at a self-service storage facility be notified that an owner's lien for a claim in that property has become due.
- Requires that all persons who have a filed security interest in the name of the occupant evidencing a security interest in the personal property with either the Secretary of State or the appropriate county recorder be notified that an owner's lien for a claim in that property has become due.
- Requires that the notice discussed in the prior dot point be sent by electronic mail to the last known electronic mail address of each person who is required to be notified and allows the notice to be sent by first-class mail with a certificate of mailing to the last known address of each person who is required to be notified.
- Provides that any notice sent by first-class mail with a certificate of mailing is presumed delivered when it is deposited with the United States Postal Service and properly addressed with proper postage prepaid.
- Provides that after the expiration of the time given in the notice, an advertisement of the sale of the property must be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the self-service storage facility is located *or any other commercially reasonable manner*.
- Provides the manner of advertisement is deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised.
- Removes the requirement that if there is no newspaper of general circulation in the county in which the self-service storage facility is located, the advertisement must be posted at least ten days before the date of sale in not less than six conspicuous places in the neighborhood where the self-service storage facility is located.
- Modifies existing law by providing that any person who has a legal interest or a security interest in, *or who holds a lien against, any personal property other than a motor vehicle or watercraft may pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred and remove the personal property in which the person has the interest or against which the person holds the lien*.
- Provides that after removal of all the personal property, including any motor vehicle or watercraft, from the storage space, any person can enter into a rental agreement

for the storage of personal property with the owner, and the owner has no obligation to the prior occupant of that storage space.

- Requires the owner to have any motor vehicle or watercraft towed from the storage space before entering into a new rental agreement.
- Removes the requirement that a person must immediately remove personal property from the self-service storage facility if the person presents proof of a legal interest in the personal property or of a right to take possession of the personal property or a court order authorizing the person to take possession of the personal property.
- Allows a person who has a security interest in, or who holds a lien against, a motor vehicle or watercraft to pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred and to enter into a new rental agreement for the storage of the motor vehicle or watercraft.
- Allows any person who presents proof of a security interest or a lien on a motor vehicle or watercraft or a court order authorizing the person to take possession of a motor vehicle or watercraft to immediately remove the motor vehicle or watercraft from the self-service storage facility without satisfying the lien or expenses of the owner.
- Provides that if property on which there is an owner's lien is not sold at auction but is claimed under the provisions described in the previous dot points and the owner's lien is satisfied, then all legal or security interest in, or any other liens held against, the property remain intact.
- Specifies that a purchaser at auction takes the property free and clear of any rights of persons against whom the lien was valid, or any persons who had an interest in, or who held, any other lien against the property.
- Provides that if the property upon which the owner's lien is claimed is a motor vehicle or watercraft, the owner must have the motor vehicle or watercraft towed from the premises under certain specified circumstances.
- Provides that the owner is not liable for the motor vehicle or watercraft for any damages to the motor vehicle or watercraft once the tower takes possession.
- Requires that the notice delivered or sent to all persons holding a lien on the motor vehicle or watercraft include the name of the towing company and that the name and address of the towing company be made available to the occupant or any lien

holder upon the presentation of a document of title or other document that confirms an interest in the motor vehicle or watercraft.

- Modifies the definition of "self-service storage facility" and defines "electronic mail" and "last known address."
- Allows a principal to nominate a guardian of the person, the estate, or both of one or more of the principal's incompetent adult children and removes references to guardians being nominated under a durable power of attorney from the power of attorney law.
- Makes changes regarding the operating agreement that governs relations among members and between members, any managers, and a limited liability company, including provisions regarding the duty of loyalty, the duty of care, the obligation of good faith and fair dealing, and the duties of a manager.
- Makes a conforming change to the law regarding a minor seeking judicial consent to an abortion and provides that the Supreme Court instead of the Clerk of the Supreme Court must prescribe the forms used by a complainant in such a proceeding or an appeal from such a proceeding.
- Makes a clarifying change regarding the duties of a trustee regarding a life insurance policy as a trust asset under the Ohio Uniform Prudent Investor Act.

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## **CONTENT AND OPERATION**

### **COURTS**

#### **Cancellation of uncollectible amounts owing to a court**

The bill authorizes a court to direct the court clerk to cancel all or part of a claim for an amount due to the court if at any time the court finds that the amount is due and uncollectible, in whole or in part. Upon receiving such direction, the clerk must effect the cancellation.<sup>1</sup>

#### **Sentencing court's notice to defendant and continuing jurisdiction over costs**

Under existing law, the judge or magistrate in a criminal case must include the costs of prosecution in the sentence and render a judgment against the defendant for those costs. At the time of sentencing, the judge or magistrate must give the defendant notice of both of the following: (1) if the defendant fails to pay the judgment or to timely make payments towards that judgment under an approved payment schedule, the court may order the defendant to perform community service until the judgment is paid or the defendant complies with an approved payment schedule, and (2) if the court orders the defendant to perform community service, the defendant will receive credit upon the judgment at a specified hourly credit rate per hour of community service performed.

If the judge or magistrate determines after a hearing that the defendant has failed to pay the judgment or to timely make payments towards that judgment under an approved payment schedule, the judge or magistrate may order the offender to perform community service of not more than 40 hours per month until the judgment is paid or the offender is in compliance with an approved payment schedule.

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<sup>1</sup> R.C. 1901.263 (municipal court), 1905.38 (mayor's court), 1907.25 (county court), 1925.151 (small claims division of municipal or county court), 2101.165 (probate court), 2151.542 (juvenile court), 2303.23 (court of common pleas), 2501.161 (court of appeals), and 2503.18 (Supreme Court).

The bill provides that the court must give the notice described above only if the court imposes a community control sanction or other nonresidential sanction and that the court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution (including any costs of investigation by the State Board of Pharmacy ordered under R.C. 2947.231) at the time of sentencing or at any time thereafter.<sup>2</sup>

For purposes of the above provisions and the statute that requires a criminal or juvenile court to impose additional costs of \$30 for a felony, \$20 for a misdemeanor other than a traffic offense that is not a moving violation, or \$10 for a traffic offense that is not a moving violation for deposit into the Indigent Defense Support Fund, the bill defines "case" as a prosecution of all the charges that result from the same act, transaction, or series of acts or transactions and that are given the same case type designator and case number under Rule 43 of the Supreme Court's Rules of Superintendence for the Courts of Ohio or any successor to that rule.<sup>3</sup>

### **Abolition of Felony Sentence Appeal Cost Oversight Committee**

The Felony Sentence Appeal Cost Oversight Committee consists of eight members representing the judiciary, the General Assembly, the Office of Budget and Management, the State Public Defender, prosecutors, and county commissioners. The Committee is charged by statute with reviewing data received from the State Criminal Sentencing Commission to determine how much money, if any, has been appropriated to the Supreme Court's judiciary budget to help counties pay for felony appeals and postconviction relief proceedings and recommending to the Supreme Court a method of distributing the money available for that purpose to the counties. The bill abolishes the Committee.<sup>4</sup>

## **SELF-SERVICE STORAGE FACILITIES**

### **Owner's lien against stored property upon default**

Under existing law, the owner of a self-service storage facility has a lien against the occupant on the personal property stored pursuant to a rental agreement in any storage space at the self-service storage facility, or on the proceeds of the personal property subject to the defaulting occupant's rental agreement in the owner's possession, for rent, labor, or other charges in relation to the personal property that are specified in the rental agreement and that have become due and for expenses necessary

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<sup>2</sup> R.C. 2947.23(A), (B), and (C).

<sup>3</sup> R.C. 2947.23(D) and R.C. 2949.091(C)(3).

<sup>4</sup> R.C. 181.25(A)(5) and 2953.08(I).

for the preservation of the personal property or expenses reasonably incurred in the sale or other disposition of the personal property pursuant to law. The bill specifies that if the rental agreement contains a limit on the value of the property stored in an occupant's storage space, that limit is presumed to be the maximum value of the property stored in that space for the purposes of such a lien.<sup>5</sup>

Existing law provides that the owner's lien described above is also effective against a person who has an unfiled security interest in the personal property, except that the owner's lien is not effective against a person who has a valid security interest in a motor vehicle, whether or not the security interest in the motor vehicle is filed. The bill also provides that the owner's lien is not effective against a person who has a valid security interest in a watercraft, whether or not the security interest in the watercraft is filed.<sup>6</sup>

### **Enforcement of owner's lien**

Under existing law, an owner's lien for a claim that has become due may be enforced only as described below.

#### **Persons who must be notified**

Under existing law, all persons whom the owner has actual knowledge claim an interest in the personal property, and all persons who have filed security agreements in the personal property with either the Secretary of State or the county recorder of the county in which the facility is located or the Ohio county of the last known address of the occupant, must be notified in accordance with the provisions described below. The bill continues to require that all persons whom the owner has actual knowledge of and claim an interest in the personal property be so notified. It further requires that such notice be given to all persons holding liens on any motor vehicle or watercraft amongst the property and to all persons who have filed security agreements *in the name of the occupant evidencing a security interest in the personal property* with either the Secretary of State or the county recorder of the county in which the self-service storage facility is located or the Ohio county of the last known address of the occupant.<sup>7</sup>

#### **Delivery of the notice**

Existing law requires that the notice be delivered in person or sent by certified mail to the last known address of each person who is required to be notified, as

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<sup>5</sup> R.C. 5322.02(A).

<sup>6</sup> R.C. 5322.02(A)(1).

<sup>7</sup> R.C. 5322.03(A).

described above. The bill also requires that the notice be sent by electronic mail to the last known electronic mail address of each person who is required to be notified and allows the notice to be sent by first-class mail with a certificate of mailing to the last known address of each person who is required to be notified.<sup>8</sup>

### **Presumption of delivery of notice**

Under the bill, any notice sent by first-class mail with a certificate of mailing pursuant to R.C. 5322.03 is presumed delivered when it is deposited with the United States Postal Service and properly addressed with proper postage prepaid.<sup>9</sup>

### **Advertisement of the sale of personal property**

The bill modifies existing law by providing that after the expiration of the time given in the notice, an advertisement of the sale must be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which the self-service storage facility is located *or any other commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised.*<sup>10</sup>

The bill also removes the requirement that if there is no newspaper of general circulation in the county in which the self-service storage facility is located, the advertisement must be posted at least ten days before the date of sale in not less than six conspicuous places in the neighborhood where the self-service storage facility is located.<sup>11</sup>

### **New rental agreement**

Under existing law, before the sale of personal property that is in the storage facility, any person who has a legal interest or a security interest in the personal property may pay the amount necessary to satisfy the lien and the reasonable expenses incurred.<sup>12</sup> The bill relocates most of these provisions to R.C. 5322.03(H)(2) and specifies that the personal property under this provision is personal property *other than a motor vehicle or watercraft*, that the lien is a lien created under R.C. 5322.02(A) (owner's lien) in various provisions in the bill, and that any person who has a legal interest or a

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<sup>8</sup> R.C. 5322.03(B).

<sup>9</sup> R.C. 5322.03(D).

<sup>10</sup> R.C. 5322.03(G).

<sup>11</sup> *Id.*

<sup>12</sup> R.C. 5322.03(G).

security interest in, *or who holds a lien against, any* personal property other than a motor vehicle or watercraft may pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred *and remove the personal property in which the person has the interest or against which the person holds the lien.* The bill also provides that after removal of all the personal property, including any motor vehicle or watercraft, from the storage space of the self-service storage facility by any means under R.C. 5322.03, any person can enter into a rental agreement for the storage of personal property with the owner, and the owner has no obligation to the prior occupant of that storage space in the self-service storage facility. Before entering into a new rental agreement, the owner must have any motor vehicle or watercraft towed from that storage space.<sup>13</sup>

Under existing law, any person except the occupant may, upon payment of the amount necessary to satisfy the owner's lien plus expenses, enter into a new rental agreement for the storage of the personal property or, if the person presents proof of a legal interest in the personal property or of a right to take possession of the personal property or a court order authorizing the person to take possession of the personal property, must immediately remove the personal property from the self-service storage facility.<sup>14</sup> The bill removes this provision.

The bill also provides that any person who has a security interest in, or who holds a lien against, a motor vehicle or watercraft may pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred. That person, upon payment of the amount necessary to satisfy the lien plus expenses, may enter into a new rental agreement for the storage of the motor vehicle or watercraft. Any person who presents proof of a security interest or a lien on a motor vehicle or watercraft or a court order authorizing the person to take possession of a motor vehicle or watercraft may immediately remove the motor vehicle or watercraft from the self-service storage facility without satisfying the lien or expenses of the owner.<sup>15</sup>

### **Property not sold at auction**

Under the bill, if property on which there is an owner's lien is not sold at auction but is claimed under the provisions described above and the owner's lien is satisfied, then all legal or security interest in, or any other liens held against, the property remain intact.<sup>16</sup>

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<sup>13</sup> R.C. 5322.03(H)(2) (under the bill).

<sup>14</sup> R.C. 5322.03(H)(1).

<sup>15</sup> R.C. 5322.03(H)(1) (under the bill).

<sup>16</sup> R.C. 5322.03(I)(1).

Under existing law, a purchaser in good faith, except an owner or an owner's agent, of the personal property sold to satisfy an owner's lien takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements described in R.C. 5322.03. The bill revises this provision and specifies that the purchaser is a purchaser *at auction* and that the purchaser takes the property free *and clear* of any rights of persons against whom the lien was valid, *or any persons who had an interest in, or who held, any other lien against the property.*<sup>17</sup>

### **Towing of motor vehicle or watercraft**

Under the bill, if the property upon which the owner's lien is claimed is a motor vehicle or watercraft, the owner must have the motor vehicle or watercraft towed from the premises if any of the following circumstances applies:<sup>18</sup>

(1) The notice was delivered or sent to all persons holding a lien on the motor vehicle or watercraft, and 30 days have elapsed since the notice was delivered or sent without a response from any of those persons.

(2) Rent and other charges related to the property remain unpaid or unsatisfied by the occupant for 60 days, and no lien holders have been identified.

(3) The owner is planning to hold a sale at auction of the personal property that was stored in the self-service storage unit with that motor vehicle or watercraft, in which case the motor vehicle or watercraft must be towed prior to the auction.

The owner is not liable for the motor vehicle or watercraft or any damages to the motor vehicle or watercraft once the tower takes possession of the property. The notice delivered or sent to all persons holding a lien on the motor vehicle or watercraft must include the name of the towing company. The name and address of the towing company must also be made available to the occupant or any lien holder upon the presentation of a document of title or other document that confirms an interest in the motor vehicle or watercraft.<sup>19</sup>

### **Definitions**

The bill removes from the definition of "self-service storage facility" the requirement that the property has 50 or more individual storage spaces and provides

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<sup>17</sup> R.C. 5322.03(I)(2).

<sup>18</sup> R.C. 5322.03(K)(1).

<sup>19</sup> R.C. 5322.03(K)(2).

that "self-service storage facility" does not include any garage or storage area in a private residence.<sup>20</sup>

Under the bill, "electronic mail" means an electronic message, or an executable program or computer file that contains an image of a message, that is transmitted between two or more computers or electronic terminals. "Electronic mail" includes electronic messages that are transmitted within or between computer networks from which a confirmation of receipt is received.<sup>21</sup>

"Last known address" means either of the following:<sup>22</sup>

(1) The mailing address or electronic mail address provided by the occupant in the most recent rental agreement or the mailing address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

(2) The mailing address or the electronic mail address of any of the persons described in R.C. 5322.03(A) that is provided by any of those persons to the owner of a self-service storage facility or that is discovered by the owner of a self-service storage facility.

The bill also makes other technical and cross-reference changes.

## **POWER OF ATTORNEY**

### **Nomination of guardian**

Under existing law, in a power of attorney, a principal may nominate a guardian of the principal's person, estate, or both and may nominate a guardian of the person, the estate, or both of one or more of the principal's minor children whether born at the time of the execution of the power of attorney or afterward. The bill provides that the principal may nominate a guardian of the person, the estate, or both of one or more of the principal's *incompetent adult children* as well. The bill also makes conforming changes to include a reference to the principal's incompetent adult children where appropriate.<sup>23</sup>

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<sup>20</sup> R.C. 5322.01(A).

<sup>21</sup> R.C. 5322.02(G).

<sup>22</sup> R.C. 5322.01(H).

<sup>23</sup> R.C. 1337.38.

## Nomination of a guardian under the juvenile law

Existing law allows a person to nominate in a writing another person to be the guardian of the nominator's person, estate, or both or the guardian of the person, the estate, or both, of one or more of the nominator's minor or incompetent adult children, whether born at the time of the execution of the writing or afterward. To be effective as a nomination, the writing must be signed by the person making the nomination in the presence of two witnesses; signed by the witnesses; contain, immediately prior to their signatures, an attestation of the witnesses that the person making the nomination signed the writing in their presence; and be acknowledged by the person making the nomination before a notary public. The bill specifies that the writing must be signed by the person making the nomination in the presence of two witnesses; signed by the witnesses; *and* contain, immediately prior to their signature, an attestation of the witnesses that the person making the nomination signed the writing in their presence; *or* be acknowledged by the person making the nomination before a notary public.<sup>24</sup> Existing law also makes several references to a person being nominated as a guardian of the person, estate, or both of the nominator's minor or adult incompetent children in a durable power of attorney under R.C. 1337.24.<sup>25</sup> The bill removes these references.

## LIMITED LIABILITY COMPANIES

### Effect of operating agreement

Under existing law, the operating agreement that governs relations among members and between members, any managers, and the limited liability company cannot do, in part, the following:<sup>26</sup>

(1) Eliminate the duty of loyalty, but the operating agreement may identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable, and all of the members or a number or percentage of members specified in the operating agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty;

(2) Unreasonably reduce the duty of care;

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<sup>24</sup> R.C. 2111.121(A).

<sup>25</sup> R.C. 2111.121(B).

<sup>26</sup> R.C. 1705.081(B)(3) to (6).

(3) Eliminate the obligation of good faith and fair dealing, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(4) Eliminate the duties of a manager under R.C. 1705.29(B), but the operating agreement may prescribe in writing the standards by which performance is to be measured or specify types or categories of activities that do not violate duties in each case if not manifestly unreasonable.

The bill modifies these provisions as follows:<sup>27</sup>

(1) The bill continues to provide that the operating agreement may not eliminate the duty of loyalty but the operating agreement may identify activities (rather than specific types or categories of activities) that do not violate the duty of loyalty (removes "if not manifestly unreasonable").

(2) The operating agreement cannot eliminate (rather than unreasonably reduce) the duty of care, but the operating agreement may prescribe the standards by which the duty is to be measured.

(3) The bill continues to provide that the operating agreement cannot eliminate the obligation of good faith and fair dealing but removes the provision that states that the standards used to measure the performance of the obligation cannot be manifestly unreasonable.

(4) The bill continues to provide that the operating agreement cannot eliminate the duties of a manager but states that the operating agreement may prescribe in writing the standards by which performance is to be measured or identify activities (rather than specify types or categories of activities) that do not violate the manager's duties, and removes the requirement that those activities are not manifestly unreasonable.

## **JUDICIAL CONSENT TO ABORTION**

### **Minor may seek abortion without consent to parent or guardian**

Under Ohio law before the enactment of Am. H.B. 63 of the 129th General Assembly, the right of a minor to consent to an abortion or judicial consent to obtain an abortion could be granted by a court order if, in part, the minor or next friend made an application to the juvenile court of the county in which the minor has a residence or legal settlement, the juvenile court of any county that borders the county in which she

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<sup>27</sup> R.C. 1705.081(B)(3) to (6).

has a residence or legal settlement, *or the juvenile court of the county in which the facility in which the abortion would be performed or induced is located.*<sup>28</sup> Am. H.B. 63 removed the italicized language. However, existing R.C. 2151.85 also provides that a woman who is pregnant, unmarried, under 18 years of age, and unemancipated and who wishes to have an abortion without the notification of her parents, guardian, or custodian may file a complaint in the juvenile court of the county in which she has a residence or legal settlement, in the juvenile court of any county that borders to any extent the county in which she has a residence or legal settlement, *or in the juvenile court of the county in which the hospital, clinic, or other facility in which the abortion would be performed or induced is located,* requesting the issuance of an order authorizing her to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian.<sup>29</sup> The bill removes the italicized language to conform the law to the changes that were made in Am. H.B. 63.

Existing law also provides that the clerk of the Supreme Court must prescribe the complaint and notice of appeal forms that are used by a complainant filing a complaint under R.C. 2151.85 and by an appellant filing an appeal under R.C. 2505.073 (minor's appeal of denial of an abortion). The bill specifies that the Supreme Court must prescribe those forms.<sup>30</sup>

## **OHIO UNIFORM PRUDENT INVESTOR ACT**

### **Duties of trustee regarding life insurance policy as trust asset**

Under existing law, generally the duties of a trustee with respect to the acquisition, retention, or ownership of a life insurance policy as a trust asset does not include, among other things, the duty to exercise or not exercise any option, right, or privilege available under the policy, including the payment of premiums, unless there is sufficient cash or there are other readily marketable trust assets from which to pay the premium or there are other trust assets that were designated by the settlor or any other person transferring those assets to the trust to be used for that purpose, regardless of whether that exercise or nonexercise results in the lapse or termination of the policy. The bill removes the comma after "premiums" above, so that it is clear that the duty includes the payment of premiums *unless* there is sufficient cash or there are other readily marketable trust assets from which to pay the premium or there are designated

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<sup>28</sup> R.C. 2919.121(C)(1).

<sup>29</sup> R.C. 2151.85(A).

<sup>30</sup> R.C. 2151.85(G).

trust assets and that this limitation does not apply to the other actions taken under this provision.<sup>31</sup>

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## HISTORY

ACTION	DATE
Introduced	06-01-11
Reported, H. Judiciary and Ethics	11-16-11
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<sup>31</sup> R.C. 5809.031(A)(3).

