



ENACTMENT NEWS

Senate Bill 202

Disability Rights, Judicial Candidate Qualifications, Probate Omnibus & Task Force on Bail

Effective April 2, 2023

On January 2, 2023, Governor DeWine signed Senate Bill 202 (Sen. Antonio & Sen. Hackett) into law. The bill prohibits a person's disability from being the basis to deny or limit custody, parenting time, visitation, adoption, or service as a guardian or foster caregiver. Prior to enactment, the bill received several amendments including changes to judicial candidate qualification, provisions from S.B. 199, the "Probate Omnibus Bill" and an uncodified section creating the Task Force on Bail.

Civil Actions in Response to Governor's State of Emergency

The bill modifies R.C. 107.43 to clarify that civil actions in response to a Governor's State of Emergency must be brought in the court of claims if the action is for damages or for damages and declaratory judgment, injunctive relief, or other appropriate relief. If the action is only for declaratory judgment, injunctive relief, or other appropriate relief, the action may be brought in the appropriate court in the county where the person's residence or business is located or in the court of claims.

Judicial Candidate Qualifications

The bill modifies the qualifications for judicial candidates by reducing the previously mandatory six-years of practice of law in Ohio down to one-year of mandatory practice in this state. The new provision also requires at least six-years of any of the following: (1) practice of law in Ohio, (2) practice in federal court in Ohio, regardless of whether the person was admitted to the practice of law in this state or (3) engaging in the authorized practice of law as in-house counsel for a business in this state or as an attorney for a government entity in this state, regardless of whether the person was admitted to the practice of law in Ohio. These changes apply to municipal court judges (R.C. 1901.06), county court judges (R.C. 1907.13), common pleas judges (R.C. 2301.01), appellate judges (R.C. 2501.02) and Supreme Court justices (R.C. 2503.01).

Disability Rights

The bill enacts R.C. 2131.03 through R.C. 2131.036 to prohibit a person's disability from being the basis to deny or limit custody, parenting time, visitation, adoption or service as a guardian or foster caregiver.

The bill defines "disability" and "supportive services" (R.C. 2131.03). The bill states that no court, children services agency or private agency "shall deny or limit a person from any of the following solely on the basis that the person has a disability: (1) Exercising custody, parenting time, or visitation rights with a minor, (2) Adopting a minor, (3) Serving as a foster caregiver for a minor or (4) Appointment as a guardian for a minor" (R.C. 2131.031(A)). The bill clarifies that this prohibition shall not be construed as a guarantee or granting of a right to conduct the activities described above (R.C. 2131.031(B)).

When determining whether to grant a person the right to conduct the activities above, the court must determine whether modifications or support services are necessary and reasonable, and the court must provide findings of fact and conclusions of law (R.C. 2131.032). If modifications or support services are determined to be necessary, the court may require the modifications or services to be implemented to help the disabled person. The court must review the continuing necessity of the services after a "reasonable amount of time" (R.C. 2131.033).

If modifications and services are not determined reasonable, the court or agency shall deny or limit the conduct or exercise of authority of the person with a disability (R.C. 2131.034). A person with a disability may bring an action or file a motion to challenge required modifications or services or limitations or denials of conduct or exercises of authority (R.C. 2131.035). If an action or motion is filed, the court may affirm the modifications or services or affirm the limitation or denial and make specific written findings of fact and conclusions of law or rescind the modifications or services or limitation or denial (R.C. 2131.036).

Disinterment

The bill revises the law on disinterment to clarify that priority to disinter a body buried in a cemetery belongs to a person designated by the decedent under the Ohio Right of Disposition Law, and if there is no designation, then the surviving spouse has priority (R.C. 517.23). The bill also revises the application process for disinterment (R.C. 517.24).

Anti-Lapse

The bill amends the definition of "devise" to include a "primary devise" and states this amendment must be given retroactive effect to the fullest extent permitted under the Ohio Constitution. However, the amendment states that it should not be given retroactive effect in instances where doing so would invalidate or supersede any instrument that conveys real property or any interest in the real property that has been recorded (R.C. 2107.52).

Right of Disposition

The bill expands the list of factors a probate court must consider when assigning the right of disposition and requires the court, prior to granting an application for disinterment, to make a finding of “compelling reasons” based upon the expanded factors (R.C. 2108.82).

Minor Beneficiary Nondisclosure

The bill modifies R.C. 2111.18 to state that if a beneficiary is a minor, records of the proceedings are not subject to disclosure to any person who is not a party to the settlement, or made available for publication or inspection, except upon a motion and show of good cause.

Presentment of Claims Against an Estate

The bill revises the options a creditor has to present a claim against an estate after the appointment of an executor or administrator and prior to the filing of a final account or certificate of termination to include presenting the claim to the executor’s or administrator’s counsel and to the probate court (R.C. 2117.06).

Irrevocable Trusts

The bill enacts new R.C. 5801.20 to 5801.24 to create an optional process by which the trustees of an irrevocable trust may conclude the trustee’s administration of the trust. This optional process does not apply to testamentary trusts subject to supervision of a probate court. The optional process is applicable in two scenarios: (1) when the trust is to terminate as a result of one or more “trust-terminating distributions” or (2) when the trustee is resigning, or has been removed, and will be delivering the trust assets to a successor trustee. The process may be used in combination with or in lieu of other options or proceedings available under the law. A “trust-terminating distribution” means a distribution that, when completed, will distribute the remaining net assets of a trust and thereby effectively terminate the trust.

Task Force on Bail

An uncodified section of the bill creates the “Task Force on Bail” consisting of six members, three from each legislative chamber. The Task Force shall collect and evaluate data on bail from county sheriffs, hold hearings and prepare and submit a report to the General Assembly.

Fulton County Municipal Court

In another uncodified section, the bill fixes an erroneous section of H.B. 518 regarding the judicial compensation for the Fulton County Municipal Court effective January 1, 2024.