



Ohio Judicial Conference

The Voice of Ohio Judges

**House Civil Justice Committee
Judge Timothy J. Grendell
Opponent Testimony on House Bill 692
November 17, 2020**

Chair Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, I thank you for this opportunity to submit opponent testimony for House Bill 692 on behalf of the Ohio Judicial Conference.

I am Judge Tim Grendell of the Geauga County Probate/Juvenile Court, which I have served since 2011. Prior to that, I was a State Senator, past Chair of the Senate Judiciary Committee, and State Representative. I am a Past President of the Ohio Association of Juvenile Court Judges, the Second Vice President of the Ohio Association of Probate Judges, and serve as a Board Member of the National College of Probate Judges. I am testifying today to discuss the judges' concerns with proposed Substitute H.B. 692.

The probate judges began reviewing the substitute version of H.B. 692 last week. We acknowledge that the sponsor is trying to address concerns about the as-introduced version of the bill that probate judges have raised, along with the concerns of the Ohio State Bar Association. While the substitute bill makes improvements, we do not believe there is sufficient time to thoroughly analyze this complex bill and alleviate all of the concerns in the remaining time for this General Assembly. Therefore, we are opposed to passing this bill before the end of this year.

Fraud and Undue Influence

Our greatest concern with H.B. 692 is the inherent risk of fraud or undue influence created by a system of online-only creation and witnessing of electronic wills and other documents. In addition to wills, the bill could allow potential abuse of financial powers of attorney or real estate transfer on death designations. Even if an electronic will was properly executed by the testator and two disinterested witnesses, opportunities for fraudulent file modification or revocation will persist until the will is admitted to probate, perhaps decades later.

We recognize that the sponsor and proponents of this bill share this concern. We are not convinced that the bill as currently drafted has sufficient safeguards in place. Electronic estate planning documents are a recent creation. Since 2017, a small handful of states have enacted electronic will statutes. We would like the opportunity to review and compare those states' statutes, along with The Uniform Electronic Wills Act drafted by the Uniform Law Commission. We also want to research whether the early adopting states have

noted any significant concerns during implementation of their electronic will laws, although potential problems with electronic wills may not manifest themselves for years to come.

Concerns with Long-term Storage

The changes in this bill would impact probate practices for decades, but the long-term viability of electronic wills is still unclear. We should not assume that today's technology will be accessible years into the future. In addition to hardware and software changes, documents must be protected from degradation, hacking, and ransomware attacks. If probate court storage of electronic will files is contemplated in this legislation, the courts should not be held liable if future technology changes render older electronic wills inaccessible, nor should probate courts be required to maintain outdated technology specifically for accessing older electronic wills. The burden for long-term storage of an electronic file should be on the testator or their heirs. Printed copies of an electronic will could be stored at the probate court, just like other written wills.

Revocation

The bill's procedure for revocation of an electronic will remains problematic. Proposed R.C. 2107.33(B) would allow the testator to revoke an electronic will by a "physical act," which includes, but is not limited to, deleting or trashing the will file, or typing or writing "revoked" on the electronic will file or a printed copy of the will. Family members and other potential heirs could have access to the computer containing the will files. The testator or someone with access to their computer could accidentally delete or lose the will file. If the electronic will revocation is contested, a costly forensic accounting or technology expert will be required. Even with expert testimony, a court may not be able to determine when exactly a file was altered or deleted and who performed the act. These contested actions would also financially impact the probate courts by increasing court hearings and workloads.

These are just some of the concerns the probate judges have raised for this bill. We believe they highlight the need to move cautiously and avoid rushing any far-reaching legislation of this kind. We thank you for the opportunity to testify and appreciate your openness to our concerns. I am available to answer any questions you may have.