



ENACTMENT NEWS

House Bill 595

Probate Omnibus; DR - Juvenile Jurisdiction Transfer; Uniform Determination of Indigence in Civil Filings

Effective March 22, 2019

On December 21, 2018, the Governor signed House Bill 595, the “Probate Omnibus Bill.” Primarily a probate bill, HB 595 was amended prior to enactment to include a procedure for transferring certain cases between the domestic relations and juvenile court and a procedure for the uniform determination of indigence in civil filings. The bill is effective on March 22, 2019.

Consistency of Coroners’ Obligations

The bill updates coroners’ obligations to relatives of a deceased person under RC 313.14 to make them consistent with the statutes regarding rights of disposition under RC 2108.70 to 2108.90 by requiring the coroner to make “reasonable efforts” to determine and notify the person who has been assigned the rights of disposition and, upon request, transfer personal effects, including firearms, to that person.

Uniform Determination of Indigence in Civil Filings

Prior to enactment, the bill was amended to include changes to RC 1901.26, 1907.24, 2323.30, 2323.31, 2323.311, 2323.33, 2701.09, and 2746.10 to make the process of determination of indigence in civil filings uniform across the State.

Changes made to RC 1901.26 and 2323.30 make it possible for someone to submit a civil filing without paying an advance court cost (e.g. in order to meet a statute of limitations), and prove indigence at a hearing sometime after filing. Unchanged by HB 595, but reiterated in the new statute, a court can at any time have a hearing to determine indigence, especially if the court has reason to believe the status of indigence has changed.

R.C. 2323.311 lists factors the court may consider in making a determination of indigence. RC 2323.311(B)(4) references the Ohio Public Defender standards in Ohio Administrative Code 120-1-03:

- Income, specifically whether annual income is at or below 125% of the Federal Poverty Guidelines.
- Receipt of needs-based, means-tested public assistance, such as TANF, SSI, or SSDI.
- Financial resources, assets, financial obligations, and dependents.

- Where the person resides; for example, whether the person is homeless or institutionalized.
- Basic living expenses, such as food, rent/mortgage, utilities, medical expenses, transportation, and child support.
- Offender’s efforts to acquire additional resources, including any limitations to secure paid work due to disability, homelessness, institutionalization, lack of transportation, or driving privileges.

“Slayer Statute” Addition

HB 595 amends RC 2105.19, the so-called “Slayer Statute” that prohibits specified persons from financially benefiting from homicides they caused. The statute was expanded to include involuntary manslaughter pursuant to RC 2903.04(A) that was *not* a proximate result of committing felony aggravated vehicular homicide pursuant to RC 2903.06.

Incorporation of a Trust into a Will

The bill amends RC 2107.05, the “Incorporation by Reference Statute” to clarify the procedure for incorporation of a written trust into a testator’s will. New RC 2107.05(B) states that if incorporation of a trust instrument into a will is conditioned on the determination that a bequest or devise to the trustee is otherwise ineffective, the trust instrument must be deposited in the probate court no later than 30 days after final determination of ineffectiveness. The bill requires clear intent if a testator intends to incorporate a trust instrument into a will; intent is manifested through use of the term “incorporate,” “made a part of,” or similar language (RC 2107.05(C)). New division RC 2107.05(D) requires division (B) and (C) of that statute to apply to the wills of testators who die on or after the effective date, March 22, 2019.

Requirement of Testator Physical Presence at Execution of a Will

The bill modifies the statute on admission of a will to probate to require a testator to be physically present when a will was executed (RC 2107.18 & RC 2107.22).

Deceased Devisee/Anti-lapse Protection

RC 2107.52 provides that when a will makes a gift to a class and a member of the class predeceases the testator, a substitute gift will be made to the descendants of the deceased class member. The bill clarifies that the exception to this “anti-lapse” protection for class gifts in wills and trusts only applies to gifts to multi-generational classes (RC 2107.52(B)(2)(b) & RC 5808.19(B)(2)(b)(ii)).

Fiduciary Funds IOLTA Accounts

The bill modifies the recently enacted IOLTA language from HB 223 of the 132nd General Assembly, effective March 23, 2018. Fiduciaries may still transfer funds to their attorneys for deposit in an IOLTA account, but the deposit no longer requires probate court approval. Funds may now be deposited if they are either nominal in amount (undefined in the bill) or held for a short period of time (also undefined). Prior law required both conditions to be met.

(RC 2109.41 and RC 4705.09). The bill also clarifies that any communication between an attorney and a client acting as fiduciary is privileged (RC 5815.16).

Trust to Age 25 Authority

The bill creates RC 2111.182 to grant judges the authority to create a trust for a minor beneficiary until the beneficiary reaches age 25, when the trust would be in the minor's best interest. This is consistent with the wrongful death statute, RC 2125.03, which grants probate court the discretion to create a trust for a minor beneficiary that extends to age 25. The court will maintain continuing jurisdiction over the settlement until the minor reaches age 25, giving the court discretion to release all or some of the funds before age 25 when appropriate.

Guardianship Service Board Expansion

The bill enacts RC. 2111.52 to grant permissive authority for probate courts to create and raise money for their own guardianship service boards. Previously, only Franklin County had statutory authority to create a guardianship service board. The statute grants courts and their county board of developmental disabilities, county board of addiction and mental health services, and other entities the flexibility to work together to create their own county guardianship service board or join with other counties to create a multi-county board.

Medical Records Release Authority

The bill creates a streamlined procedure for allowing for a person eligible to be appointed as a decedent's personal representative to file an application with the probate court to release the decedent's medical records and medical billing records for the limited purpose of deciding whether or not to file a wrongful death claim. (RC 2113.032).

Domestic Relations – Juvenile Jurisdiction Transfer

Prior to enactment, the bill was amended to include the Domestic Relations – Juvenile Jurisdiction Transfer procedure, which creates new RC 2151.233 through 2151.236, and RC 3109.061, and amends RC 3105.011 and RC 3109.26 to grant Ohio courts with domestic relations jurisdiction authority to hear and determine child support and child custody cases in which the parents are still married but living separately and to enable juvenile courts to certify certain cases to the domestic relations division.

The bill prospectively prohibits juvenile courts from exercising jurisdiction for determining custody or support for a child if the child's parents are 1) married (to each other), 2) the child's parents are no longer married and there is an existing order regarding the child or a sibling of the child for which the juvenile court does not have jurisdiction, or if 3) the order is ancillary to the parents' pending or prior action for divorce, dissolution, annulment or legal separation (RC 2151.233). The authority of the juvenile court to issue an order under RC 2151.23(A)(1) granting custody to a relative or placing a child under a kinship care agreement is not affected (RC 2151.234).

The bill allows for discretionary transfer of jurisdiction on an action or order for support or custody on a child already in effect from a juvenile court to a court with domestic relations jurisdiction if 1) the parents of the child are married to each other and not subject to a pending

divorce, dissolution, legal separation, or annulment, 2) if the parents are no longer married and there is an existing order regarding the child or a sibling of the child for which the juvenile court does not have jurisdiction, 3) if there is a pending divorce, dissolution, legal separation, or annulment and the parents of the child are parties, or 4) the parents of the child are subject to both a child support order and a domestic violence protection order under RC 3113.31. (RC 2151.235(A)).

The bill mandates transfer of jurisdiction on an action or order for support or custody on a child already in effect from a juvenile court to a court with domestic relations jurisdiction if 1) the court with domestic relations jurisdiction, juvenile court, or an interested party makes a motion to transfer jurisdiction, and 2) the domestic relations court receiving jurisdiction consents to the transfer. In any case where a transfer occurs, the juvenile court must certify all or part of the record to the court receiving jurisdiction. (RC 2151.235(B)).

Under the bill, if a child is subject to a support order in domestic relations court and a juvenile court then adjudicates the child to be delinquent, unruly, abused, neglected or dependent and grants custody to an individual or entity other than the as set forth in the domestic relations court order, the juvenile court must notify the domestic relations court and the child support enforcement agency serving the domestic relations court. The agency shall then review the support order. (RC 2151.236).

The bill defines “domestic relations matters” as both matters committed to domestic relations courts under RC 2301.03 and actions and proceedings under Revised Code Chapters 3105, 3109, 3111, 3113, 3115, 3119, 3121, 3123, 3125 and 3127 (RC 3105.011).

The bill eliminates the juvenile court consent requirement for the certification to juvenile court statute (RC 3109.06). The bill also clarifies that nothing in new sections RC 2151.233 to 2151.236 and RC 2301.03 prevents a domestic relations court to certify a case to juvenile court pursuant to RC 3109.04(D)(2) or RC 3109.06 (RC 3109.061).

Determination of Validity of a Trust or Will

The bill allows for a declaratory judgment on the validity of a trust during the settlor’s lifetime pursuant to new Revised Code Chapter 5817 (RC 2721.03).

The bill creates a new Revised Code Chapter 5817. New RC 5817.01 lists definitions relating to the determination of validity of a trust or will. New RC 5817.02, 5817.05, 5817.07 and 5817.10(A) provide for a procedure for a judgment determine validity of a will during the testator’s lifetime. New RC 5817.03, 5817.06 and 5817.10(B) provide for a procedure for a judgment determine validity of a trust during the settlor’s lifetime. If a complaint for validity of a will or trust is filed, the probate court must schedule an adversarial hearing and provide notice to all parties pursuant to the Rules of Civil Procedure (RC 5817.08). The bill provides the burdens of proof for testators or settlors and those who oppose the complaints (RC 5717.09). New RC 5817.12 and 5817.13 clarify that a will or trust declared valid may still be later modified under applicable law. New RC 5817.14 provides disclaimers as to what findings of facts are or are not admissible for evidence in other proceedings.

Although the probate court maintains exclusive jurisdiction to render declaratory judgements involving the validity of the trust of a living settlor, the probate court has discretion to transfer

the proceedings to the court of common pleas, general division, if needed for contested jury trials on contested declarations (RC 2101.24(B)(3), RC 5802.03 and RC 5817.04).

The bill eliminates the requirement that a will declared valid by a probate court must not be removed from the possession of the probate judge to remain valid and eliminates references to will “modifications,” retaining only references to “wills” and “codicils” (RC 2107.71).

The bill clarifies that no person may contest the validity of a living trust declared valid by a probate court during the settlor’s lifetime, unless that person should have been named a party defendant and was not named and properly served in the action (RC 5806.04(E) and RC 5817.11).

Trust Dispute Arbitration

The bill clarifies when the terms of a trust may require that the trustee and/or beneficiaries settle disputes by arbitration (RC 5802.05).

Special Needs Trusts Effective Date

The bill codifies the effective date for creation of Ohio special needs trusts to align it with the effective date of the establishing federal law: December 13, 2016 (RC 5163.21(F)(1)(a)(iii)).