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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Cupp and Rogers

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### SUMMARY

#### Selection of automobiles by surviving spouse

- Modifies current law by providing that if the surviving spouse selected “more than one automobile,” instead of *one or more automobiles* under current law, the allowance for support is reduced by the value of the automobile having the lowest value “of the automobiles” so selected.
- Modifies existing 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 the following:
  - 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 current law requiring the probate court to cause notice to be given and a hearing to be conducted prior to its exercise or direction of 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 above 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 or revocable trust or under the last known will; beneficiaries of insurance policies, retirement plans, IRAs, and annuities owned by the ward; and others.

## Ohio Trust Code changes

- Repeals current 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.

## Referrals of civil actions to retired judge

- Modifies current law pertaining to referrals for adjudication of civil actions to retired judges by providing that the written referral agreement of the parties 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.

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## DETAILED ANALYSIS

### Selection of automobiles by surviving spouse

Under current law, not changed by the bill, upon the death of a married resident who owned at least one automobile at the time of death, the interest of the deceased spouse in *one or more automobiles* that are not transferred to the surviving spouse due to joint ownership with right of survivorship, that are not transferred to a transfer-on-death beneficiary or beneficiaries, and that are not otherwise specifically disposed of by testamentary disposition may be selected by the surviving spouse.<sup>1</sup>

Current law entitles a surviving spouse and any minor children to generally receive in money or property the sum of \$40,000 as allowance for support. It provides that if the surviving spouse selected *one or more automobiles* under the preceding paragraph, the allowance for support is reduced by the value of the automobile having the lowest value *if more than one automobile* is so selected.<sup>2</sup> The bill modifies current law by providing that if the surviving spouse selected "more than one automobile," the allowance for support is reduced by the value of the automobile having the lowest value "of the automobiles" so selected.<sup>3</sup> The bill further modifies existing law by providing that if the surviving spouse selected "more than one automobile," instead of *one or more automobiles*, the probate court, in considering the needs of the surviving spouse and the minor children when allocating an allowance for support, must consider the benefit derived by the surviving spouse from the transfer of the automobile having

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<sup>1</sup> R.C. 2106.18(A), not in the bill.

<sup>2</sup> R.C. 2106.13(A).

<sup>3</sup> *Id.* (Quoted clauses replace the italicized clauses in current law.)

the lowest value “of the automobiles so selected,” instead of *if more than one automobile is so selected* under current law.<sup>4</sup>

## Probate court as superior guardian of wards

Continuing law regarding the probate court as the superior guardian of wards provides that generally the probate court may confer upon a guardian any power granted under that law to the probate court in connection with wards. The bill provides that nothing in that law (R.C. 2111.50) is intended to create or imply a duty upon a guardian to apply for authority to exercise any power authorized in the law; and that no inference of impropriety or liability of the guardian or others associated with the guardian arises as a result of a guardian not applying for authority to exercise a power authorized in the law.<sup>5</sup>

### Expansion of guardian’s authority

Under continuing law, the probate court has all the powers that relate to the ward’s person or estate and that the ward could exercise if present and not a minor or under a disability, except the power to make or revoke a will. These powers, also conferred upon a guardian, include the power to do the following as modified by the bill (modifications are italicized):<sup>6</sup>

- Convey, release, *or disclaim* the present, contingent, or expectant interests in the ward’s real or personal property, including dower and any right of survivorship incident to *a transfer on death designation, payable on death designation*, survivorship tenancy, joint tenancy, or tenancy by the entireties;
- Exercise, release, *or disclaim* powers as a trustee, personal representative, custodian for a minor, guardian, or donee of a power of appointment;
- *Subject to the following dot point*, enter into contracts (the bill removes “create revocable trusts of property of the ward’s estate”) that may not extend beyond the ward’s minority, disability, or life;
- *Create, amend, or revoke revocable trusts of property of the ward’s estate that may extend beyond the ward’s minority, disability, or life*;
- Exercise options to purchase securities or other property;
- Exercise rights to elect options under annuities and insurance policies, *including changing beneficiaries of insurance policies, retirement plans, individual retirement accounts (IRAs), and annuities*, and to surrender an annuity or insurance policy for its cash value;

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<sup>4</sup> R.C. 2106.13(C).

<sup>5</sup> R.C. 2111.50(A)(2)(b).

<sup>6</sup> R.C. 2111.50(B).

- Exercise the right to an elective share in the estate of the ward's deceased spouse pursuant to *R.C. Chapter 2106 (rights of surviving spouses)* instead of the specific section (R.C. 2106.08) on such right of election by a surviving spouse under legal disability;
- Make gifts, in trust or otherwise, to the ward's relatives, and to charities and the ward's friends consistent with any prior pattern of the ward giving to charities or providing support for friends.

Continuing law provides that the exercise of a particular power must not impair the financial ability of the ward's estate to provide for the ward's foreseeable maintenance needs. If applicable, the court must consider any of specified factors. Two of these factors under current law are the disposition of property made by the ward's will, and if there is no knowledge of a will, the ward's prospective heirs. The bill expands these two factors to include the disposition of property made by the ward's revocable trust, and if there is no knowledge of a revocable trust, the ward's prospective heirs.<sup>7</sup>

### **Notice and hearing on exercise of certain powers**

The bill expands current law that requires the probate court to cause notice to be given and a hearing to be conducted prior to its exercise or direction of the exercise of the following powers (modifications are italicized):<sup>8</sup>

- The exercise, release, *or disclaimer* of powers as a donee of a power of appointment;
- Unless the amount of the gift is no more than \$1,000, the making of a gift, in trust or otherwise;
- *The power to create, amend, or revoke a revocable trust as described above under "Expansion of guardian's authority";*
- *The power to exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, IRAs, and annuities, and to surrender an annuity or insurance policy for its cash value, as described above under "Expansion of guardian's authority."*

Under continuing law, the notice is required to be given to the following:<sup>9</sup>

- Unless a guardian of a ward has applied for the exercise of a power specified in any of the four dot points above, to the guardian;
- To the ward whom the probate court has found to be an incompetent or a minor subject to guardianship;

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<sup>7</sup> R.C. 2111.50(D)(2)(c) and (d).

<sup>8</sup> R.C. 2111.50(E)(1).

<sup>9</sup> R.C. 2111.50(E)(2)(a), (b), (c), and (e).

- If known, to a guardian who applied for the exercise of a power as described in any of the four dot points above, to the prospective heirs of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship, and to any person who has a legal interest in property that may be divested or limited as the result of the exercise of a power specified in any of those four dot points;
- To any other persons the court orders.

The bill expands the types of persons to whom the above notice is to be given as follows:<sup>10</sup>

- If known, to the beneficiaries under the last known will, or under an existing revocable trust, of the ward;
- To all of the following as applicable:
  - The ward's heirs at law and next of kin;
  - The beneficiaries under the ward's existing will or revocable trust;
  - The beneficiaries of any insurance policies, retirement plans, IRAs, and annuities owned by the ward;
  - The beneficiaries under any proposed revocable trust and the proposed beneficiaries under any changes in the designation of beneficiaries of any insurance policies, retirement plans, IRAs, or annuities owned by the ward.

## **Ohio Trust Code changes**

### **Modification of noncharitable irrevocable trust**

The bill modifies the current provision on the modification of a noncharitable trust by permitting such trust to be modified, but not to remove or replace the *currently serving* (added by the bill) trustee, upon the consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.<sup>11</sup>

### **Rights of settlor's creditors – power of withdrawal**

Under current law, unchanged by the bill, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to that power during the period the power may be exercised.<sup>12</sup>

Current law also provides for the lapse, release, or waiver of the power of withdrawal. The bill repeals that provision, which currently states that upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the trust's settlor only to the extent the value

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<sup>10</sup> R.C. 2111.50(E)(2)(c) and (d).

<sup>11</sup> R.C. 5804.11(B).

<sup>12</sup> R.C. 5805.06(B)(1).

of the property affected by the lapse, release, or waiver exceeds the greatest of the following amounts:<sup>13</sup>

- The amount specified in Internal Revenue Code (IRC) section 2041(b)(2) or 2514(e) (applicability of a lapse of a power of appointment to the extent the subject property exceeded the greater of certain amounts);
- If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in IRC section 2503(b);
- If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in IRC section 2503(b) (exclusion from gifts as taxable gifts).

## **Referrals for adjudication of civil actions to retired judges**

Continuing law permits parties to any civil action or proceeding pending in any court of common pleas, municipal court, or county court unanimously to choose to have the entire action or proceeding referred for adjudication, or to have any specific issue or question of fact or law in the action or proceeding submitted for determination, to a retired judge of their choosing who has registered with the clerk of that court for the purpose of receiving referrals.<sup>14</sup>

If the parties choose to have such a referral or submission made, all of them must enter into a written agreement with the retired judge that must have specified provisions under current law, such as designating the judge to whom the referral or submission is to be made, the judge's compensation, that the parties will have the responsibility for providing necessary facilities, equipment, and personnel, and other provisions.<sup>15</sup> The bill adds to these provisions in the agreement an indication of a procedure for terminating the agreement with the retired judge.<sup>16</sup>

Current law provides that upon the filing of the agreement, the judge before whom the action or proceeding is pending, by journal entry, must order the referral or submission in accordance with the agreement. The bill instead provides that such judge must address the agreement *within 14 days after its filing* and, by journal entry, *may, at the judge's discretion*, order the referral or submission in accordance with the agreement.<sup>17</sup> The bill further provides that upon conclusion of the referred action or proceeding or determination of the submitted issue or question, jurisdiction is returned to the referring judge.<sup>18</sup>

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<sup>13</sup> R.C. 5805.06(B)(2), repealed by the bill.

<sup>14</sup> R.C. 2701.10(B)(1).

<sup>15</sup> R.C. 2701.10(B)(1)(a) to (e).

<sup>16</sup> R.C. 2701.10(B)(1)(f).

<sup>17</sup> R.C. 2701.10(B)(2).

<sup>18</sup> R.C. 2701.10(D)(2).

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## HISTORY

Action	Date
Introduced	01-09-20

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