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Bill Analysis

Aida S. Montano

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Sens. Bacon, Wagoner, Brown, Hughes, Kearney, Coley, Hite, Lehner, Obhof, Sawyer, Seitz, Wilson

BILL SUMMARY

Probate court – jurisdiction and procedure

- Replaces "stenographers" and "stenographic reporters" with "court reporters" and replaces "referee" with "magistrate" in the Probate Code.

Liability of probate judge and juvenile judge

- Provides that a probate judge is not personally liable for the misconduct of an employee appointed by the judge and removes language that made a judge's liability for such acts contingent on whether the judge required the appointee to give a bond.

- Provides that a juvenile judge is not personally liable for the misconduct of an employee appointed by the judge and removes language that made a judge's liability for such acts contingent on whether the judge required the appointee to give a bond.

Wills

- Increases the fee for receiving, keeping, and giving a certificate of deposit for the will from $1 to $5, and requires the envelope in which the will is kept to be publicly opened within one month, instead of two months, after notice of the testator's death.

- Reduces from three years to one year the period in which a beneficiary named in a will knows of its existence and intentionally conceals or withholds it, thus preventing any testate or intestate property or right from passing to the beneficiary.

- Reduces the time to offer an oral will for probate from six months to three months after the testator's death.

Fiduciaries

- Removes the requirement for the probate court to impose the $2.50 cost per improper or incomplete filing in matters of estates, guardianships, or trusts.

- Requires every fiduciary to sign and file with the court a statement of permanent address and notify the court of any change of address, and authorizes the court to remove a fiduciary if the fiduciary fails to comply with this requirement.

- Specifies that a fiduciary may resign by filing a written statement with the court after giving at least 15 days notice to the persons known to be interested in the estate, and prohibits a fiduciary from resigning without a court order.

- Authorizes a fiduciary with trust funds to invest to invest them in savings accounts in, or certificates or other evidences of deposits issued by, credit unions under certain requirements, including the requirement that deposits in the depository credit union are insured under specified federal or state law.

- Generally expands the authority for additional investments made by a fiduciary to include securities of corporations organized and existing under the laws of any foreign government or state or bonds or other interest-bearing obligations of any foreign government if they may be lawfully sold in Ohio and investment is made only in those securities as would be acquired by prudent persons who are seeking a reasonable income and the preservation of their capital.

- Generally expands the authority of a fiduciary to make a temporary investment of cash or of funds held in liquid form to include an investment in obligations of foreign governments or states.

- In addition to current law's sanctions, permits the court to remove a fiduciary for fraudulent conduct or dereliction of duty related to the fiduciary's personal use or misuse of funds or property belonging to a trust.

- Provides that it is within the court's discretion, upon application, notice to interested persons, and a hearing, to allow the personal use of trust property by the fiduciary.

- Permits the fiduciary or the attorney for an estate to petition the court for authority to purchase property of the estate if specified requirements are met.

- Applies existing law's procedures when assets are concealed or embezzled in the administration of a trust estate to the concealment or embezzlement of assets in the administration of an *estate, a testamentary trust, or a guardianship*.

- Requires that notice of any action or proceeding against the bonded fiduciary be given to the surety.

Executors and administrators

- Increases from $2,500 to $5,000 the amount of the wages or personal earnings due a deceased employee that an employer may pay to specified heirs without requiring letters testamentary or letters of administration to be issued upon the estate of the deceased employee and without requiring an Ohio estate tax release.

- Provides that minors who would have been entitled to priority to administer the estate except for their minority must be served notice pursuant to the Civil Rules.

- Specifically requires a special administrator to file an account of the special administration within 30 days of the appointment of the executor or administrator.

- Specifies that a creditor's claim may be presented to a special administrator.

- Reduces the time within which an executor or administrator of an estate must collect the assets and complete the administration of that estate from 13 months to six months after the date of appointment unless an extension of the time to file a final and distributive account is authorized and provides that for good cause shown the court may grant an extension of the time to file the inventory and accounts.

- Modifies the contents of the application for a certificate of transfer of real property and the contents of the certificate of transfer.

- Requires the notice of the manner of the apportionment of tax determined by the fiduciary that is sent by the fiduciary to any person interested in the estate to include a statement that the person is bound by the proposed apportionment if the person fails to file an objection to the proposed apportionment within 30 days of receipt of the notice.

- Permits an executor or administrator to accept the valuation of the real property by the county auditor in lieu of the appointment of an appraiser for real property as required under current law.

- Outright repeals the sections in R.C. Chapter 2113. pertaining to the following: statute of limitations for granting original administration; nonliability of a special administrator to an action by the deceased's creditor, tolling of statute of limitations

for an action against an executor or administrator upon the executor's or administrator's death, resignation, or removal until the appointment of a successor; limit on the court's extension of the time for collecting assets and administering the estate; time allowed to collect assets not to defer filing of accounts; accounting by and liability of new administrator as that of original administrator; distribution of balance after settlement of account; and fees for recording certificates of transfer.

Presentation of certain claims

- Shortens the time within which a claim that is contingent at the time of a decedent's death and on which a cause of action subsequently accrues must be presented to the executor or administrator as in other claims.

- Reduces the time within which claims against an estate that is subject to ancillary administration by a nonresident executor or administrator must be presented to the probate court.

- Renames the Medicaid estate recovery reporting form the Medicaid estate recovery notice form, eliminates the requirement for the administrator of the Medicaid estate recovery program to prescribe a reporting form and the provisions specifying the contents of the form, and removes the requirement for the probate court to send a copy of the completed probate form to the administrator of the program.

Miscellaneous changes

- Replaces "petition" with "complaint" in specified proceedings in the probate court.

- Replaces outdated terminology and makes numerous gender neutralizing, grammatical, and other technical changes throughout the Probate Code.

- Provides that the bill's provisions relating to decedents' estates apply to the estates of decedents who die on or after the act's effective date.

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CONTENT AND OPERATION

Probate court – jurisdiction

Under existing law, "probate judge" in the statutes relating to lunacy matters includes the court of common pleas of such county, when it is made to appear to the

judge of that court that the probate judge is incapacitated from sitting in such case.[1] The bill outright repeals that section.

The bill authorizes the probate judge to appoint "court reporters" instead of a "stenographic reporter" and replaces "stenographer" or "stenographic reporter" with "court reporter."[2] It also replaces "referee" with "magistrate."[3] The bill requires the board of county commissioners to provide "suitable equipment" (instead of "suitable cases") for the safekeeping and preservation of the books, records, and papers, and to furnish any "books, forms" (instead of "blankbooks, blanks"), and stationery.[4]

Elimination of personal liability of probate and juvenile court judges

Liability of probate judge for appointee's misconduct

The bill relieves a probate judge from personal liability for the official misconduct of court employees appointed by the judge.

Under existing law, unchanged by the bill (except replacing "stenographer" with "court reporter"), a probate judge has the authority to appoint clerks, stenographers, a bailiff, and any other necessary probate court employees. The probate judge may also provide for an assessor for child-placing purposes by appointing someone to the position or by designating a current probate court employee or contracting with a private individual to serve as an assessor. The probate judge must provide for one or more probate court investigators in a similar manner (that is, by appointment, designation, or contract) or by agreeing with another department or agency of the county to have an employee of that department or agency serve as an investigator.[5]

Existing law authorizes the probate judge to require any of the judge's appointees to give bond in the sum of not less than $1,000 conditioned for the honest and faithful performance of the appointee's duties. The judge is personally liable for the default, malfeasance, or nonfeasance of any such appointee, but, if the judge requires a bond, the judge's liability is limited to the amount by which the loss resulting from the default, malfeasance, or nonfeasance exceeds the amount of the bond. The bill retains the judge's authority to require a bond, but it provides that the judge is not personally

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[1] R.C. 2101.36.

[2] R.C. 2101.08 and 2101.11(A)(1).

[3] R.C. 2101.41 and 2111.02(C)(2).

[4] R.C. 2101.01(A).

[5] R.C. 2101.11(A).

liable for the appointee's default, malfeasance, or nonfeasance. The elimination of the probate judge's personal liability is not contingent on whether a bond is required.[6]

Liability of juvenile judge for appointee's acts

The bill relieves a juvenile judge from personal liability for the official misconduct of a court employee appointed by the judge.

Existing law, unchanged by the bill authorizes a juvenile judge to appoint such bailiffs, probation officers, and other employees as are necessary and to require any employee to give bond in the sum of not less than $1,000, conditioned for the honest and faithful performance of the employee's duties. Under existing law, the judge is not personally liable for the default, misfeasance, or nonfeasance of any employee *from whom a bond has been required*. The bill deletes the italicized language, so that the judge is not personally liable for the employee's misconduct regardless of whether a bond is required.[7]

Wills

The bill specifically defines "testator" in the Probate Code as any person who makes a will and replaces "maker" of a will with "testator."[8] It replaces "last will and testament" and "last will" in the Probate Code with "will."[9]

Deposit of will

Existing law permits a will to be deposited by the "maker," or by some person for the maker, in the office of the judge of the probate court in the county in which the testator lives. The judge, on being paid the fee of $1, must receive, keep, and give a certificate of deposit for such will. Every will that is to be deposited must be enclosed in a "sealed wrapper" that must be indorsed with the name of the testator. If no person named in the indorsement demands the will and it is not one that has been declared valid pursuant to R.C. 2107.084, it must be publicly opened in the probate court within two months after notice of the testator's death and retained in the office of the probate judge until offered for probate. The bill increases the fee for receiving, keeping, and giving a certificate of deposit for the will from $1 to $5. It replaces "maker" with "testator" and "sealed wrapper" with "envelope." It requires the envelope to be publicly

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[6] R.C. 2101.11(C).

[7] R.C. 2151.13.

[8] R.C. 2107.01(B), 2107.07, 2107.71(B), and 2109.21(B).

[9] R.C. 2107.03, 2107.09(A), 2107.34, 2107.59, 2107.75, 2111.09, 2113.07, 2113.14, 2113.30(A), 2113.58, 2121.02(C)(2), 2121.05(A), and 2127.39.

opened within one month (instead of two months) after notice of the testator's death under the same circumstances as in existing law.[10]

Declaration of validity of will

The bill modifies existing law by providing that a person who executes a will allegedly in conformity with Ohio law may file a "complaint" (instead of "petition") in the probate court of the county in which the person is domiciled if the domicile is in Ohio or the probate court of the county in which any of the person's real property is located if the person is not domiciled in Ohio, for a judgment declaring the validity of the will. The failure of a testator to file such a complaint may not be construed an admission that the testator did not have the requisite testamentary capacity or "was under restraint" (instead of "did not have . . . freedom from undue influence under R.C. 2107.02"). The court must declare the will valid if, after a proper hearing, it finds that the will was properly executed and that the testator had the requisite testamentary capacity and "was not under any restraint."[11]

Existing law permits a testator to revoke or modify a will declared valid and filed with the probate court by "petitioning" the probate court and asking that the will be revoked or modified. A testator also may modify a will by any later will or codicil executed according to the laws of Ohio or any other state and may revoke a will by any method permitted under R.C. 2107.33 (revocation of a will). Generally, a declaration of validity of a will, or of a revocation or modification of a will previously determined to be valid is not subject to collateral attack. Instead of a "petition" to revoke or modify a will declared valid, the bill permits the testator to file a "complaint." It modifies existing law by providing that a will *that has been declared valid under division (A) of this section and is in the possession of the probate judge may be modified by* codicil *if the codicil is declared valid by the same procedure as the will.* Generally, a declaration of validity of a will, *of a codicil to a will previously declared valid,* or of a revocation or modification of a will previously determined to be valid that is given under existing law, is not subject to collateral attack (added language is italicized).[12]

Production of will; withholding of will

The bill modifies existing law by providing that if real ("or personal estate" is removed) *property* is devised or *personal property is* bequeathed by *a will* (modified language is italicized), the executor or any interested person may cause the will to be

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[10] R.C. 2107.07 and 2107.08.

[11] R.C. 2107.081, 2107.082, 2107.083, 2107.084(A), and 2107.085.

[12] R.C. 2107.084(C), (D), and (E).

brought before the probate court of the county in which the decedent was domiciled. By "judicial order" (instead of "by citation, attachment, or warrant or, if circumstances require it, by warrant or attachment in the first instance"), the court may compel the person having the custody or control of the will to produce it before the court for the purpose of being proved. Any "judicial order" (instead of "citation, attachment, or warrant") issued pursuant to existing law may be issued into any county in the state and must be served and returned by the officer to whom it is delivered.[13]

Existing law prevents any property or right, testate or intestate, from passing to a beneficiary named in a will who knows of the existence of the will for three years and has the power to control it, and, without reasonable cause, intentionally conceals or withholds it or neglects or refuses within the three years to cause it to be offered for or admitted to probate. The estate devised to such devisee descends to the heirs of the testator, not including any heir who has concealed or withheld the will. The bill prevents any property or right, testate or intestate, from passing to a beneficiary named in a will who knows of the existence of the will for "one year after the death of the testator" (instead of three years) and has the power to control it and, without reasonable cause, intentionally conceals or withholds it or neglects or refuses within "that one year" (instead of the three years) to cause it to be offered for or admitted to probate. The *property* devised *or bequeathed* to that *beneficiary* descends to the heirs of the testator, not including any heir who has concealed or withheld the will (modified language is italicized).[14]

Record of will destroyed

Existing law provides that when the record of a will is destroyed, a copy of the will or a copy of the will and its probate may be recorded by the probate court if it appears to the court's satisfaction that the record has been destroyed and if it appears, by reason of a certificate signed and sealed by the probate judge, or by the clerk of the court of common pleas, that the copy is a true copy of the original will or a true copy of the original will and its probate. The bill deletes the authority of the clerk of the court of common pleas to sign and seal a certificate as described above.[15]

Oral will

Existing law precludes an oral will from being admitted to record unless it is offered for probate within six months after the death of the testator. The bill reduces

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[13] R.C. 2107.09(A).

[14] R.C. 2107.10(A).

[15] R.C. 2107.29.

the time to offer an oral will for probate from six months to three months after the testator's death.[16]

Fiduciaries

In general

Under existing law, the probate court must reject an improper or incomplete filing in matters of estates, guardianships, or trusts, return it to the sender, and impose a cost of $2.50 per improper or incomplete filing, chargeable against the estate. The bill deletes the requirement for the court to impose the $2.50 cost per improper or incomplete filing.[17]

The bill modifies existing law pertaining to a fiduciary's bond by providing that, unless otherwise provided by law, *order, or local rule* (added by the bill), every fiduciary, prior to the issuance of the fiduciary's letters must file in the probate court in which the letters are to be issued a bond with a penal sum in an amount fixed by the court, but in no event less than double the probable value of the personal property and of the annual real property rentals that will come "into the possession or under the control of the person as a fiduciary" (instead of "into such person's hands").[18]

Under existing law, if the court removes a trustee from the trust created by a will or considers the trustee as having declined the trust upon failure to give bond within the time ordered by the court, the court may appoint another person as trustee upon that person giving the required bond. The bill removes the provision authorizing the court to appoint another person as trustee. Existing law also requires the court to remove a fiduciary who fails within the time fixed by the court to furnish new or additional bond or sureties and requires that some other person be appointed instead of the fiduciary as the circumstances of the case require. The bill replaces the provision requiring that some other person be appointed instead of the removed fiduciary with a provision requiring that the court appoint a successor fiduciary. It appears that a fiduciary would include a trustee of a trust created by will. Although the bill removes the provision in R.C. 2109.05 authorizing the court to appoint another person as trustee upon the trustee's failure to give bond, the appointment of a successor fiduciary under

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[16] R.C. 2107.60.

[17] R.C. 2109.021.

[18] R.C. 2109.04(A)(1).

the modified language in R.C. 2109.06 would include the appointment of a successor trustee of a trust created by will.[19]

The bill requires every fiduciary to sign and file with the court a statement of permanent address and notify the court of any change of address. A court may remove a fiduciary if the fiduciary fails to comply with this provision.[20]

Existing law permits the probate court at any time to accept the resignation of any fiduciary upon the fiduciary's proper accounting, if the fiduciary was appointed by, is under the control of, or is accountable to the court. The bill provides that a fiduciary may resign by filing a written statement with the court after giving at least 15 days notice to the persons known to be interested in the estate. Upon notice or a motion of the fiduciary to resign, the court may set the matter for a hearing and may notify all interested persons. The bill prohibits any fiduciary from resigning without an order of the court. It requires the court to revoke all letters of authority for the fiduciary upon the resignation or removal of the fiduciary.[21]

Existing law requires the court to require a final account by the fiduciary's executor or administrator if the sole fiduciary dies. The bill provides that if no estate is commenced for a deceased fiduciary, the deceased fiduciary's successor must file the final account.[22]

Residence qualifications of guardian

Existing law requires that a guardian be a resident of Ohio, except that the court may appoint a nonresident of Ohio as a guardian if any of the following applies: (1) the nonresident is named in a will by a parent of a minor, (2) the nonresident is selected by a minor over the age of 14 years as provided in R.C. 2111.12, or (3) the nonresident is nominated in or pursuant to a durable power of attorney as described in R.C. 1337.09(D) or a writing as described in R.C. 2111.121(A). A guardian, other than a guardian named in a will by a parent of a minor, selected by a minor over the age of 14 years, or nominated in or pursuant to a durable power of attorney or writing described above in (3), may be removed on proof that the guardian is no longer a resident of Ohio (guardian resided at the time of appointment). The bill specifies that these

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[19] R.C. 2109.05 and 2109.06.

[20] R.C. 2109.21(F).

[21] R.C. 2109.24.

[22] R.C. 2109.26.

requirements apply only to a guardian of the estate. The bill also allows the court to appoint a resident or nonresident of Ohio as a guardian of the person.[23]

Notice of hearing on fiduciary's account

Existing law requires every fiduciary's account to be set for hearing before the probate court. A fiduciary may serve notice of the hearing, or cause the notice to be served, upon any person who is interested in the estate or trust. The bill specifies that the fiduciary may serve notice, or cause notice to be served, upon creditors as the court may direct. It requires the notice to be made by mail in addition to service by publication.[24]

Investment authority

Existing law generally permits a fiduciary having funds belonging to a trust that are to be invested to invest them in specified types of investments. Under the bill, such a fiduciary may invest the funds in savings accounts in, or certificates or other evidences of deposits issued by, a state credit union located and organized under Ohio laws or a federal credit union located in Ohio by depositing the funds in the credit union, and the federal or state credit union when itself acting in a fiduciary capacity may deposit the funds in savings accounts in, or certificates or other evidences of deposits issued by, its own savings department, provided that no deposit may be made by any fiduciary, individual or corporate, unless the deposits of the depository credit union are insured by the National Credit Union Administration created under the "Federal Credit Union Act of 1934," 48 Stat. 1216, 12 U.S.C. 1751, as amended, or the deposits of the depository credit union are insured by a share guaranty corporation as defined in R.C. Chapter 1761. (Credit Union Guaranty Corporation Law), and provided that the deposit of the funds of any one trust in those savings accounts in, or certificates or other evidences of deposits issued by, any one credit union cannot exceed the sum insured under that Act or under R.C. Chapter 1761.[25]

The bill expands the authority of a fiduciary to invest trust funds in obligations consisting of notes, bonds, debentures, or equipment trust certificates issued under an indenture, that are the direct obligations, or in the case of equipment trust certificates are secured by direct obligations, of a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph

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[23] R.C. 2109.21(C).

[24] R.C. 2109.32 and 2109.33.

[25] R.C. 2109.37(A)(14).

systems or waterworks, or in some combination of them if the obligor corporation is one that is incorporated under the *laws of a foreign government* and the obligations are rated under existing law's requirements.[26]

Existing law authorizes the court to permit a guardian or trustee to use the funds of the trust to purchase or acquire a home for the ward or an interest in a home for the ward in which a member of the ward's family may have an interest. The bill provides that after the filing of the petition by a guardian or a conservator for authority to purchase or acquire a home for the ward or an interest in a home for the ward in which a member of the ward's family may have an interest, the matter must be set for a hearing before the probate court.[27]

The bill expands the authority for additional investments to be made by a fiduciary other than a guardian under R.C. 5905.01 to 5109.19 (Veterans' Guardianship Law), and subject to the restriction placed on an administrator or executor by R.C. 2109.37(B), to include any of the following kinds and classes of securities, provided that it may be lawfully sold in Ohio and investment is made only in those securities that would be acquired by prudent persons of discretion and intelligence in those matters who are seeking a reasonable income and the preservation of their capital: (1) securities of corporations organized and existing under the laws of *any foreign government or state*, including, but not limited to, bonds, debentures, notes, equipment trust obligations, or other evidences of indebtedness, and shares of common and preferred stocks of those corporations, or (2) bonds or other interest-bearing obligations of *any foreign government*.[28]

The bill expands the authority of a fiduciary to make a temporary investment of cash that the fiduciary may hold uninvested under existing law, and the requirement for the fiduciary to make a temporary investment of funds held in liquid form pursuant to existing law, to include an investment in *obligations of foreign governments or states*, unless the governing instrument provides for other investments in which the temporary investment of cash or funds is permitted.[29]

The bill modifies the definition of "short term trust-quality investment fund" in existing law to provide that the term means a short term investment fund that meets the conditions specified in existing law, including the condition that the fund is invested in

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[26] R.C. 2109.37(A)(15).

[27] R.C. 2109.37(C)(2).

[28] R.C. 2109.371(A)(1) and (3).

[29] R.C. 2109.372(D)(1)(c).

obligations of the United States or of its agencies, obligations of one or more of the states of the United States or their political subdivisions, or *obligations of foreign governments or states* (added by the bill).[30]

Prohibited transactions – penalties; exception

Existing law prohibits any fiduciary from making any personal use of the funds or property belonging to a trust. For a violation of this prohibition, the fiduciary and the fiduciary's bond are liable in an action for any loss occasioned by such use and for such additional amount by way of forfeiture, not exceeding the amount of the loss occasioned by such use, as may be fixed by the probate court hearing such case. The bill provides that in addition to those penalties, the court may remove the fiduciary pursuant to R.C. 2109.24 for fraudulent conduct or dereliction of duty related to the fiduciary's personal use or misuse of funds or property belonging to a trust. However, under the bill, if all interested persons consent to the fiduciary's use of the property in a signed writing filed with the probate court, the fiduciary may make personal use of property belonging to the trust. The bill further provides that it is within the court's discretion, upon application, notice to interested persons, and a hearing, to allow the personal use of trust property by the fiduciary.[31]

Existing law generally prohibits fiduciaries from buying from or selling to themselves and from having in their individual capacities any dealings with the estate, except as expressly authorized by the instrument creating the trust and then only with the approval of the probate court in each instance.[32] The bill permits the fiduciary to petition the court for authority to purchase property of the estate if all of the following requirements are met:[33]

(1) Written consent to the purchase is signed by each known heir and each known devisee whose interests in the estate would be affected by the proposed purchase.

(2) The written consents are filed with the court.

(3) The purchase is shown to be to the advantage of the estate.

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[30] R.C. 2109.372(A)(1)(b)(iii).

[31] R.C. 2109.43.

[32] R.C. 2109.44(A).

[33] R.C. 2109.44(B).

The bill requires the court to deliver notice of the hearing on the petition to the heirs, devisees, or legatees of the estate or any interested person.[34]

Mortgage of real property

The bill modifies existing law pertaining to the authority of a fiduciary other than an executor or administrator to borrow money and mortgage real property by providing for such authority when it appears to be for the best interests of the "entrusted estate" (instead of "trust") and with the approval of the probate court. The fiduciary proposing to borrow money must file in the probate court that appointed the fiduciary a "complaint" (instead of "petition"). If filed by a guardian, the complaint must state the names, ages, and residences of the ward and next of kin known to be a resident of Ohio, including the spouse of the ward and persons holding liens on the real property *unless the liens will be extinguished* (added by the bill). The complaint also must contain a statement of the nature of the "incompetency or incapacity" (instead of imbecility or insanity), if any, of the ward, whether temporary or confirmed and its duration. Before the probate court makes an order authorizing a guardian to mortgage real property for the purpose of borrowing money to make repairs or improvements, the court must appoint disinterested persons (instead of "three" disinterested persons) whose duty is to investigate fully the necessity for and the advisability of making the repairs or improvements and their probable cost and to report their conclusions to the court.[35]

Concealed or embezzled assets

The bill modifies existing law that prescribes the procedures when assets are concealed or embezzled by providing that upon complaint made to the probate court of the county having jurisdiction of the administration of an *estate* (instead of trust estate), *a testamentary trust, or a guardianship* (added by the bill) or of the county where a person resides against whom the complaint is made, by a person interested in the *estate, testamentary trust, or guardianship* or by the creditor of a person interested in the *estate, testamentary trust, or guardianship* against any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any moneys, personal property, or choses in action of the *estate, testamentary trust, or guardianship*, the court must by citation "or other judicial order" (instead of "attachment or warrant, or, if circumstances require it, by warrant or attachment in the first instance") compel the person or persons suspected to appear before it to be examined, on oath, touching the matter of the complaint. The probate court may issue a citation *or*

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[34] R.C. 2109.44(C).

[35] R.C. 2109.46 and 2109.47.

other judicial order into any county in Ohio that must be served and returned as provided in existing law. If a judgment is rendered against a fiduciary, the fiduciary must be removed by the probate court. The bill provides that "[i]f any portion of the estate, testamentary trust, or guardianship remains to be administered by the probate court at the time of the removal of the fiduciary, the court shall appoint a new fiduciary to continue the administrative process" (instead of "that part of the trust not already administered shall be committed to some other person").[36]

Appointment of trustee of funds of unknown or nonresident

Existing law provides for the appointment of a trustee of the unpaid part of the proceeds of property sold in an action or proceeding if any person entitled to the proceeds is unknown or is a nonresident and not represented in the action or proceeding or cannot definitely be ascertained. When the probate court that appointed such trustee is satisfied that a person who appears and claims the moneys paid into the county treasury has a right to receive them, in whole or part, less the costs of collection by the prosecuting attorney, the court must order the payment thereof to the person shown to be entitled to the moneys. The bill replaces the preceding sentence with the following: upon application to the probate court that appointed the trustee and presentment of the proof necessary to entitle the person to the money, the court must order the payment of the money to the person in whole or part, less the costs of collection by the prosecuting attorney.[37]

Action on bond

The bill modifies existing law pertaining to an action prosecuted on the bond of a fiduciary against the obligors on the bond by any person injured by a breach of any condition of the bond. It requires that notice of any action or proceeding against the bonded fiduciary be given to the surety.[38]

Failure of fiduciary to make payment or distribution

Under existing law, if a fiduciary, upon demand, refuses or neglects to pay any creditor whose claim has been allowed by the fiduciary and not subsequently rejected or to pay any creditor or make distribution to any person interested in the estate whose claim or interest has been established by judgment, decree, or order of court, such creditor or other person may file a petition against the fiduciary in the probate court

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[36] R.C. 2109.50, 2109.52, and 2109.53.

[37] R.C. 2109.57.

[38] R.C. 2109.61.

from which the fiduciary received the appointment to enforce such payment or distribution. When such a proceeding is pending in the probate court, on motion of any party, the court may reserve and send the cause to the court of common pleas, which court must hear, settle, and determine all issues involved. The bill additionally provides that the probate court, *on the court's own motion*, may transfer (instead of "reserve and send") the cause to the court of common pleas.[39]

Executors and administrators – appointment, powers, and duties

Limitation for granting original administration

Existing law provides that administration cannot be originally granted as of right after the expiration of 20 years from the death of the testator or intestate, but within the county, each probate judge may grant letters of original administration upon the estate of a deceased person after the expiration of 20 years upon the petition of interested persons or their agent and on good cause shown. Before allowing the prayer of such petition, the judge may direct notice thereof to be given by publication, for a period not exceeding 30 days, in one or more of the newspapers published in the county where the petition is filed.[40] The bill outright repeals existing law.

Release from administration

Existing law specifies the circumstances and procedures in which an estate may be released from administration. It provides that when a delivery, sale, or transfer of personal property has been ordered from an estate that has been relieved from administration, the court may appoint a commissioner to execute all necessary instruments of conveyance. The commissioner must receipt for the property, distribute the proceeds of the conveyance upon court order, and report to the court after distribution. The bill provides that the court may appoint a commissioner to execute all necessary instruments of conveyance, *including the instruments of conveyance and other documents required for the transfer of title upon the sale of real property pursuant to R.C. 2127.011* (disposition of real property) (added by the bill). The commissioner must receipt for the property, distribute the proceeds of the conveyance upon court order, and report to the court "after the delivery, sale, or transfer of personal or real property from an estate that has been relieved from administration" (instead of "after distribution").[41]

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[39] R.C. 2109.59 and 2109.60.

[40] R.C. 2113.02.

[41] R.C. 2113.03(E).

Payment of wages of deceased employee without administration

Existing law permits any employer, including the state or a political subdivision, at any time after the death of an employee, to pay all wages or personal earnings due to the deceased employee to specified heirs, preference being given in the order named in the law, without requiring letters testamentary or letters of administration to be issued upon the estate of the deceased employee, and without requiring an Ohio estate tax release if the wages or personal earnings do not exceed $2,500. The bill changes the maximum amount of the wages or personal earnings to $5,000.[42]

Letters testamentary

Existing law requires that administration of the estate of an intestate be granted to the following persons in that order: (1) the surviving spouse of the deceased if resident of Ohio or (2) one of the deceased's next of kin if resident of Ohio. If those persons fail to take or renounce administration voluntarily, they must be cited by the probate court for that purpose. The bill provides that if those persons fail to take or renounce administration voluntarily, *the matter must be set for hearing and notice given to the persons*.[43]

Application for appointment; minority of executor

The bill modifies existing law pertaining to an application filed by a person before being appointed executor or administrator by requiring that the application contain the "addresses of usual residence" (instead of "post office addresses") of the surviving spouse and the next of kin of the deceased known to the applicant. The application may be accompanied by a waiver signed by the persons who have priority to administer the estate, and, in the absence of a waiver, those persons must be "served notice" (instead of "cited by the probate court") for the purpose of ascertaining whether they desire to take or renounce administration. The bill provides that minors who would have been entitled to priority to administer the estate except for their minority also must be served notice pursuant to the Rules of Civil Procedure.[44]

The bill further modifies existing law by providing that when a person "nominated" (instead of "appointed") as executor is under 18 years of age at the time of "admitting the will to probate" (instead of "proving the will"), the administration may

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[42] R.C. 2113.04.

[43] R.C. 2113.06(A) and (B).

[44] R.C. 2113.07.

be granted with the will annexed during the nominee's minority, unless there is another executor who will accept the trust.[45]

Special administrator

The bill modifies existing law by providing that when there is delay granting letters testamentary or of administration, the probate court may appoint a special administrator to collect and preserve the effects of the deceased *and grant the special administrator any other authority that the court considers appropriate* (added by the bill). The special administrator must be allowed the compensation for the special administrator's services that the court thinks reasonable, "if the special administrator faithfully fulfills the fiduciary duties" (instead of "if he forthwith delivers the property and effects of the estate to the executor or administrator who supersedes him." The bill requires the special administrator to file an account of the special administration within 30 days of the appointment of the executor or administrator and requires the account to be in conformance with R.C. 2109.30 (accounts of fiduciaries).[46]

Existing law provides that a special administrator appointed under R.C. 2113.15 is not liable to an action by a creditor of the deceased. The time of limitation for suits against the estate begins to run from the time of granting letters testamentary or of administration in the usual form, as if such special administration had not been granted.[47] The bill outright repeals this provision, and instead provides that a creditor's claim may be presented in accordance with R.C. 2117.06 (presentation and allowance of creditors' claims) to a special administration[48] appointed under R.C. 2113.15.[49]

Administrator de bonis non

Existing law requires a person who is appointed an administrator, with the will annexed or otherwise, when a sole executor or administrator dies without having fully administered the estate to administer the goods and estate of the deceased not administered, in case there is personal estate to be administered to the amount of $20 or debts to that amount due from the estate. The bill instead requires such a person to administer the *assets* of the deceased not *previously* administered.[50]

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[45] R.C. 2113.13.

[46] R.C. 2113.15 and 2113.16.

[47] Existing R.C. 2113.17.

[48] This probably should read "special administrator."

[49] New R.C. 2113.17.

[50] R.C. 2113.19.

Powers during will contest

Existing law provides that when a will is contested, the executor, administrator de bonis non, with the will annexed, or the testamentary trustee may, during the contest, do specified functions, including controlling all real estate that is included in the will but not specifically devised and all the personal estate of the testator not administered before the contest. The bill provides that when a will is contested, the executor, administrator de bonis non, with the will annexed, or the testamentary trustee may control all the real property and all the personal property of the testator not administered before the contest.[51]

Limitations

The bill outright repeals the provision in existing law that provides that if any claim must be presented or any notice given to an executor or administrator, or if any action, suit, or proceeding must be instituted against the executor or administrator within any limited period of time prescribed by statute, and if during such period the administrator or executor dies, resigns, or is removed, or the office becomes vacant for any other reason, the time between such death, resignation, removal, or the occurrence of such vacancy and the appointment of a successor must be excluded in computing the period of such time limitation.[52]

Collection of assets

Existing law

Existing law provides that so far as the executor or administrator is able, the executor or administrator of an estate must collect the assets and complete the administration of that estate within 13 months after the date of appointment.[53]

Upon application of the executor or administrator and notice to the interested parties, if the probate court considers that notice necessary, the court may allow further time in which to collect assets, to convert assets into money, to pay creditors, to make distributions to legatees or distributees, to file partial, final, and distributive accounts, and to settle estates. An application made by an executor or administrator must set forth the grounds of the application, the amount of money in the hands of the executor or administrator applicable on the debts of the deceased, and that the executor or administrator has used due diligence in performing the duties enumerated therein. The

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[51] R.C. 2113.21(A)(1).

[52] R.C. 2113.24.

[53] R.C. 2113.25.

application must be supported by the affidavit of the executor or administrator.[54] The probate court cannot at any one time grant an extension of more than six months from the date of application, except that in cases where the estate is subject to estate or inheritance taxes that cannot be determined and paid within six months, the court may grant an extension for such longer period as it deems proper. The office of the executor or administrator does not cease with the time allowed by law or the court for the performance of the duties enumerated in these provisions. The time allowed by the probate court to collect the assets of an estate does not operate as an allowance of further time to file the accounts required by R.C. 2109.301.[55]

Operation of the bill

The bill requires the executor or administrator of an estate to collect the assets and complete the administration of that estate within six months (instead of 13 months) after the date of appointment *unless an extension of the time to file a final and distributive account is authorized under R.C. 2109.301(B). For good cause shown, the court may grant an extension of the time to file the inventory and accounts* (added by the bill).[56] The bill repeals the provisions in existing law described in the preceding paragraph. The court, upon application of any interested party, may authorize the examination of the executor or administrator under oath in open court on any matter relating to the administration of the estate.[57]

New administrator

The bill repeals the provision in existing law that provides that when assets come to the hands of a new administrator, after any of the periods limited for the commencement of suits against the new administrator, the new administrator must account for them and be liable to suits and proceedings on account thereof, as is provided with respect to an original administrator.[58]

Fees of executor or administrator

Existing law requires that executors and administrators be allowed commissions in specified percentages of the amount of personal property received and accounted for and the proceeds of real property sold. The bill requires that executors and

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[54] R.C. 2113.25 and existing 2113.26.

[55] R.C. 2113.27 and 2113.28.

[56] R.C. 2113.25.

[57] Existing R.C. 2113.25 relocated to new R.C. 2113.26.

[58] R.C. 2113.29.

administrators be allowed fees instead of commissions in the percentages specified in existing law unchanged by the bill.[59]

Public sale of personal property

The bill modifies existing law by providing that the executor or administrator, *if considered in the best interests of the estate* (added by the bill), may employ an auctioneer or clerk, or both, to conduct the public sale of personal property, and their reasonable fees and charges must be deducted from the sale proceeds.[60]

Distribution after settlement

The bill repeals the provision in existing law that provides that if upon hearing and settlement of an executor's or administrator's account, a balance due the estate remains in the hands of the executor or administrator, the court may order distribution to be made by the executor or administrator.[61]

Certificate of transfer of real property

Existing law

Under existing law, when real property passes by the laws of intestate succession or under a will, the administrator or executor must file in probate court, at any time after the filing of an inventory that includes the real property but prior to the filing of the administrator's or executor's final account, an application requesting the court to issue a certificate of transfer as to the real property.[62] Generally, the application for a certificate of transfer must contain all of the following:[63]

(1) The name, place of residence at death, and date of death of the decedent;

(2) A statement whether the decedent died testate or intestate;

(3) The fact and date of the filing and probate of the will, if applicable, and the fact and date of the appointment of the administrator or executor;

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[59] R.C. 2113.35 and 2113.36.

[60] R.C. 2113.41.

[61] R.C. 2113.57.

[62] R.C. 2113.61(A)(1).

[63] R.C. 2113.61(B).

(4) A description of each parcel of real property situated in Ohio that is owned by the decedent at the time of death;

(5) Insofar as they can be ascertained, the names, ages, places of residence, and relationship to the decedent of the persons to whom each parcel of real property described above in (4) passed by descent or devise;

(6) A statement that all the known debts of the decedent's estate have been paid or secured to be paid, or that sufficient other assets are in hand to complete the payment of those debts;

(7) Other pertinent information that the court requires.

Generally, within five days following the filing of an application for a certificate of transfer, the court must issue a certificate of transfer for record in each county in Ohio in which real property so passing is situated, that must recite all of the following:[64]

(1) The name and date of death of the decedent;

(2) Whether the decedent died testate or intestate and, if testate, the volume and page of the record of the will;

(3) The volume and page of the probate court record of the administration of the estate;

(4) The names and places of residence of the devisees, the interests passing to them, the names and places of residence of the persons inheriting intestate, and the interests inherited by them, in each parcel of real property described above;

(5) A description of each parcel of real property described above;

(6) Other information that in the opinion of the court should be included.

Operation of the bill

The bill modifies the contents of the application for a certificate of transfer to include the following (new language is italicized):[65]

(1) The name, place of "domicile" (instead of "residence") at death, and date of death of the decedent;

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[64] R.C. 2113.61(C).

[65] R.C. 2113.61(B).

(2) A statement whether the decedent died testate or intestate;

(3) *The reason the property is being transferred to the devisee or devisees*;

(4) *Whether any spousal elections have been exercised*;

(5) *Whether any disclaimers or assignments have been filed*;

(6) A statement that all the known debts of the decedent's estate have been paid or secured to be paid, or that sufficient other assets are in hand to complete the payment of those debts *or a statement that the estate is insolvent and the transfer is of the mansion house and is being made to satisfy all or a portion of the spousal allowance for support*;

(7) Other pertinent information that the court requires.

The bill modifies the contents of the certificate of transfer to include the following (new language is italicized):[66]

(1) The name and date of death of the decedent;

(2) Whether the decedent died testate or intestate (the bill deletes "and, if testate, the volume and page of the record of the will");

(3) The "case number" (instead of "volume and page") of the probate court record of the administration of the estate;

(4) The names and places of residence of the devisees, the interests passing to them, the names and places of residence of the persons inheriting intestate, and the interests inherited by them, in each parcel of real property *being transferred*;

(5) A description of each parcel of real property *being transferred*;

(6) Other information that in the opinion of the court should be included.

The bill alters existing law by providing that if no administration was had on an estate and if no administration is contemplated, except in the case of the grant of or contemplated application for the grant of an order of a summary release from administration under R.C. 2113.031, an application for a certificate of transfer may be filed by an heir or devisee, or a successor in interest, in the probate court of the county in which the decedent was a resident at the time of death *or in which the real property of the decedent is located* (added by the bill).

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[66] R.C. 2113.61(C).

Under existing law, modified by the bill, when a person who has entered into a written contract for the sale and conveyance of an interest in real property dies before its completion, the interest of the decedent in the contract and the record title to the real property described in the contract may be transferred to the devisees or heirs at law (the bill deletes "persons, legatees") entitled to the interest of the decedent in the real property, in the same manner as provided in these provisions and in R.C. 2113.62 (the bill deletes the reference to "R.C. 2113.63," which is repealed by the bill) for the transfer of real property.[67]

Finally, the bill outright repeals the provision in existing law that provides that for recording and indexing the certificate of transfer, the county recorder must be paid in fees provided by R.C. 317.32 for the recording and indexing of deeds, and the probate court must be allowed the fees provided by R.C. 2101.16 for similar certificates. The probate judge must tax and collect, as other costs of administering the estate, the fees of the recorder and the court.[68]

Apportionment of taxes

Existing law permits a fiduciary to notify any person interested in the estate of the manner of the apportionment of tax determined by the fiduciary. Upon receipt of the notice, a person interested in the estate, within 30 days after the date of receipt of the notice, may indicate the person's objection to the manner of apportionment by application to a probate court. The bill requires the notice to state the name and address of the probate court with jurisdiction over the apportionment and to include the following statement: "If you fail to file an objection to this proposed apportionment with the probate court within thirty days of the receipt of this notice, you are bound by the proposed apportionment."[69]

Existing law allows a fiduciary to withhold from any property distributable to any person interested in the estate the amount of tax attributable to the person's interest. If the property is not in the possession of the fiduciary, the fiduciary may recover from any person interested in the estate the amount of the tax apportioned to that person in accordance with existing law. The bill provides that the fiduciary may recover such amount *by filing a complaint to recover the tax in the probate court that has jurisdiction of the administration of the estate*.[70]

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[67] R.C. 2113.61(D) and (F).

[68] R.C. 2113.63.

[69] R.C. 2113.87(B).

[70] R.C. 2113.88(A).

Inventory – appraisal of property

Existing law generally requires that real and personal property comprised in the inventory be appraised by one suitable disinterested person appointed by the executor or administrator, subject to the approval of the court and sworn to a faithful discharge of the trust. The executor or administrator, subject to the approval of the court, may appoint separate appraisers of property located in any other county and appoint separate appraisers for each asset. The bill adds the provision that *in lieu of the appointment of an appraiser for real property, the executor or administrator may accept the valuation of the real property by the county auditor.*[71]

Presentation of claims

Contingent claims

The bill modifies existing law by providing that if a claim is contingent at the time of a decedent's death and a cause of action subsequently accrues on the claim, it must be presented to the executor or administrator, in the same manner as other claims, before the expiration of "six months" (instead of "one year") after the date of death of the decedent, or before the expiration of two months after the cause of action accrues, whichever is later, except as provided in R.C. 2117.39 (contingent claims not to be presented).[72]

Notice of receipt of Medicaid benefits to administrator of estate recovery program

Existing law requires the person responsible for the estate of a decedent subject to the Medicaid estate recovery program or of a decedent who was the spouse of a decedent subject to that program to submit a properly completed Medicaid estate recovery reporting form prescribed below to the administrator of the program within any of specified periods of time. The person responsible for the estate must mark the appropriate box on the appropriate probate form to indicate compliance with these requirements. The probate court must send a copy of the completed probate form to the administrator of the Medicaid estate recovery program.[73]

The bill renames the Medicaid estate recovery reporting form the Medicaid estate recovery *notice* form and requires the person responsible for the estate to mark the appropriate box on the appropriate probate form *that gives notice to the administrator of*

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[71] R.C. 2115.06.

[72] R.C. 2117.37.

[73] R.C. 2117.061(B) and (C).

the Medicaid estate recovery program to indicate compliance with the above requirements (italicized language is added by the bill). It eliminates the requirement for the probate court to send a copy of the completed probate form to the administrator of the Medicaid estate recovery program.

The bill eliminates the requirement under existing law for the administrator of the Medicaid estate recovery program to prescribe a Medicaid estate recovery reporting form and removes the following provisions from existing law. In the case of a decedent subject to the program, the form must require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate as defined in R.C. 5111.11. In the case of a decedent who was the spouse of a decedent subject to the program, the form must require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate as defined in R.C. 5111.11 and were also part of the estate, as so defined, of the decedent subject to the Medicaid estate recovery program. The administrator must include on the form a statement printed in bold letters informing the person responsible for the estate that knowingly making a false statement on the form is falsification under R.C. 2921.13, a misdemeanor of the first degree.[74]

The bill modifies existing law by providing that the Medicaid estate recovery notice form must be submitted to the administrator of the Medicaid estate recovery program not later than 30 days after the granting of *letters of administration* (added by the bill) or letters testamentary or the filing of an application for release from administration or summary release from administration and removing the provision that the form must be submitted not later than 30 days after the administration of the estate.[75]

Finally, the bill removes from existing R.C. 2117.061 the definition of "permanently institutionalized individual," which term is not used in that section.[76]

Proceedings by nonresident executor or administrator to bar creditors' claims

Under existing law, the claim of any creditor of a decedent whose estate is not governed by ancillary administration proceedings in Ohio are subject to R.C. 2117.06 (presentation and allowance of creditors' claims). The person to whom the letters of

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[74] R.C. 2117.061(D).

[75] R.C. 2117.061(B).

[76] R.C. 2117.061(A)(2).

appointment were granted in another state, territory or possession of the United States, or foreign country may file an authenticated copy of them in the probate court of any county of Ohio in which real property of the decedent is located. Such person may accelerate the bar against claims against the estate established by R.C. 2117.06, by giving written notice to a potential claimant that identifies the decedent by name, states the date of the death of the decedent, identifies the court, states its mailing address, and informs the potential claimant that any claims the claimant may have against the estate are required to be presented to the court within the earlier of 30 days after receipt of the notice by the potential claimant or one year after the date of the death of the decedent. A claim of the potential claimant that is not presented to the court within that period is forever barred as a possible lien upon the real estate of the decedent in Ohio. The bill modifies existing law by providing that the written notice to a potential claimant must inform the potential claimant that any claims the claimant may have against the estate are required to be presented to the court within the earlier of 30 days after receipt of the notice by the potential claimant or "six months" (instead of "one year") after the date of the death of the decedent. A claim of the potential claimant that is not presented to the court within that period is forever barred as a possible lien upon the real property of the decedent in Ohio.[77]

Notice on marriage license of penalty for failure to return certificate of solemnized marriage

The bill modifies existing law by providing that every marriage license must have printed upon it in prominent type the notice that, unless the person solemnizing the marriage returns a certificate of the solemnized marriage to the probate court that issued the marriage license within 30 days after performing the ceremony, or, if the person solemnizing the marriage is a probate judge who is acting in accordance with R.C. 2101.27 and who issued the marriage license to the husband and wife, unless such a probate judge files a certificate of the solemnized marriage in his office within 30 days after the solemnization, the person or probate judge is guilty of a "minor" (added by the bill) misdemeanor and, upon conviction, may be punished by a fine of $50.[78]

Failure of board of education or governing board to perform duties or fill vacancy

Under current law, if the board of education of any city, exempted village, or local school district or the governing board of any educational service center fails to perform the duties imposed upon it or fails to fill a vacancy in such board within 30

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[77] R.C. 2129.02.

[78] R.C. 3101.14.

days after such vacancy occurs, the probate court of the county in which the district or service center is located, upon being advised and satisfied of that failure, must act as such board and perform all duties imposed upon the board. The bill instead provides that if the board of education of any city, exempted village, or local school district or the governing board of any educational service center fails to fill a vacancy in that board within a period of 30 days after the vacancy occurs, the probate court of the county in which the district or service center is located, upon being advised and satisfied of that failure, must act as that board *to fill any vacancy as promptly as possible*.[79]

Lists of unclaimed costs – publication

Existing law requires that, on the first Monday of January of each year, the clerk of each court of common pleas and court of appeals, each probate judge, and each sheriff make two certified lists of causes in which money has been paid and has remained in the hands of such person or in the hands of a former clerk, probate judge, or sheriff, for one year next preceding such first Monday of January. One list must be posted at or on the door of the courthouse, on the second Monday of January, for the period of 30 days. The bill removes the requirement that the list be posted on the door of the courthouse and instead requires that the list be posted at a *public area* of the courthouse *or published on the web site of the court or officer*.[80]

Miscellaneous changes

Replacing "petition" with "complaint"

The bill changes "petition" to "complaint" in the following proceedings in probate court:

(1) Complaint for a judgment declaring the validity of a will.[81]

(2) Complaint to modify or revoke a will that has been declared valid.[82]

(3) Complaint by a fiduciary other than an executor or administrator to borrow money and mortgage real property belonging to the entrusted estate.[83]

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[79] R.C. 3313.85.

[80] R.C. 2335.34.

[81] R.C. 2107.07, 2107.08, 2107.081 to 2107.085, and 2107.71(C).

[82] R.C. 2107.084.

[83] R.C. 2109.46 and 2109.48.

(4) If a will of a deceased is proved and allowed after letters of administration have been granted as of an intestate estate, the first administration is revoked, unless before the revocation a complaint contesting the probate of the will is filed.[84]

(5) Complaint for the alteration or cancellation of a written contract for the sale and conveyance of an interest in real property when a person who has entered into the contract dies before its completion.[85]

(6) Complaint to determine heirship.[86]

(7) Fees for a complaint for construction of a will, complaint for declaratory judgment, complaint to determine heirship, complaint to alter or cancel a contract for sale or purchase of real property, and complaint to mortgage or mortgage and repair or improve real property.[87]

Replacing terminology

The bill replaces "lands, tenements, or hereditaments," "lands or tenements," "land," or "lands" with "real property" or "interests in real property." (R.C. 2103.01, 2105.16, 2107.47, 2107.49, 2107.51, 2107.58, 2107.59, 2109.48, 2109.56, 2111.21, 2113.03, 2127.05, 2127.06, 2127.11, 2127.21, 2127.28, 2127.32, 2127.33, 2127.40, 2127.42, 2129.28, 2129.29, and 2131.08.)

The bill replaces "chattels" or "goods" with "personal property" or "assets." (R.C. 2103.01, 2109.11, 2109.12, 2109.361, 2109.50, 2109.52, 2109.56, 2111.37, 2113.15, 2113.16, 2113.19, 2113.31, 2113.40, and 2117.35.)

The bill replaces "in the hands of" with "in the possession or under the control of." (R.C. 2106.01, 2109.04, 2109.302, 2109.303, 2111.14, 2111.39, 2111.41, 2113.03, 2113.16, 2113.31, 2113.45, 2113.51, 2113.69, 2113.72, 2115.09, 2115.10, 2115.12, 2117.35, 2117.36, 2119.05, 2121.08, 2127.02, and 2127.41.)

The bill replaces "tuition" of a minor or ward with "education" of a minor or ward. (R.C. 2111.06 and 2111.07.)

The bill replaces "idiocy, imbecility, or lunacy" with "incompetence" and replaces "idiots, imbeciles, or lunatics" with "incompetents." (R.C. 2111.27 and 2111.48.)

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[84] R.C. 2113.20.

[85] R.C. 2113.49 and 2113.50.

[86] R.C. 2123.02, 2123.03, 2123.05, and 2123.06.

[87] R.C. 2101.16.

The bill replaces "real estate" with "real property" in various sections in R.C. Chapters 2101., 2105., 2106., 2107., 2109., 2111., 2113., 2115., 2117., 2119., 2121., 2127., and 2129.

The bill replaces "personal estate" with "personal property" in various sections in R.C. Chapters 2107., 2109., 2111., 2113., 2115., 2117., 2119., and 2129.

The bill replaces other outdated and archaic terms in the Probate Code.

Technical changes

The bill makes numerous gender neutralizing, grammatical, and other technical changes throughout the Probate Code.

Applicability

The bill provides that its provisions relating to the estates of decedents apply to the estates of decedents who die on or after the act's effective date.[88]

HISTORY

ACTION	DATE
Introduced	03-22-11
Reported, S. Judiciary – Civil Justice	05-10-11
Passed Senate (33-0)	05-24-11
Reported, H. Judiciary & Ethics	09-21-11

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[88] Section 3.