

Courts

H.B. 7

Primary Sponsors: Reps. Grendell and Stewart

Effective date: August 17, 2021

Selection of automobiles by surviving spouse

- Modifies the law by providing that if the surviving spouse selected “more than one automobile,” instead of “one or more automobiles” under prior law, the allowance for support is reduced by the value of the automobile having the lowest value “of the automobiles” so selected.
- Modifies the law by providing that if the surviving spouse selected “more than one automobile,” the probate court, in considering the needs of the spouse and the minor children when allocating a support allowance, must consider the benefit derived from the transfer of the automobile having the lowest value “of the automobiles so selected.”

Guardianship Law changes

- Expands the powers of a guardian to include:
 - Disclaiming the present, contingent, or expectant interests in the ward’s property;
 - Creating, amending, or revoking revocable trusts of property of the ward’s estate that may extend beyond the ward’s minority, disability, or life; and
 - Changing beneficiaries of insurance policies, retirement plans, IRAs, and annuities.
- Expands the factors the court must consider to determine that a guardian’s exercise of a particular power must not impair the financial ability of the ward’s estate to provide for the ward’s maintenance needs, to include the disposition of property by the ward’s revocable trust, and if there is no knowledge of such trust, the ward’s prospective heirs.
- Modifies the law requiring the probate court to cause notice to be given and a hearing to be conducted prior to exercising or directing the exercise of certain powers, such as the power to create, amend, or revoke a revocable trust and to exercise rights to elect options under annuities and insurance policies.
- Expands the types of persons to whom the notice is to be given to include the ward’s heirs at law and next of kin and certain beneficiaries, such as those under the ward’s existing will, revocable trust, or last known will; beneficiaries of insurance policies, retirement plans, IRAs, and annuities owned by the ward; and others.

Nonprofit corporation as guardian of person of an incompetent

- Provides that certain nonprofit corporations may be appointed guardian of the person of an incompetent upon being certified by the probate court.

- Requires the probate court to certify the nonprofit corporation and an individual acting as guardian on its behalf upon meeting the requirements for serving as guardian in the Rules of Superintendence for the Courts of Ohio and the rules of the probate court of the county exercising jurisdiction over the incompetent person.
- Prohibits a nonprofit corporation appointed as guardian of the person of an incompetent from being the incompetent's residential caregiver, health care provider, or employer.

Anatomical gifts

- Eliminates the following as manners to make an anatomical gift: (a) specifying in the donor's will an intent to make a gift, or (b) specifying an intent to make the gift in the donor's "living will" (declaration governing use or continuation, or withholding or withdrawal, of life-sustaining treatment).
- Removes law regarding amendment or revocation of an anatomical gift made in a will.
- Eliminates the provision for indicating in a will a refusal to make a gift of the body or part.
- Removes law dealing with the effects of a conflict between an anatomical gift and a "living will" (declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment).

Ohio Trust Code changes

- Repeals law providing that upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of specified amounts determined under the Internal Revenue Code.

Ohio Legacy Trust Act (OLTA) changes

- Modifies the definitions of "disposition" and "qualified trustee" in the OLTA.
- Expands the definition of "qualified trustee" to include a "family trust company" (FTC) as defined in the Ohio Family Trust Company Act and which may or may not be licensed under that Act, if all of specified requirements apply regarding the FTC's licensing status.
- Specifies that the records required to be maintained by a qualified trustee for the legacy trust be electronic or physical records.
- Expands a transferor's powers to include a power allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust.
- Changes the reference to a court taking an action in the procedure for the determination or selection of a successor or replacement trustee of a legacy trust, to a reference to a court "entering or issuing an order."

- Specifies that when determining whether a provision of law is similar to any provision of the Ohio Uniform Fraudulent Transfer Act if there is a conflict between that Act and the OLTA, a court must be liberal in finding that such similarity exists.
- Adds new provisions that apply if any disposition is made by a trustee of a first legacy trust to a trustee of a second legacy trust, including:
 - A provision that generally the disposition is considered a qualified disposition for the benefit of all the beneficiaries of both the first and second legacy trusts;
 - The specification of dates to apply when an item of property is to be treated as having been transferred to a trustee of the second legacy trust;
 - A provision that specifies that a qualified trustee of the first legacy trust may serve as the qualified trustee of the second legacy trust.
- States that the OLTA and its provisions reflect and embody the strong public policy of Ohio.

Cemetery endowment care trusts

- Establishes two different distribution methods for cemetery endowment care trusts in order to pay for cemetery expenses.
- Expands the list of allowable trust expenses to which a trust distribution can be directed to include investment expenses.
- Requires cemetery operators to report unitrust distribution percentages to the Department of Commerce's Division of Real Estate.
- Requires that the distribution method and, if a unitrust disbursement, the disbursement percentage selected, remain in effect unless the cemetery notifies the trustees and the Division.
- Establishes requirements and restrictions that the trustee must follow regarding distribution and disbursement from a cemetery endowment care trust.

Referrals of civil actions to retired judge

- Modifies the law pertaining to referrals for adjudication of civil actions to retired judges by providing that the parties' written referral agreement must also include a procedure for terminating the agreement, and authorizing, instead of requiring, the judge before whom the action is pending to order the referral.

Probate judge's account of fees

- Modifies the due date for the probate judge to file with the county auditor an itemized account of fees received or charged by the judge in each case, examination, or proceeding.

Involuntary mental health treatment

- Specifies that the diagnosis and prognosis of a respondent subject to involuntary mental health treatment, made by a clinical nurse specialist or advanced practice registered nurse with certain psychiatric training, may be considered when determining the most appropriate treatment placement for the respondent.

Conformity of a legal name

- Permits a person desiring to conform the person's legal name on an official identity document to file an application in the probate court of the county where the person resides.
- Requires a name conformity application to set forth (1) that the applicant has been a resident of the county for at least 60 days, (2) an explanation of the misspelling, inconsistency, or other error in the name, and (3) a description of the correction.
- Requires a name conformity application to be supported by an affidavit verifying information on the applicant's residency, purpose, debtor status, the truth, accuracy, and completeness of submitted documentary evidence, and any other information the court may require.
- Permits the probate court to issue an order to conform the applicant's name on proof that (1) the facts set forth in the application show that a misspelling, inconsistency, or other error exists and (2) reasonable and proper cause exists for issuing an order that resolves the discrepancy and conforms the applicant's name.
- Permits an application to conform a legal name to be made on behalf of a minor by the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem.
- Applies the notice/consent requirements for minor name changes, as modified under the act, to the name conformity requirements for minors.
- Prohibits an action to conform the legal name of a person or on behalf of a minor in lieu of either (1) correction of a birth record or (2) changing a legal name to a name that is not used in any existing official identity documents.

Change of legal name

- Specifies requirements for a change of name application and for the applicant's affidavit to support the application.
- Requires name change application to set forth (1) that the applicant has been a resident of the county for at least 60 days (rather than one year as in prior law), (2) the reason for the name change, and (3) the requested new name.
- Requires a name change application to be supported by an affidavit verifying information on the applicant's residency, purpose, debtor status, the truth, accuracy, and completeness of submitted documentary evidence, and any other information the court may require.

- Requires the affidavit to also verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to register as a sex offender for having committed a sexually oriented offense or a child-victim oriented offense.
- Permits the court to order the applicant's change of name upon proof (1) that the facts set forth in the application show that reasonable and proper cause exists for changing the applicant's name and (2) if applicable, that proper notice was served.
- Permits an application to change a legal name to be made on behalf of a minor by the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem.
- Modifies the consent/notice requirements for the name change of a minor with the result that the minor name change requirements are the same as the minor name conformity requirements.
- Recodifies the law governing the change of legal name process.

General name change/conformity provisions

- Permits the court to hold a hearing on a name change or conformity application and, if a hearing is ordered, requires the court to set the manner, scope, and content of the hearing (former law required, for a name change application, a hearing and service of a hearing notice in a local newspaper 30 days prior to the hearing).
- Permits the court to grant an exception to a hearing notice with satisfactory proof that publication of the service of hearing notice or open records of the name change or conformity would jeopardize the applicant's personal safety.
- Permits the court, by local rule or order, to require a name conformity or name change applicant to submit a copy of the applicant's official identity documents or other documentary evidence the court deems relevant.
- Permits the court, on receipt of an application to conform or change a legal name, to require the applicant to submit to a criminal records check at the applicant's expense.

S.B. 2

Primary Sponsor: Sen. Gavarone

Effective date: August 3, 2021

Procedure for court-ordered competency examinations

- Prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at certain facilities operated or certified by the state, unless the defendant is charged with a felony or offense of violence, immediate hospitalization is deemed necessary, or the order is based on a request from the examiner according to law.
- Allows evaluation of the defendant's mental condition at the time of the offense to be conducted through electronic means.

- Requires the examiner's written report to be filed with the court under seal and allows inspection of the report by the defendant, the defendant's guardian, probate courts, ADAMHS boards, and mental health professionals involved in the defendant's treatment.
- Allows others to inspect the report under certain circumstances and prescribes a mechanism for determining whether disclosure should be allowed.
- Provides that intellectual disability reports must be filed under seal in the same manner as competency evaluations.
- Requires the examiner to consider housing needs and availability of mental health treatment in the community when giving a recommendation as to the least restrictive placement or commitment alternative for the defendant due to the defendant's condition.

Finding of incompetence to stand trial

- Modifies and expands the provisions governing a court's issuance of a treatment order for a defendant found incompetent to stand trial (IST).
- Requires the court, when determining the place of commitment for a defendant found IST, to consider the availability of housing and supportive services, including outpatient mental health services.
- Requires a criminal court to send to the probate court copies of all previously prepared written reports regarding a defendant's mental condition for a defendant who cannot be restored to competency and for whom an Affidavit of Mental Illness has been filed.

Misdemeanor defendants undergoing competency restoration

- Enacts a procedure that a hospital chief clinical officer must follow before discharging a mental health patient found IST for one or more specified misdemeanor offenses and who consequently becomes the subject of an Affidavit of Mental Illness initiated by a criminal court or prosecutor.
- Prohibits a described patient from being discharged from hospitalization before the hospital's chief clinical officer has notified the trial court or prosecutor of the intent to discharge.
- Requires that the Affidavit of Mental Illness, used to initiate involuntary mental health treatment using the process of judicial hospitalization, include a space for the affiant to indicate that the person for whom involuntary mental health treatment is sought is a described patient.

Psychology Interjurisdictional Compact (PSYPACT)

- Enters Ohio in the multi-jurisdictional psychology compact, known as PSYPACT.
- Regulates the practice of telepsychology and temporary in-person psychology across state boundaries for participating states.

- Establishes the Psychology Interjurisdictional Compact Commission.
- Creates the Coordinated Licensure Information System.
- Outlines the procedure for implementing and withdrawing from PSYPACT.

Substance abuse civil commitment

- Eliminates a provision that authorized a court to order the hospitalization on an immediate, emergency basis of a respondent found to present an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol or other drug abuse.

S.B. 13

Primary Sponsor: Sen. Lang

Effective date: June 16, 2021

Statute of limitations of actions on a contract

- Shortens from eight to six years the period of limitations of actions on a contract in writing, and expands the exceptions to that period of limitations.
- Shortens from six to four years the period of limitations of actions on a contract not in writing.

Actions arising out of consumer transaction

- Generally requires an action arising out of a consumer transaction primarily incurred for personal, family, or household purposes, based upon an express or implied agreement, be commenced within six years after the cause of action accrues, and provides the circumstances when such cause of action accrues.
- Excludes from the applicability of the period of limitations the limitation periods under Ohio's Commercial Paper Law, of an action to recover title to or possession of real property, or violations of the Consumer Sales Practices Act.
- Provides that the limitation period of an action arising out of a consumer transaction is notwithstanding certain other periods of limitation.

Changes to the “borrowing statute”

- Narrows the law regarding the “borrowing statute” by providing that no tort action, instead of civil action, based upon a cause of action that accrued in another state or foreign jurisdiction, may be commenced in Ohio if the limitation period under the other jurisdiction's law or Ohio law has expired.
- Generally prevents an action on a contract in writing that seeks post-default interest at a rate governed by another state's or foreign jurisdiction's law, and in excess of the federal short-term rate, from being commenced in Ohio if the limitation period under the other jurisdiction's law or Ohio law has expired.

- Prevents an action arising out of a consumer transaction as described above, that seeks post charge-off interest at a rate governed by another jurisdiction's law and in excess of the federal short-term rate, from being commenced in Ohio if the limitation period under the other jurisdiction's law or Ohio law has expired.

Application

- Generally provides that the limitation periods that apply in actions described above apply to actions in which the cause of action accrues on or after June 16, 2021, the act's effective date.
- Specifies the limitation periods that apply if the cause of action accrues prior to that date.

Statutes of limitation and repose for legal malpractice action

- Provides that a legal malpractice action against an attorney, law firm, or legal professional association must be commenced within one year after the cause of action accrues.
- Generally provides that a legal malpractice action against an attorney, law firm, or legal professional association cannot commence more than four years after the act or omission constituting the alleged basis of the legal malpractice claim occurs.
- Provides that if a legal malpractice action is not commenced within four years after the act or omission occurs, any action upon that claim is barred.
- Allows a person seeking a legal malpractice claim to commence an action on the claim not later than one year after the person discovers the injury resulting from an act or omission if certain requirements are met.