

## Courts

### H.B. 17

**Reps.** Blessing and Landis, Brenner, Grossman, Conditt, Becker, Maag, Romanchuk, Roegner, Amstutz, Thompson, Dever, Young, Anielski, Baker, Boose, Brown, Buchy, Burkley, Derickson, DeVitis, Dovilla, Duffey, Ginter, Green, Hackett, Hagan, Hall, Hayes, Hood, Koehler, Kraus, McClain, Pelanda, Perales, Retherford, Ruhl, Ryan, Scherer, Schuring, Sears, Terhar, Zeltwanger

**Sens.** Bacon, Balderson, Burke, Coley, Eklund, Gardner, Hite, Hottinger, Jordan, LaRose, Lehner, Obhof, Patton, Peterson, Seitz, Uecker, Yuko

**Effective date:** May 17, 2016

- Grants qualified immunity from civil liability to volunteer architects, contractors, engineers, surveyors, and tradespersons for acts, errors, or omissions conducted in the performance of services during a declared emergency and 90 days thereafter.

### Sub. H.B. 347

**Reps.** McColley and Brinkman, Antani, Becker, Brenner, Dever, Duffey, Hambley, Henne, Hood, LaTourette, Retherford, Roegner, Schuring, Terhar, Thompson, Vitale, Young, Zeltwanger, Amstutz, Koehler, Rezabek, Romanchuk

**Sens.** LaRose, Coley, Balderson, Beagle, Brown, Burke, Eklund, Faber, Hackett, Hottinger, Jones, Jordan, Lehner, Obhof, Peterson, Seitz, Tavares, Thomas, Uecker

**Effective date:** April 6, 2017

#### Modification of civil forfeiture

- Modifies the civil forfeiture process by permitting a civil forfeiture action to be filed only under specified circumstances not sooner than specified periods of time after the seizure of the property.
- Specifies that a civil forfeiture complaint may only be filed if the property was seized with probable cause of its involvement in the commission of a felony or gambling offense or was directly or indirectly obtained through the commission of a felony or gambling offense and either of the following applies:
  - (1) The property owner is unavailable due to being deceased, or having been indicted and being out of state and unable to be extradited for prosecution or unable to be located despite reasonable efforts to locate the owner.

(2) The property owner has not claimed, or asserted any interest in, the property at any time during or after seizure and all claims of aggrieved parties have been denied.

- Permits a prosecutor to file a civil forfeiture action with or after the filing of a complaint charging an offense or delinquent act.
- Provides that the above civil forfeiture action is stayed during the pendency of the criminal or delinquency proceedings and proceeds after the defendant is convicted or enters intervention in lieu of conviction or the juvenile is adjudicated delinquent.
- Changes the burden of proof required for the prosecutor in a civil forfeiture action to establish that property is subject to forfeiture from a preponderance of the evidence to clear and convincing evidence.
- Eliminates the provision permitting a civil forfeiture action to be commenced regardless of whether the offender or delinquent child has pleaded guilty to, been convicted of, or been adjudicated delinquent for the act that is the basis of the forfeiture order.
- Permits the state to file a civil action against a person alleged to have received, retained, possessed, or disposed of proceeds, in an amount exceeding \$15,000, knowing or having reasonable cause to believe that the proceeds were derived from the commission of an "offense subject to forfeiture proceedings."
- Specifies the contents of a complaint in the above civil action, the elements that the state has the burden to prove by clear and convincing evidence, and the period of limitations for bringing the civil action.
- Provides that the civil action is stayed if a criminal complaint is filed against the person alleged to have received, retained, possessed, or disposed of the proceeds under the above circumstances.
- Requires the above amount of \$15,000 to be annually increased based on the rate of inflation according to the consumer price index starting on January 1, 2018.

### **"Receiving proceeds of an offense subject to forfeiture proceedings"**

- Establishes the offense of "receiving proceeds of an offense subject to forfeiture proceedings" by prohibiting any person from receiving, retaining, possessing, or disposing of proceeds knowing or having reasonable cause to believe the proceeds were derived from the commission of any of specified offenses.
- Provides that a person is considered to have received, retained, possessed, or disposed of proceeds if they were found in a vehicle that the person was the last person to operate immediately prior to the vehicle's search.

## **Seized property**

- Modifies the timeline for hearing a motion by a person aggrieved by an alleged unlawful seizure of property showing the person's interest in the property.
- At the above hearing, places on the state or political subdivision the burden of proof by a preponderance of the evidence that the seizure was lawful if the property is titled or registered, and places on the person the same burden of proof that the seizure was unlawful if the property is not titled or registered.
- Modifies the timeline for filing and for deciding a petition by a person with an interest in seized property for its conditional release.

## **Criminal forfeiture**

- Repeals the provision that allowed the court, for good cause shown, to consider issues of guilt of the alleged offender or the delinquency of the alleged delinquent child separate from whether property should be forfeited.
- Changes the burden of proof required for the state or political subdivision to establish that property is subject to forfeiture from a preponderance of the evidence to clear and convincing evidence.
- Expands the contents of a petition by a third party claimant asserting a legal interest in the property.
- Changes the burden of proof required for a prosecutor to prove that a lienholder asserting a legal interest in the property does not possess such interest from a preponderance of the evidence to clear and convincing evidence.
- Places on the state or political subdivision the burden of proof by clear and convincing evidence that the amount or value of the instrumentality ordered forfeited is proportionate to the severity of the offense.
- Expands the factors the court is required to consider in determining the severity of the offense.
- Requires the state or political subdivision to demonstrate by clear and convincing evidence specified conditions for the court to order forfeiture of any other property of the offender or delinquent child if the property ordered forfeited is unreachable.

## **Definition of "proceeds"**

- Excludes from the definition of "proceeds" property, including money, if it is held under clear title by a law enforcement agency, it is or may be used to purchase contraband in investigating a drug abuse offense, and it continues to be the agency's property if the agency establishes a clear chain of custody of it.

### **Disposal of forfeited property**

- Requires the written internal control policy of a law enforcement agency with custody of forfeited property to include records of an itemized list of the specific expenditures from the sale proceeds of the property.

### **Federal forfeiture**

- Prohibits the transferring or referral of property seized by a law enforcement agency to any federal law enforcement authority or agency for federal forfeiture purposes unless the value of the property generally exceeds \$100,000 or the transfer or referral is for federal criminal forfeiture proceedings.

### **Goods in execution claimed by a third party**

- Requires the judge of the court of common pleas, municipal court, or county court, whichever has jurisdiction, to schedule a hearing to determine a claimant's right to the goods in execution as soon as practicable after receipt of the notice and schedule of the property.
- Repeals the provisions that required the summoning of jurors to try and determine the rights of the claimant to the property in controversy in a jury trial and to make appropriate findings.
- Requires the judge to render judgment based on the judge's findings at the hearing.

## **H.B. 387**

**Reps.** Terhar and Dever, Becker, Boose, Burkley, Butler, Fedor, Hackett, Hambley, Henne, Perales, Rezabek, Ruhl, Rogers, Conditt, Amstutz, Anielski, Antani, Antonio, Arndt, Baker, Blessing, Boggs, Brown, Buchy, Celebrezze, Dovilla, Duffey, Hayes, Huffman, G. Johnson, Leland, Maag, Manning, McClain, M. O'Brien, Reineke, Retherford, Romanchuk, Ryan, Schuring, Slaby, Strahorn, Sweeney, Thompson, Young

**Sens.** Obhof, Coley, Bacon, Balderson, Brown, Eklund, Faber, Gardner, Hottinger, Hughes, Jordan, LaRose, Lehner, Oelslager, Patton, Peterson, Sawyer, Seitz, Thomas, Uecker

**Effective date:** September 28, 2016

- Increases from \$3,000 to \$6,000 the monetary jurisdiction of a small claims division of a county and municipal court.

## Am. Sub. H.B. 432

**Reps.** Cupp and Rezabek, Bishoff, Craig, Grossman, Hayes, G. Johnson, Manning, McClain, Rogers, Sweeney

**Sens.** Coley, Bacon, Hackett, Eklund, Hughes, Jordan, Oelslager, Peterson, Schiavoni

**Effective date:** April 6, 2017

### Probate Law

- Allows a will deposited by or for a testator in the office of the judge of the probate court of the county in which the testator lives to be deposited before or after the testator's death and, if after the testator's death, with or without applying for its probate.
- Requires the fee for the deposit of a will be paid to the court.
- Authorizes a probate judge to dispose of a deposited will after 100 years if it is not delivered or disposed of as provided in law, and requires the judge to keep an electronic copy prior to disposal.
- Specifies that a deposited will generally is not a public record until an application is filed to probate it.
- Passes property devised or bequeathed to a beneficiary in a will who knows of the will's existence for one year after the testator's death and, without reasonable cause, intentionally conceals or withholds the will or refuses to cause it to be offered for probate as if the beneficiary predeceased the testator.
- Allows a provision in a will or governing instrument to apportion tax to an interest that is otherwise allowable as an estate tax marital or charitable deduction only if it refers to such deduction and expressly acknowledges and accepts any resultant partial loss of the deduction.
- Eliminates a cap on the number of automobiles that may be selected by a surviving spouse upon the other spouse's death.
- Increases the maximum total value of the automobiles that may be selected by the surviving spouse from \$40,000 to \$65,000.

### Uniform Simultaneous Death Act

- Substantially retains preexisting law that generally provides, for purposes of the probate law or governing instruments, that an individual who is not established by clear and convincing evidence to have survived the other individual or an event by 120 hours is deemed to have predeceased the other individual or event.
- Generally provides that if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120

hours, one-half of the property passes as if one co-owner survived the other by 120 hours and one-half passes as if the other co-owner survived the one by 120 hours.

- Generally provides that if there are more than two co-owners with right of survivorship and it is not established by clear and convincing evidence that at least one of the co-owners survived the others by 120 hours, the property passes in the proportion that one co-owner's ownership bears to all the co-owners' ownership.
- Expands the instances in which a payor or other third party is either liable or not for a payment made or an item of property or benefit transferred.

### **Intestate succession**

- Specifies in intestate succession that a person described as living is a person who was living at the time of the intestate's death and who lived for at least 120 hours after the intestate's death, and a person described as having died is a person who died before the intestate or failed to live for at least 120 hours after the intestate's death.
- Provides that no descendant of an intestate inherits under the law on descent and distribution unless surviving the intestate for at least 120 hours, or unless born within 300 days after the intestate's death and living for at least 120 hours after birth.

### **Ohio Trust Code**

- Makes the Trust Code requirements for interested parties to enter into private settlement agreements regarding trust matters generally inapplicable to agreements amending the governing instrument of charitable remainder trusts that require the approval of the Attorney General under continuing law.
- Specifies that an action under the Trust Code is a civil action subject to the Rules of Civil Procedure and is commenced by filing a complaint unless it involves a testamentary or other trust already subject to court supervision.
- Authorizes the holder of a limited testamentary power of appointment to also represent persons whose interests as possible appointees are subject to the power, to the extent no conflict of interest exists between the holder and the persons represented with respect to the particular question.
- Authorizes an agent under a power of attorney to create a trust for the principal, whether or not the principal has capacity to create the trust and indicates an intention to create the trust, but only as provided in the Uniform Power of Attorney Act.

## Uniform Principal and Income Act

- Replaces former law with the following rules that generally apply in determining the allocation of a payment from a separate fund to a trust for which an election to qualify for a marital deduction is made or a trust that qualifies for the marital deduction under the Internal Revenue Code:
  - A trustee must allocate a payment from a separate fund to income to the extent of the fund's internal income and distribute that amount to the surviving spouse, and allocate the balance to principal.
  - If the trustee cannot determine the fund's internal income but can determine its value, the internal income is deemed to equal 4% of its value according to the most recent statement of value preceding the start of the accounting period.
  - If the trustee cannot determine the fund's internal income or its value, the internal income is determined according to a formula in the Internal Revenue Code on the valuation tables for annuities.
- Specifies the applicable dates on which those new rules would apply depending on when or whether a payment has been received from a separate fund in relation to the act's effective date or January 1 of the year the act takes effect.
- Eliminates a provision regarding the fiduciary duty of the trustee of a trust that qualifies for an estate tax marital deduction and is the beneficiary of an individual retirement account to withdraw and distribute the income of the account to the settlor's or testator's surviving spouse, and the satisfaction of that duty.
- Clarifies continuing law regarding the source of payment of income taxes paid by a trustee on the trust's share of an entity's taxable income, from income or principal or proportionately from principal and income depending upon the allocation of the receipts from the entity.

## Ohio Transfers to Minors Act

- Generally permits the delivery to a minor of transferred custodial property to be delayed until a time after the minor turns 21, which time must be specified in the written instrument that provides for the gift or transfer.
- Generally permits the delivery to a minor of custodial property transferred under a will, trust, or irrevocable exercise of a testamentary power of appointment to be delayed only if the instrument provides that the custodianship is until the minor reaches a specified age, which cannot be later than 25.
- Except in regard to the transfer of custodial real property, specifically permits a donor, transferor, trustee, executor, or administrator to designate one or more successor custodians.



- Permits a custodian to designate one or more successor custodians by transferring the custodial property, other than real estate, to self as custodian, followed by the designation of the successor custodian or custodians.
- Provides that the designation by a custodian of a successor custodian of custodial real estate is pursuant to the law on transfer on death of real property.
- Allows the legal representative of a custodian who is deceased or adjudged to be an incompetent to designate a successor custodian if no eligible successor custodian is designated under the Ohio Transfers to Minors Act.
- Raises the threshold from \$10,000 to \$25,000 for a transfer to be authorized by a court if a trustee, executor, or administrator makes a transfer of property that is in the minor's best interest and is not prohibited by or inconsistent with the governing instrument.

### **Sale of estate's real property by guardian**

- Provides another method for a guardian to sell the estate's real property in which written consents of the ward's spouse and potential heirs to the sale must be filed with the court, the sale price must be at least 80% of the appraised value, and the guardian must give a bond.

### **Franklin County guardianship program**

- Authorizes the Franklin County Probate Court to charge fees for certain services in connection with establishing and managing adult guardianships.
- Replaces the Court's authority to appoint the members and director of the Franklin County Guardianship Service Board as guardians with authority for the Court to appoint the Board itself as guardian.
- Permits the director or designee of the Franklin County Guardianship Service Board to act on behalf of the Board on all guardianship matters, and authorizes the Board to charge a reasonable fee approved by the probate judge for services to wards.

### **Revised Uniform Access to Digital Assets Act**

- Adopts the Revised Uniform Access to Digital Assets Act, which:
  - Authorizes specified fiduciaries (an agent under a power of attorney, an executor or administrator of an estate, a guardian, or a trustee) of another person to access a digital asset in which the other person has or had a right or interest;
  - Describes the scope of authority of fiduciaries and designated recipients in relation to digital assets;
  - Specifies the manner in which a fiduciary may access digital assets and a custodian may disclose those assets;



--Authorizes a fiduciary to request a custodian to terminate a user's account and a guardian to request the termination or suspension of a ward's account for good cause;

--Creates an order of priority if the user has provided contradictory directions with respect to the disclosure of the user's digital assets.

--Permits a user to direct the custodian of the user's digital assets to disclose or not to disclose some or all of those assets to a designated recipient by means of an online tool.

## Am. Sub. S.B. 139

**Sens.** Seitz and Williams, Tavares, Brown, LaRose, Eklund, Burke, Coley, Lehner, Manning, Schiavoni, Thomas

**Reps.** Antonio, Arndt, Boyd, Buchy, Dever, Fedor, Manning, Perales, Rezabek, Rogers, Sheehy, Sweeney

**Effective date:** April 6, 2017

- Requires the clerk of a common pleas court to retain a copy of the original trial file when a death penalty is imposed.
- Specifies that there is no page limit on petitions for postconviction relief (PCR) in death penalty cases or on notices of appeal, responses, or briefs in appeals of denials of such relief.
- Expands the time within which a person who has been sentenced to death and files a petition for PCR may amend the petition, to any time that is not later than 180 days after the petition is filed, with or without leave or prejudice to the proceedings.
- Provides in specified circumstances for depositions, subpoenas, and discovery in PCR proceedings brought by a person who has been sentenced to death.
- Provides for orders protecting from undue oppression, burden, or expense if a person who has been sentenced to death files a petition for PCR and requests discovery or if the prosecuting attorney in the case requests discovery, and the court finds that justice requires the order.
- Requires a judge hearing a PCR proceeding brought by a person who was sentenced to death to state specifically in the findings of fact and conclusions of law why each claim was either denied or granted.

## S.B. 171

**Sens.** Seitz, Eklund, Thomas, Obhof, Bacon, Coley, Burke, Hughes, Lehner, Oelslager, Patton, Schiavoni

**Reps.** Celebrezze, Dever, Anielski, Craig, Cupp, Green, G. Johnson, Rezabek, Rogers

**Effective date:** September 14, 2016

- Enacts the Uniform Interstate Depositions and Discovery Act.
- Requires a party located outside Ohio seeking to depose a person in Ohio to submit a foreign subpoena to a clerk of court in the county in which discovery is sought in order to request issuance of the subpoena.
- Requires the clerk to promptly issue a subpoena for service upon the person to which the foreign subpoena is directed, with certain specified requirements.
- Specifies that the Ohio Rules of Civil Procedure and any statutes relating to service of subpoenas and compliance with subpoenas will apply to subpoenas issued under the act's provisions.
- Specifies that consideration must be given, when applying and construing the act, to the need to promote uniformity of the law with respect to its subject matter among states that enact a substantially similar statute or rule.
- Specifies that the act's provisions apply to requests for discovery in cases pending on the act's effective date.

## Sub. S.B. 232

**Sens.** Bacon, Coley, Burke, Brown, Eklund, Faber, Hackett, Hite, Hughes, Jordan, Peterson, Schiavoni, Seitz, Tavares, Thomas

**Reps.** Dever, Gavarone, Green, Leland, Manning, Pelanda, Rezabek, Rogers, Sweeney

**Effective date:** March 14, 2017

- Terminates a transfer on death designation made to an owner's spouse on certain affidavits and deeds if the owner and the spouse later obtain a divorce, dissolution, or annulment.
- Precludes a descendant of an intestate from inheriting under the law on descent and distribution unless surviving the intestate for at least 120 hours, or unless born within 300 days after the intestate's death and living for at least 120 hours after birth.
- Prevents a person born more than 300 days after a testator's death from inheriting under the testator's will unless the will clearly provides otherwise, and specifies

that if the will clearly provides for such posthumously born child to inherit, the child must be born within one year and 300 days after the testator's death.

- Prevents a settlor's child born by means of assisted reproductive technologies more than 300 days after the settlor's death from being considered the settlor's child unless the terms of the trust clearly provide otherwise.
- Provides that if the terms of a trust provide for a child born by means of assisted reproductive technologies and also provide for a time period in which the child must be born, that time period applies for the child to benefit from the trust, subject to a maximum period of five years from the settlor's death.
- Provides that if the terms of a trust provide for a child born by means of assisted reproductive technologies but do not provide for a time period in which the child must be born, the child must be born within one year and 300 days from the settlor's death in order for the child to benefit from the trust.

## Sub. S.B. 321

**Sens.** Faber, Burke, Eklund, Jordan, LaRose, Peterson, Seitz, Obhof, Skindell, Bacon, Balderson, Beagle, Brown, Coley, Gardner, Hackett, Hite, Hottinger, Hughes, Jones, Lehner, Manning, Oelslager, Patton, Sawyer, Schiavoni, Thomas, Uecker, Yuko, Tavares, Williams

**Reps.** Buchy, Curtin, R. Smith, Amstutz, Anielski, Arndt, Boose, Brown, Dovilla, Duffey, Fedor, Green, Henne, Lepore-Hagan, Manning, M. O'Brien, Patterson, Rogers, Schaffer, Sheehy, Sprague, Strahorn, Sweeney, Thompson

**Effective date:** September 28, 2016

- Creates a procedure within the Court of Claims to hear complaints alleging a denial of access to public records.
- Provides for the assignment of a special master to refer the case to mediation or to proceed with the case and submit a report and recommendation to the Court of Claims.
- Requires a court to award court costs to a person who files a mandamus action to obtain a judgment that orders compliance with the Public Records Law if the public office or person responsible for the records acted in bad faith.
- Permits the awarding of attorney's fees in a mandamus action if the court determines that the public office or person responsible acted in bad faith, and precludes discovery on the issue of bad faith.
- Specifies the circumstances when a court is prohibited from awarding attorney's fees in a mandamus action.

- Establishes that an infrastructure record of a private entity may be exempt from release or disclosure under the Public Records Law.
- Allows a public office that provides public records for free on a website to limit the number of digital format public records it will provide any requester to ten per month, unless the records requested are not provided on the website or the requester certifies that they do not intend to use or forward the requests for commercial purposes.
- Protects private, nonprofit institutions of higher education from any claims, including breach of confidentiality claims, that arise from the institution disclosing information in response to a public records request.