

As Reported by the House Civil Justice Committee

134th General Assembly

Regular Session

2021-2022

Sub. S. B. No. 202

Senators Hackett, Antonio

Cosponsors: Senators Maharath, Cirino, Craig, Brenner, Romanchuk, Yuko, Manning, Blessing, Gavarone, Hottinger, Johnson, Kunze, Peterson, Rulli, Schaffer, Schuring, Thomas, Wilson Representatives Hillyer, Galonski

A BILL

To amend sections 107.43 and 5301.071 and to enact 1
sections 2131.03, 2131.031, 2131.032, 2131.033, 2
2131.034, 2131.035, and 2131.036 of the Revised 3
Code to prohibit a person's disability from 4
being the basis to deny or limit custody, 5
parenting time, visitation, adoption, or service 6
as a guardian or foster caregiver, regarding a 7
minor, to provide that a civil action to 8
challenge a state administrative order issued in 9
a state of emergency be brought in the Court of 10
Claims or an appropriate local court depending 11
on the nature of the action, and to make changes 12
concerning the validity of real property 13
instruments and fiduciary signature errors. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 107.43 and 5301.071 be amended 15
and sections 2131.03, 2131.031, 2131.032, 2131.033, 2131.034, 16
2131.035, and 2131.036 of the Revised Code be enacted to read as 17

follows:	18
Sec. 107.43. (A) As used in this section:	19
"Administrative department" means a department listed	20
under section 121.02 of the Revised Code.	21
"Administrative department head" means a department head	22
listed under section 121.03 of the Revised Code.	23
"Internal management rule" means any rule, regulation, or	24
standard governing the day-to-day staff procedures and staff	25
operations within an administrative department or state agency,	26
or within the office of an administrative department head or	27
statewide elected officer.	28
"Rule" means, unless the context dictates otherwise, any	29
rule, regulation, or standard adopted, promulgated, and enforced	30
by a statewide elected officer, administrative department,	31
administrative department head, or state agency under the	32
authority of the laws governing such officer, department,	33
department head, or state agency. "Rule" does not include an	34
internal management rule.	35
"State agency" means any organized body, office, agency,	36
commission, board, institution, or other entity established by	37
the laws of the state for the exercise of any function of state	38
government. "State agency" does not include a court.	39
"State of emergency" has the meaning defined in section	40
107.42 of the Revised Code.	41
"Statewide elected officer" means the governor, lieutenant	42
governor, secretary of state, auditor of state, attorney	43
general, and treasurer of state.	44
(B) Beginning the day the governor declares a state of	45

emergency, the governor and the department of health promptly 46
shall report to the president of the senate and the speaker of 47
the house of representatives every action the governor or 48
department takes in response to the state of emergency, 49
including actions by the department or director of health under 50
sections 3701.13 and 3701.14 of the Revised Code. 51

(C) (1) If the governor declares a state of emergency, the 52
general assembly may do any of the following by adopting a 53
concurrent resolution: 54

(a) Rescind, in whole or in part, any order or rule issued 55
or adopted by an administrative department, administrative 56
department head, state agency, or statewide elected officer in 57
response to a state of emergency, including an order to 58
authorize an agency to adopt, amend, or rescind rules under 59
division (G) of section 119.03 of the Revised Code. This 60
division does not apply to an order issued to declare a state of 61
emergency. 62

(b) Invalidate, in whole or in part, an emergency rule 63
adopted or amended by an agency in response to the state of 64
emergency and pursuant to an emergency order the governor issues 65
under division (G) (1) of section 119.03 of the Revised Code; 66

(c) Authorize a rule rescinded by an agency under division 67
(G) (1) of section 119.03 of the Revised Code in response to the 68
state of emergency to be readopted, in whole or in part; 69

(d) Invalidate, in whole or in part, an emergency rule 70
adopted by an agency in response to the state of emergency 71
pursuant to division (B) (2) of section 111.15 of the Revised 72
Code. 73

(2) If the general assembly rescinds an order or rule, or 74

a portion thereof, the administrative department, administrative 75
department head, state agency, or statewide elected officer 76
shall not reissue that order or rule, the rescinded portion, a 77
substantially similar order, rule, or portion, or any 78
restriction contained in the rescinded order or rule or 79
rescinded portion, for a period of sixty calendar days following 80
the adoption of the concurrent resolution by the general 81
assembly, except as provided in division (C)(3) of this section. 82

(3) (a) Within sixty calendar days of the general assembly 83
rescinding an order or rule under division (C)(1) of this 84
section, the governor, on behalf of an administrative 85
department, an administrative department head, or a state 86
agency, may submit a request to the general assembly to 87
authorize an administrative department, an administrative 88
department head, or a state agency to reissue a rescinded order 89
or rule, rescinded portion thereof, a substantially similar 90
order, rule, or portion, or any restriction contained in the 91
rescinded order or rule or rescinded portion issued or adopted 92
by an administrative department, administrative department head, 93
or state agency. Upon review, the general assembly may adopt a 94
concurrent resolution authorizing the request, in whole or in 95
part. 96

(b) Within sixty calendar days of the general assembly 97
rescinding an order or rule under division (C)(1) of this 98
section, a statewide elected officer may submit a request to the 99
general assembly to reissue a rescinded order or rule, rescinded 100
portion thereof, a substantially similar order, rule, or 101
portion, or any restriction contained in the rescinded order or 102
rule or rescinded portion issued or adopted by the statewide 103
elected officer. Upon review, the general assembly may adopt a 104
concurrent resolution authorizing the request, in whole or in 105

part.	106
(D) (1) Notwithstanding any other provision of the Revised Code, a person who challenges an order or rule adopted by an administrative department, administrative department head, state agency, or statewide elected officer that is issued or adopted in response to a state of emergency, in a civil action for damages, declaratory judgment, injunctive relief, or other appropriate relief may do so in <u>whichever of the following courts is applicable regarding the action:</u>	107 108 109 110 111 112 113 114
<u>(a) If the civil action is for damages, the action may be brought only in the court of claims.</u>	115 116
<u>(b) If the civil action is for declaratory judgment, injunctive relief, or other appropriate relief other than damages, the action may be brought in an appropriate court located in the county where the person's residence or business is located or in the court of claims.</u>	117 118 119 120 121
<u>(c) If the civil action is for damages and also is for declaratory judgment, injunctive relief, or other appropriate relief, the action may be brought only in the court of claims.</u>	122 123 124
(2) If a person successfully challenges an order or rule adopted by an administrative department, administrative department head, state agency, or statewide elected officer that is issued or adopted in response to a state of emergency, the administrative department, administrative department head, state agency, or statewide elected officer shall pay the person's reasonable attorney's fees and court costs.	125 126 127 128 129 130 131
(E) An order or rule issued or adopted in violation of this section is invalid and has no legal effect.	132 133
<u>Sec. 2131.03. As used in sections 2131.03 to 2131.036 of</u>	134

<u>the Revised Code:</u>	135
<u>(A) "Disability" has the same meaning as in the "Americans with Disabilities Act of 1990," 42 U.S.C. 12102;</u>	136
<u>(B) "Supportive services" means any service provided through a program or agency at the federal, state, or local level that is intended to assist a person with a disability with day-to-day responsibilities and activities, including those associated with the care and supervision of a minor.</u>	138
<u>Sec. 2131.031. (A) No court, public children services agency, private child placing agency, or private noncustodial agency shall deny or limit a person from any of the following solely on the basis that the person has a disability:</u>	143
<u>(1) Exercising custody, parenting time, or visitation rights with a minor;</u>	147
<u>(2) Adopting a minor;</u>	148
<u>(3) Serving as a foster caregiver for a minor;</u>	149
<u>(4) Appointment as a guardian for a minor.</u>	150
<u>(B) Division (A) of this section shall not be construed to guarantee or grant a person with a disability a right to conduct activities or exercise authority as described in that division.</u>	151
<u>Sec. 2131.032. (A) A court, public children services agency, private child placing agency, or private noncustodial agency, when determining whether to grant a person with a disability the right to conduct activities or exercise authority as described in division (A) of section 2131.031 of the Revised Code, shall determine whether modifications or supportive services designed to assist the person regarding the activities or authority are necessary and reasonable.</u>	152
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(B) A public children services agency, private child placing agency, or private noncustodial agency shall provide its reasons for a determination under division (A) of this section. 163
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(C) A court shall make specific written findings of fact and conclusions of law providing the basis for its determination under division (A) of this section. 166
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Sec. 2131.033. If modifications and supportive services are determined to be necessary and reasonable under section 2131.032 of the Revised Code, the court, public children services agency, private child placing agency, or private noncustodial agency that made the determination may require the modifications or services to be implemented to assist the person with a disability to conduct the activities or exercise the authority as described in division (A) of section 2131.031 of the Revised Code. The court, public children services agency, private child placing agency, or private noncustodial agency imposing the modifications or services shall review their continued necessity and reasonableness after a reasonable amount of time. 169
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Sec. 2131.034. If modifications and supportive services are not determined reasonable under section 2131.032 of the Revised Code, the court, public children services agency, private child placing agency, or private noncustodial agency that made the determination shall deny or limit conduct of activities or exercise of authority described under division (A) of section 2131.031 of the Revised Code by the person with a disability. 182
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Sec. 2131.035. A person with a disability may bring an action or, in the case of a court determination, file a motion, to challenge either of the following: 190
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<u>(A) The modifications or supportive services required</u>	193
<u>under section 2131.033 of the Revised Code;</u>	194
<u>(B) The limitation or denial under section 2131.034 of the</u>	195
<u>Revised Code.</u>	196
<u>Sec. 2131.036.</u> <u>A court shall do one of the following</u>	197
<u>regarding an action or motion under section 2131.035 of the</u>	198
<u>Revised Code:</u>	199
<u>(A) Affirm the modifications or supportive services</u>	200
<u>required under section 2131.033 of the Revised Code or</u>	201
<u>limitation or denial under section 2131.034 of the Revised Code</u>	202
<u>and make specific written findings of fact and conclusions of</u>	203
<u>law providing the basis for its decision as to why reasonable</u>	204
<u>modifications or supportive services are necessary in order to</u>	205
<u>conduct the activity or exercise the authority in question or</u>	206
<u>insufficient to alleviate any concerns. With regard to a motion</u>	207
<u>to challenge a court determination, the court shall consider,</u>	208
<u>and address in its decision, any new arguments or evidence</u>	209
<u>provided with the motion.</u>	210
<u>(B) Rescind the modifications or supportive services or</u>	211
<u>limitation or denial and grant the person the right to conduct</u>	212
<u>activities or exercise authority described in section 2131.031</u>	213
<u>of the Revised Code, with or without reasonable modifications or</u>	214
<u>support services.</u>	215
<u>Sec. 5301.071.</u> <u>No instrument conveying real property, or</u>	216
<u>any interest in real property, and of record in the office of</u>	217
<u>the county recorder of the county within this state in which</u>	218
<u>that real property is situated shall be considered defective nor</u>	219
<u>shall the validity of that conveyance be affected because of any</u>	220
<u>of the following:</u>	221

(A) The dower interest of the spouse of any grantor was 222
not specifically released, but that spouse executed the 223
instrument in the manner provided in section 5301.01 of the 224
Revised Code. 225

(B) The officer taking the acknowledgment of the 226
instrument having an official seal did not affix that seal to 227
the certificate of acknowledgment. 228

(C) The certificate of acknowledgment is not on the same 229
sheet of paper as the instrument. 230

(D) The executor, administrator, guardian, assignee, 231
attorney in fact, or trustee making the instrument signed or 232
acknowledged the same individually instead of in a 233
representative or official capacity. 234

(E) (1) The grantor or grantee of the instrument is a trust 235
rather than the trustee or trustees of the trust if the trust 236
named as grantor or grantee has been duly created under the laws 237
of the state of its existence at the time of the conveyance and 238
a memorandum of trust that complies with section 5301.255 of the 239
Revised Code and contains a description of the real property 240
conveyed by that instrument is recorded in the office of the 241
county recorder in which the instrument of conveyance is 242
recorded. Upon compliance with division (E) (1) of this section, 243
a conveyance to a trust shall be considered to be a conveyance 244
to the trustee or trustees of the trust in furtherance of the 245
manifest intention of the parties. 246

(2) Except as otherwise provided in division (E) (2) of 247
this section, division (E) (1) of this section shall be given 248
retroactive effect to the fullest extent permitted under section 249
28 of Article II, Ohio Constitution. Division (E) of this 250

section shall not be given retroactive or curative effect if to 251
do so would invalidate or supersede any instrument that conveys 252
real property, or any interest in the real property, recorded in 253
the office of the county recorder in which that real property is 254
situated prior to the date of recording of a curative memorandum 255
of trust or ~~the effective date of this section~~ March 22, 2012, 256
whichever event occurs later. 257

Section 2. That existing sections 107.43 and 5301.071 of 258
the Revised Code are hereby repealed. 259