



Ohio Legislative Service Commission

Bill Analysis

David M. Gold

H.B. 438

128th General Assembly
(As Reported by H. Judiciary)

Reps. Letson and Stautberg, Murray, Blessing, Grossman, Zehringer, Huffman, Derickson, Bubb, Stebelton, Hackett, Harwood, Wagner, Harris, Mecklenborg, Brown, Domenick, Pillich, Boyd, Batchelder, Coley

BILL SUMMARY

- Provides that a probate judge is not personally liable for the misconduct of an employee appointed by the judge and removes language that made a judge's liability for such acts contingent on whether the judge required the appointee to give a bond.
- Provides that a juvenile judge is not personally liable for the misconduct of an employee appointed by the judge and removes language that made a judge's liability for such acts contingent on whether the judge required the appointee to give a bond.

CONTENT AND OPERATION

Liability of probate judge for appointee's misconduct

Under existing law, unchanged by the bill, a probate judge has the authority to appoint clerks, stenographers, a bailiff, and any other necessary probate court employees. The probate judge may also provide for an assessor for child-placing purposes by appointing someone to the position or by designating a current probate court employee or contracting with a private individual to serve as an assessor. The probate judge must provide for one or more probate court investigators in a similar manner (that is, by appointment, designation, or contract) or by agreeing with another department or agency of the county to have an employee of that department or agency serve as an investigator. (R.C. 2101.11(A).)

Existing law authorizes the probate judge to require any of the judge's appointees to give bond in the sum of not less than \$1,000 conditioned for the honest

and faithful performance of the appointee's duties. The judge is personally liable for the default, malfeasance, or nonfeasance of any such appointee, but, if the judge requires a bond, the judge's liability is limited to the amount by which the loss resulting from the default, malfeasance, or nonfeasance exceeds the amount of the bond. The bill retains the judge's authority to require a bond, but it provides that the judge is not personally liable for the appointee's default, malfeasance, or nonfeasance. The elimination of the probate judge's personal liability is not contingent on whether a bond is required. (R.C. 2101.11(C).)

Liability of juvenile judge for appointee's acts

Existing law, unchanged by the bill authorizes a juvenile judge to appoint such bailiffs, probation officers, and other employees as are necessary and to require any employee to give bond in the sum of not less than \$1,000, conditioned for the honest and faithful performance of the employee's duties. Under existing law, the judge is not personally liable for the default, misfeasance, or nonfeasance of any employee *from whom a bond has been required*. The bill deletes the italicized language, so that the judge is not personally liable for the employee's misconduct regardless of whether a bond is required. (R.C. 2151.13.)

HISTORY

ACTION	DATE
Introduced	02-03-10
Reported, H. Judiciary	03-24-10

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