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Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and Members of the Senate Judiciary Committee, thank you for the opportunity to present sponsor testimony on Senate Bill 199. This bill is intended to clarify several issues in existing law that have been identified by Ohio's estate, trust, and probate lawyers.

The first issue involves the Supreme Court of Ohio's statutory interpretation of a provision in *Wilson v. Lawrence*. In this case, the Court narrowly defined a statutory provision requiring a claim against an estate be presented "[t]o the executor or administrator" of the estate. This cast doubts on whether presenting a claim to the executor's or administrator's attorney – as had been common practice – was acceptable under the statute. Subsequent court rulings have held that service on the executor's or administrator's attorney was not acceptable under the statute. To remedy this issue, this language will modify the statute to specifically allow a claim against an estate to be presented to the executor's or administrator's attorney as identified in probate court records.

The second issue results from an inconsistency between the law governing the right to make burial decisions of a deceased person's body and the law governing the disinterment of a deceased person's body. The Ohio right of disposition statutes (R.C. 2108.70 to 2108.90) allows for an individual to provide a written declaration naming persons who have the right of disposition for their body upon death. R.C. §2108.72. A separate area of law that governs the disinterment of a body after burial allows that a surviving spouse may apply for disinterment of a body after burial. This can lead to a scenario where an individual assigns the right to disposition of their body to a person other than their spouse, for example a surviving child after remarrying. Upon their death, the child

exercises their rights under the disposition statute to make burial arrangements for their deceased parent. Immediately after the burial, the surviving spouse can file an application with the court for the disinterment of the deceased's body. The court, applying a different body of law that deals with disinterment, would ignore the deceased's assignment of the right to disposition and grant the disinterment.

As a remedy, this bill would create consistency by revising the existing law so that an individual to whom the decedent had assigned the right of disposition in a written declaration would also have the first right to make decisions on the decedent's disinterment. If an individual has not assigned the right of disposition, the right to make disinterment decisions would remain with the surviving spouse like under current law. This will ensure that the person assigned the right to make burial decisions could not be overruled the day after the burial by the surviving spouse under existing disinterment laws.

The third issue stems from difficulties in the process for resolving claims on the conclusion of a trustee's administration of an Ohio irrevocable inter vivos trust. This proposal would create a new section in the Ohio Trust Code that provides a voluntary process for the orderly closure or change of trust administrator for irrevocable inter vivos trusts. An inter vivos trust, with a living beneficiary, has the potential for friction between the trustee and the beneficiary due to the trustee's controlling decision over trust assets. To guard against the liability created by this potential friction, trustees either have had to seek court approval of their accounts (which adds cost and delay), or have been requiring signed releases and broad indemnification provisions before concluding the administration of a trust. This has led to controversy with some claiming this allows for trustee overreach. As a solution, this bill would provide for a voluntary process that a trustee could elect at the termination of or resignation from an Ohio irrevocable inter vivos trust. The process would allow the trustee to provide written notice of the termination of the trust or their resignation as trustee. The trustee would be prohibited from requiring indemnification, but the notified parties would be barred from bringing legal action if they do not raise any objections within 45 days of receiving the written

notification. This proposal balances the trustee's desire for finality with trust beneficiaries' need for meaningful notice, information, and an opportunity to object.

The fourth issue is caused by confusion around the effective date of certain provisions of R.C. 2131.09, regarding the Ohio rule against perpetuities. R.C. 2131.09 was originally enacted effective March 22, 1999, and was amended effective March 27, 2013. Some of the 2013 amendments were clarifying in nature and were intended to apply retroactively effective March 22, 1999. Other 2013 amendments were substantive changes in the law and were intended to apply prospectively effective March 27, 2013. The 2012 Legislative Service Commission (LSC) mark-up of the proposed 2013 amendments included references to “the effective date of this Section.” At the time legislation is considered, it is impossible to know the legislation’s effective date, thus the non-specific reference. This reference to the effective date however has created confusion with some attorneys incorrectly interpreting the effective date as March 22, 1999, and others correctly interpreting the effective date as March 27, 2013. These substantive changes were intended to apply prospectively after March 27, 2013, as a retroactive application of a law would raise constitutionality concerns. This proposal would remove this confusion by replacing “the effective date of this Section” with “March 27, 2013,” or “March 22, 1999,” as appropriate.

The fifth issue results from the difficulty of bequeathing tangible personal property in a legally enforceable manner without the need for a probate administration. As a solution, this proposal would create a new revised code section 2131.14 that would allow for transfer-on-death (TOD) beneficiary designations for tangible personal property like those currently allowed for real estate, bank accounts, brokerage accounts, motor vehicles, watercraft and outboard motors. This provision would allow an individual to bequeath tangible personal property upon their death in a legally enforceable manner even after their Will has been executed and without going through probate. To be valid, a TOD beneficiary form would need to be a written, dated document signed by the current owner before a Notary Public.

In all, the five proposals that I have discussed are common sense improvements to Ohio's estate, trust, and probate laws. Thank you for your consideration of SB 199. I am happy to answer any questions from the committee.