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OHIO LEGISLATIVE SERVICE COMMISSION

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Synopsis of House Committee Amendments

(This synopsis does not address amendments that may have been adopted on the House Floor.)

S.B. 199 of the 134th General Assembly

House Civil Justice

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The following amendments to the Senate passed version were adopted in committee:

Transfer on death of tangible personal property

R.C. 2131.14

Removes the provisions that establish a method for tangible personal property to be designated for transfer of ownership to specified beneficiaries upon the owner's death.

Anti-lapse provisions in the law on trusts

R.C. 5808.19

Expands the definition of "beneficiary" in the portion of the trust law relating to survivorship with respect to future interests and lapsed or failed transfers, to include a beneficiary of a primary gift, as opposed to limiting the definition to the beneficiary of a future interest or a class member if the future interest is in the form of a class gift.

Specifies that, generally, the new definition is to be applied retroactively to the fullest extent permitted under the Ohio Constitution's provision on retroactive laws.

Transfer of title through public auction

R.C. 2106.18

Authorizes the executor or administrator of an estate to transfer the title to a decedent's titled vehicle (ex., a motor vehicle, an all-purpose vehicle, an off-highway motorcycle, etc.) at a public auction to a purchaser without first obtaining the probate court's approval of the transfer.

Applies the same exception to the transfer of title of a watercraft, watercraft trailer, or outboard motor (through a cross-reference found in R.C. 2106.19, not in the amendment).

Expands the existing methods by which an executor or administrator may transfer the title to certain vehicles without probate court approval by specifically allowing such transfers regarding all titled motor vehicles.

Fulton County County Court

Sections 3 and 4 (amending Section 3 of Sub. H.B. 518, As Passed by the 134th General Assembly)

Requires that effective January 1, 2023, the part-time judgeship of the Fulton County County Court originally elected in 1982, be converted to the full-time judgeship of that court until the court is abolished on January 1, 2024, pursuant to enacted Sub. H.B. 518 of the 134th General Assembly, which also creates the Fulton County Municipal Court.

Requires that effective January 1, 2023, notwithstanding the compensation paid to a county court judge, that full-time judge of the Fulton County County Court receive the compensation of a full-time judge of a municipal court.

Qualifications for judges

R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01

Modifies the qualifications for office for judges of municipal courts, county courts, courts of common pleas, courts of appeals, and justices of the Supreme Court, as follows:

- The judge or justice has been admitted to the practice of law in Ohio for at least one year preceding appointment or the commencement of the judge's or justice's term.
- For a total of at least six years preceding appointment or the commencement of the judge's or justice's term, the judge or justice has either served as a judge of a court of record in any jurisdiction in the United States (current law), or done any of the following:
 - Engaged in the practice of law in Ohio;
 - Practiced in a federal court in Ohio, regardless of whether at the time of that practice the person was admitted to the practice of law in Ohio or practiced in the courts of Ohio;
 - Engaged in the authorized practice of law as in-house counsel for a business in Ohio or as an attorney for a government entity in Ohio, regardless of whether at the time of that practice the person was admitted to the practice of law in Ohio or practiced in the courts of Ohio.

Voluntary surrender of child in temporary custody

R.C. 2151.412, 3107.071, 5103.15, and 5103.153

Permits a public children services agency or private child placing agency to accept the voluntary permanent surrender of a child by the child's parents while the child is in the agency's temporary custody.

Abandoned vehicle disposal by conservancy districts

R.C. 4505.101, 4505.104, 4513.60, 4513.601, 4513.61, 4513.62, 4513.63, 4513.64, 4513.65, and 4513.66

Generally, allows conservancy district law enforcement officials to dispose of and, in certain circumstances, take title to motor vehicles abandoned on public or private property within their jurisdiction in the same manner that county, municipal, township, and port authority law enforcement officials are authorized to do so under current law.

Towing of vehicles by the Department of Natural Resources

R.C. 4505.104, 4513.61, 4513.62, 4513.63, 4513.64, 4513.65, 4513.66, and 4513.69

Generally, allows natural resource officers and wildlife officers employed by the Department of Natural Resources to order the towing and storage of the following vehicles within the Department's jurisdiction:

1. An abandoned junk motor vehicle;
2. A motor vehicle that has come into the Department's possession as a result of law enforcement duties;
3. A motor vehicle that has been left on public streets or other public property under the Department's jurisdiction for more than 48 hours; and
4. A vehicle that has been in an accident.

Requires money accrued by the Department from the disposal of an unclaimed motor vehicle or of an abandoned junk motor vehicle to be credited as follows:

1. To the Wildlife Fund if the vehicle was removed from property under the control or jurisdiction of the Division of Wildlife;
2. To the State Park Fund if the vehicle was removed from property under the control or jurisdiction of the Department other than property under the control or jurisdiction of the Division of Wildlife.

Authorizes the Department to provide the required notice to a person who willfully leaves an abandoned junk vehicle on private property and to a person who allows a junk motor vehicle to remain on their property.

Involuntary treatment for “mentally ill persons subject to a court order”

R.C. 5122.01 and 5122.10

Establishes a new category under which an individual may be considered a “mentally ill person subject to a court order” and subject to emergency hospitalization: psychiatric deterioration.

Modifies a requirement for emergency hospitalization (“pink slipping”) that an individual must represent a substantial risk of physical harm to self or others if allowed to

remain at liberty pending an examination by removing the requirement that the substantial risk of harm be a risk of physical harm.

Specifies that a written statement required to be made by an individual transporting a “mentally ill person subject to a court order” is not invalid if the statement identifies a general hospital as the receiving hospital of the person.

Requires an individual making a written statement regarding a person considered a “mentally ill person subject to a court order” under the psychiatric deterioration standard to include additional available relevant information about a person’s mental illness.

Establishes conditions under which a general hospital that receives a “mentally ill person subject to a court order” is not required to transfer the person.

Adds a State Highway Patrol trooper to the list of individuals who believe that a person is a “mentally ill person subject to a court order” and represents a substantial risk of harm to self or others and are authorized to transport the person to a hospital.

Medicaid prior authorization requirements for prescription drugs

R.C. 5167.12

Includes drugs that are prescribed for the treatment of schizophrenia, schizotypal disorder, or delusional disorder in the list of drugs for which a Medicaid managed care organization is prohibited from imposing a prior authorization requirement.

Prior authorization for MAT and withdrawal management

R.C. 5167.12

Prohibits Medicaid managed care organizations from imposing prior authorization requirements for a drug used in medication-assisted treatment or in withdrawal management or detoxification if the drug is prescribed (1) by a prescriber who has a waiver under federal law to dispense narcotic drugs for maintenance treatment or detoxification treatment and (2) for a use indicated on its label, as approved by the federal Food and Drug Administration.

Limitations period for childhood sexual abuse

R.C. 2305.111

Enacts the Scout’s Honor Law to eliminate the limitations period for a civil action based on a claim of childhood sexual abuse only for purposes of filing claims against a bankruptcy estate.

Persons prohibited from benefiting by the death of another

R.C. 2105.19

Provides that if a probate court finds by clear and convincing evidence that an individual committed an act that would be any of a set of specified murder or homicide offenses and the victim of the act was the individual’s spouse, the court, at its discretion and in the interests of justice, may choose to apply the rule of law that the property of the decedent, or other

property or benefits payable in respect of the decedent's death, pass or are to be paid as if the person who caused the death of the decedent had predeceased the decedent.

Residential PACE lien priority

R.C. 5301.93 and 5721.10

Specifies that the priority for a residential PACE lien is:

- Always subordinate to a first mortgage, regardless of when that mortgage is recorded with the county recorder;
- Subordinate to all other liens recorded prior to the recordation of the residential PACE lien;
- Superior to all other liens recorded after the recordation of the residential PACE lien.

A residential PACE lien is a lien for a residential PACE (property assessed clean energy) loan, which is a loan to pay for the installation of cost effective energy improvements on a homeowner's qualifying residential real property and is repayable by the homeowner through a special assessment.

Removing items of value from a body before or after cremation

R.C. 4717.26

Corrects a drafting error relating to a prohibition against removing items of value from a body prior to or after cremation without proper authorization.

Guardianship Law

R.C. 2109.21, 2111.01, 2111.011, 2111.02, 2111.021, 2111.022, 2111.023 2111.03, 2111.031, 2111.04, 2111.041, 2111.05, 2111.06, 2111.08, 2111.091, 2111.12, 2111.13, 2111.131, 2111.18, 2111.181, 2111.19, 2111.20, 2111.23, 2111.26, 2111.33, 2111.37, 2111.38, 2111.39, 2111.44, 2111.46, 2111.47, 2111.49, 2111.50, and 2112.01; R.C. 2111.07, 2111.15, 2111.34, 2111.35, 2111.36, and 2111.45, repealed

Makes the following changes in the Guardianship Law:

- Expands the terms defined in the Guardianship Law to include "limited guardian," "standby guardian," "interim guardian," "emergency guardian," and "successor guardian."
- Modifies the definitions of "ward," "incompetent," "parent," and "financial harm."
- Expands the contents of an application for guardianship of a minor to include:
 - An affidavit with information on the child's address, places where the child lived in the past five years, and the name and address of each person with whom the child lived in those years;
 - Name and contact information of any person nominated in writing or a durable power of attorney for health care as guardian of the nominator's person, estate, or both.

- Removes from the contents of an application for guardianship of a minor the name and address of the person having custody of the minor.
- Modifies current law by providing that a minor over the age of 12 years, instead of over the age of 14 years, may select a guardian who must be appointed if a suitable person.
- Eliminates current law's provision that when a testamentary guardian is appointed, that guardian's duties, powers, and liabilities in all other respects must be governed by the law regulating guardians not appointed by the will.
- Specifies that the married parents are the joint natural guardians of their minor children, and eliminates provisions specifying parental rights and responsibilities with respect to their children.
- Expands the contents of an application for guardianship of an incompetent to include:
 - The proposed ward's military service, if applicable;
 - The name and contact information of any person nominated in a durable power of attorney for health care or in writing as guardian of the person, estate, or both, of the person;
 - A statement of expert evaluation under Superintendence Rule 66 by any of the specified professionals, or other qualified person as determined by the court, who has examined the proposed ward within three months prior to the date of that statement as to the need for establishing the guardianship.
- Modifies current law by providing that generally, the guardian of an incompetent must be the guardian of the minor children of the ward, upon the filing of a separate application under a new case number unless the court appoints some other person as their guardian.
- Requires the clerk of the probate court to furnish the guardianship guide specifically to a guardian of an incompetent.
- Expands current law by providing that a guardian's report must include a statement by any other specified professionals, in addition to those in current law, or other qualified person who has evaluated the ward within three months prior to the date of the report as to the need for continuing the guardianship.
- Specifies the times when the probate court, upon written request by the ward, the ward's attorney, or any interested party, must conduct a hearing to evaluate the continued necessity of the guardianship of an incompetent.
- Requires that if the ward alleges competence, the burden of proving incompetence must be upon the guardian by clear and convincing evidence.
- Provides that the statement of expert evaluation filed with the application or the most recent statement of evaluation filed with the guardian's report, or both statements, may satisfy that burden of proving incompetence unless contradicted by medical evidence or a statement of any of the specified professionals, submitted by the ward.

- Eliminates the requirement that a competent adult must be physically infirm in order to petition the probate court to place the petitioner’s person, any or all of the petitioner’s property, or both, under a conservatorship.
- Retains current provisions regarding the persons who must receive notice of the hearing except that in the appointment of the guardian of a minor, notice must be served by personal service upon the minor, if over the age of 12, instead of over the age of 14 under current law.
- Provides that for good cause shown, the requirement of notice to certain persons under continuing law may be waived except for the notice to the proposed ward.
- Provides that an interim guardian’s appointment may be extended for up to two subsequent 30-day periods, instead of an additional 30 days under current law, after the initial extension of 15 days.
- Requires the court to provide notice of a vacancy of the guardianship to the ward and nearest next of kin.
- Authorizes the appointment of a successor guardian upon application by an interested party after notice to the ward, or by the court if found necessary to determine the suitability of applicants or it would otherwise be in the ward’s best interest.
- Authorizes the court to appoint a successor guardian sua sponte and without a hearing or notice to the ward if the interested party has not so applied within a certain period, and requires the court to give notice to the ward after the appointment.
- Specifies that a guardian of the person of a ward must oversee the physical placement, maintenance, and care of the ward.
- Requires the guardian of the person of a minor to have “legal custody” of the minor.
- Defines “legal custody” as a legal status that vests in the custodian the right to have the minor’s physical care and control, determine where and with whom the minor will live, protect and discipline the minor, and provide the minor with food, shelter, education, and medical care, all subject to any residual parental rights and responsibilities.
- Repeals current law generally requiring a guardian of the person and estate of a minor to have the custody of the ward and to provide for the education of the ward and the management of the ward’s estate during minority.
- Expands the duties of a guardian of a minor to include the duty to identify both family and nonfamily members with whom the ward desires to communicate and facilitate the contact that the guardian believes is in the best interest of the ward.
- Repeals outright current law providing that when a person is appointed to have custody of the person and to take charge of the estate of a ward, such person must have all the duties required of a guardian of the estate and of a guardian of the person.

- Modifies current law by prohibiting any attorney who represents a guardian from acting with co-responsibility for any guardianship asset for which the guardian is responsible, or from being a cosignatory on any financial account related to the guardianship.
- Provides that upon application by a guardian of the person of the ward, the court may authorize the settlement of the ward's claim for injury to the ward or damage to the ward's property without the appointment of a guardian of the estate of the ward, and authorize the delivery of the moneys as provided in applicable law.
- Outright repeals the current provision that the marriage of a ward must terminate the guardianship as to the person, but not as to the estate, of the ward.
- Specifies that an appointed successor guardian may complete any authorized contract relating to the ward's real property entered into by a guardian who has died or been removed.
- Modifies current law by providing that the guardian of the person and estate, or of the estate only, may sell all or any part of the ward's personal property if the sale is for the best interest of the ward, with prior court approval.
- Requires a guardian to file in the probate court a motion, instead of a petition under current law, to use the ward's moneys and personal property to improve the ward's real property.
- Eliminates the following from the contents of the motion (replacing petition under current law) as described in the preceding dot point:
 - A prayer that the guardian be authorized to use so much of the ward's money and personal property that is necessary to make the improvement;
 - The character of the ward's disability, and if it is incompetency, whether the disability is curable or not, temporary, or confirmed, and its duration;
 - The names, ages, and residences of the ward's family, including the spouse and residents of the county who have the next estate of inheritance from the ward, all of whom, as well as the ward, must be made defendants and notified of the pendency and prayer of the petition in the manner that the court directs.
- Outright repeals the following provisions in current law dealing with the improvement of the ward's property:
 - The probate court must appoint three disinterested freeholders of the county as commissioners to examine the premises to be improved and its surroundings, and to report to the court their opinion whether the improvement proposed will be advantageous to the estate of the ward.
 - If the prayer is granted, the probate court must fix the amount of money and personal property that may be used in making the improvement, and may authorize the guardian to unite with adjacent property owners, for the improvement and management of the ward's premises.

- A guardian must report to the probate court the amount of money and personal property expended in making an improvement to the ward's real property within 40 days after its completion.
- If the ward dies before the removal of the disability and there are heirs who inherit real property only from the ward, the money expended must descend and pass in the same manner as the ward's other personal property and must be a charge on the premises improved in favor of the heirs.
- Upon a court order to terminate the guardianship of a ward whose estate does not exceed \$25,000 in value, eliminates the court's authority to authorize delivery of the assets to the minor's natural guardian, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor's own self.
- Requires a receipt verifying the deposit of guardianship assets in an authorized depository be submitted to the court and that release of any funds held in a depository for the benefit of the minor be by court order.
- Provides that in the alternative to the preceding dot point and for good cause shown, the court may direct the guardian to deliver the assets to a suitable person, and such person must hold the assets and dispose of them in the manner the court directs.
- Upon a court order to terminate the guardianship of an incompetent, requires a receipt verifying the deposit of guardianship assets in an authorized depository be submitted to the court and that release of any funds held in a depository for the benefit of the incompetent be by court order.
- Modifies current law by providing that if the estate of a person 18 years old or older who has been adjudged incompetent, does not exceed \$25,000, the court, without the appointment of a guardian or, if a guardian is appointed without the giving of bond, may authorize the deposit of estate assets in an authorized depository.
- In the event of the preceding dot point, requires a receipt verifying the deposit of assets be submitted to the court and that release of any funds held in a depository for the benefit of the incompetent be by court order.
- Eliminates the application of current law authorizing the probate court of the county in which a person confined in a state, charitable, or correctional institution has property to appoint a resident guardian to manage the property, and retains the application of the law to the appointment of a resident guardian for a nonresident minor or incompetent.
- Generally requires a resident guardian of a nonresident minor to hold the appointment until the minor dies or arrives at the age of majority, whether or not the minor was over 14 years old at the time of appointment prior to the bill's effective date or whether or not the minor is over 12 years old at the time of appointment on or after that date.
- Changes terminology from nonresident wards to nonresident minors or incompetents.
- Modifies current law by providing that the probate court may enter an order that authorizes a person under a duty to pay money or personal property to a minor who

does not have a guardian, to perform that duty in amounts not exceeding \$25,000, instead of not exceeding \$5,000 annually.

- Expands the persons or entities to which the money or property under the preceding dot point is to be delivered to include a trust for the benefit of the minor.
- If the money under the second preceding dot point is to be paid to a financial institution, requires that a receipt verifying the deposit be submitted to the court and that release of funds held in a depository for the benefit of the minor be upon court order, including release of funds to the minor upon attaining the age of majority.
- Modifies current law by providing that a probate court may issue an emergency ex parte order freezing the financial assets of an individual whom the court or applicant has reason to believe is missing or has gone or been taken away if immediate action is required to prevent significant financial harm to the individual.
- Authorizes the probate court, on its own motion, or an interested party to apply for the appointment of a representative of an alleged incompetent for certain purposes, primarily in applications for public assistance and executing documents necessary for such applications.
- Requires the court to conduct a hearing, except when a proceeding for the guardianship of the alleged incompetent is pending, in which case the court need only address the continued need for a representative at the proceeding.
- Requires a representative, if appointed, to make certain attestations under oath regarding the alleged incompetent's applications for public assistance or accessing the means of self-support.